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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
(110)**

CWP-768-2023

Date of decision :- 01.05.2023

Ram Phal

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Susheel Gautam, Advocate for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana
for the respondents.

...

SUVIR SEHGAL, J (ORAL)

1. By way of a present writ petition filed under Article 226/227 of the Constitution of India, petitioner has approached this Court inter alia for issuance of a writ in the nature of mandamus directing the respondents to grant subsistence allowance at the rate of 50% from 01.12.2021 to 22.05.2022 and thereafter at increased rate of 75% till further orders along with all perks as admissible in accordance with the Rules.

2. Petitioner, who was posted as Patwari, has been placed under suspension vide order dated 22.11.2021, Annexure P-1, and has been relieved from the post on the same day. He has been served with a charge-sheet dated 09.12.2021, Annexure P-3, under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 2016. He submitted his reply on 23.12.2021, Annexure P-4. He served various representations and legal

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notice claiming suspension allowance.

3. Advance copy of the petition has been served upon the State. A status report has been filed on behalf of respondents No.1 to 3, submitting that during the pendency of the petition, by order dated 18.04.2023, Annexure R-2, petitioner has been removed from service. It has further been submitted that although the petitioner had initially submitted an affidavit on 25.01.2022 to the effect that he will not engage in any income generating work during the suspension period, but as the Certificate was not in terms of the Rules, he was asked to furnish a fresh Certificate, which he has submitted on 20.04.2023, Annexure R-3. On the same day, subsistence allowance @ 50% has been sanctioned to the petitioner.

4. Counsel for the petitioner has contended that subsistence allowance granted to the petitioner during the period of suspension under Rule 83 of the Haryana Civil Service (General) Rules, 2016 (for short “the General Rules”), mandatorily has to be reviewed after 6 months. On the other hand, State counsel has argued that the petitioner is not entitled to any increase in the subsistence allowance.

5. I have considered the respective submissions of the counsel for the parties.

6. Rules 83 and 84 of the General Rules, which are relevant for the purposes of adjudication of this petition, deserve to be noticed and are reproduced as under:-

“83. Subsistence allowance during the period of first six months -

A Government employee under suspension is entitled to subsistence allowance at an amount equal to the leave salary which he would have drawn had he been on leave on half pay.

***Note** - The subsistence allowance shall not be denied on any grounds unless the Government employee under suspension does not furnish the certificate that he is not engaged in any other employment, business, profession or vocation during the period of suspension.*

84. Review of subsistence allowance after every six months.-

Where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for the period after every six months as follows:-

- (i) the amount of subsistence allowance may be increased by a suitable amount not exceeding fifty per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee; or*
- (ii) the amount of subsistence allowance may be reduced by a suitable amount, not exceeding fifty per cent of the subsistence allowance admissible during the period of*

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the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.

Note 1 — *The initial grant of subsistence allowance shall be payable at an amount equal to leave salary on half pay leave. In the event of any alteration in subsistence allowance under clause (i) or (ii) of this rule, the increase or decrease shall be calculated on the amount of subsistence allowance initially fixed and shall not be subject to any maximum limit.*

Note 2 — *It is obligatory under this rule in sufficient time before the expiry of the six months of suspension the competent authority shall review each case in which the period of suspension is likely to exceed six months and even if it comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case. Specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken. Such review shall be made at least on every six months and specific orders are to be passed for increasing or decreasing or not altering of the subsistence allowance.”*

7. Perusal of the above reproduced Rules show that a suspended employee is entitled to subsistence allowance at the rate equivalent to leave salary on half pay leave for the first 6 months of the suspension period, on

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his furnishing an affidavit to the effect that he is not engage in any gainful employment. On the expiry of every 6 months, the competent authority is mandatorily required to review the subsistence allowance. The subsistence allowance may be increased by not more than 50% of the allowance originally granted, if the competent authority is of the opinion that the suspension period has been delayed for reasons not attributable to the Government employee. However, in case, the competent authority is of the view that the suspension period has been prolonged for reasons attributable to the Government employee, it may vary the subsistence allowance and reduce it. Note 2 to Rule 84 of the General Rules makes it must that before the expiry of every 6 months of suspension, every case of suspension has to be reviewed and a specific order has to be passed increasing, reducing or maintaining the subsistence allowance originally granted.

8. Status report filed by the official respondents shows that the affidavit given by the petitioner in January, 2022, was not in terms of the Rule 83 *ibid*. Thereafter, when the petitioner furnished an affidavit, Annexure R-3, specifically stated that he was not engaged in any employment during the suspension period, sanction order has been passed for release of subsistence allowance. However, there is no material on record to show that suspension period was reviewed as provided in the above reproduced Rules. This Court is, therefore, of the opinion that the mandatory requirement of Note 2 to Rule 84 has not been satisfied and the authority concerned deserves to be directed to pass specific orders.

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9. In view of above discussion, a direction is issued to the competent authority to review the matter at the end of every 6 months of the suspension and pass a specific order giving reasons and specifying as to whether suspension allowance is to be increased, decreased or maintained. In case, there is any increase in the suspension allowance on review after every 6 months, the amount due to the petitioner, be disbursed to him. The entire exercise be carried out within a period of 4 months from the date of communication of a copy of this order.
10. Writ petition is disposed of.

(SUVIR SEHGAL)
JUDGE

01.05.2023
Pardeep

Whether speaking/reasoned	Yes
Whether reportable	Yes/No