



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Date of order: 21st August, 2023**

+ **W.P.(C) 6868/2018**

SURESH CHAND Petitioner

Through: Mr.____, Advocate
 (Appearance not given)

versus

MANAGEMENT OF RAMJAS COLLAGE & ANR Respondents

Through: Mr.Sudhir Nandrajog, Senior
 Advocate with Mr.Anurag Mathur,
 Advocate for R-1

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition under Article 226 of the constitution of India, has been filed by the petitioner seeking the following reliefs:

“A) issue a writ of certiorari thereby directing the respondent management No. 1 to release the retirement benefits (including the facility of Medical Treatment in the approved hospitals) of the petitioner with immediate effect and till the time the same are released, the petitioner be paid the Subsistence Allowance w.e.f. May, 2018; and

B) direct the respondent management to treat the petitioner at parity with Sh. Dilbag Singh and in the process the respondent management to place on record the clauses of University Non-Teaching Employees (Terms & Conditions of Service), Rules of University of Delhi-2013 under which Sh. Dilbag Singh has been allowed to continue in the employment despite facing criminal trial as is being faced by the petitioner herein; and

C) Pass any other or further orders or directions in favour of



the petitioners and in the interest of Justice as this Hon'ble Court may deem fit and proper under the circumstances of the case.”

2. The facts leading to the filing of the present petition are as follows:

- i. The petitioner was employed as a Lab Assistant with the respondent college. In December 2011, FIRs were registered against the petitioner and one Sh. Dilbag Singh on the ground that they were involved in the grant of admission to the students in the year 2010-11, on the basis of forged mark sheet. Pursuant to which, the petitioner was placed under suspension *vide* order dated 23rd December 2011, which is continuing till date and the petitioner has already attained the age of superannuation on 30th April 2018.
- ii. The petitioner filed a writ petition bearing No. WP (C) 5102/2017, against the suspension order dated 23rd December 2011, which was disposed of by a Coordinate Bench of this Court *vide* an order dated 5th February 2018. The Coordinate Bench of this Court had directed the respondent college to reconsider the petitioner's suspension and to disclose whether the petitioner would be reinstated with consequential benefits in case of acquittal.
- iii. Thereafter, the respondent college passed an order dated 21st April 2018, stating that in case the petitioner gets acquitted in the criminal cases pending against him, he would be reinstated with all the consequential benefits in terms of the



University Non-Teaching Employees (Terms & Conditions of Service) Rules, of the University of Delhi. Subsequently, the petitioner made a representation dated 23rd April 2018, to the respondent college requesting for equal treatment *vis-à-vis* Sh. Dilbagh Singh, who is also an accused in similar criminal cases.

- iv. Meanwhile, the petitioner attained the age of superannuation on 30th April, 2018, and the respondent college passed an office order stating that the subsistence allowance of the petitioner is stopped w.e.f. May, 2018.
- v. Consequently, on 4th June 2018, the petitioner served the respondent college with a demand notice claiming his subsistence allowance for the month of May, 2018. Prior to the same, the petitioner had also submitted a form on 23rd April 2018, and 31st May 2018, seeking retirement benefits including the sanction of pension and medical benefits on attaining the age of superannuation.
- vi. It is alleged that since the petitioner's grievances remain unaddressed. Hence, he has preferred the present writ petition.

3. Learned Counsel appearing on behalf of the petitioner submitted that despite making innumerable requests, the respondent college has utterly failed to reinstate the petitioner on his job despite the fact that no trial has yet commenced before the learned Trial Court in respect of the abovestated FIR. Furthermore, since 2011, the respondent college has not even initiated any departmental inquiry against the petitioner.



4. It is submitted that the petitioner's co-employee, Sh. Dilbag Singh was also charged similarly, but neither was he suspended nor any action was initiated against him in terms of any departmental enquiry.

5. It is also submitted that the respondent college is bound to place Sh. Dilbag Singh under suspension in accordance to the Rules *qua* University Non-Teaching Employees, 2013, instead the respondent college has allowed him to enjoy his regular employment with all the financial and consequential benefits. It is further submitted that the suspension of the petitioner was selective as the other involved persons were not subjected to any scrutiny which amounts to prejudice *vis-à-vis* Sh. Dilbag Singh.

6. It is submitted that despite the directions issued by a Coordinate Bench of this Court *vide* Order dated 5th February 2018, in W.P (C) No. 5102/2017, the petitioner received a mere two-line order from the respondent college stating that he would be reinstated with all the consequential benefits subject to his acquittal.

7. It is also submitted that the respondent college did not comply with the order 5th February 2018, intentionally and deliberately as the order passed by the respondent college in pursuance to the directions of this Court did not contain any reasoning and details, as to why the petitioner was being dealt with in a such a prejudicial manner or being discriminated *vis-à-vis* Sh. Dilbag Singh.

8. It is therefore submitted that in view of the foregoing submissions, the petitioner prays that the instant petition deserves to be allowed.

9. *Per Contra*, Mr. Sudhir Nandrajog, learned senior counsel appearing on behalf of the respondent college vehemently opposed the instant writ petition and denied the averments made on behalf of the petitioner.



10. It is submitted at the outset that the petitioner is alleging that he has been prejudiced *vis-à-vis* Sh. Dilbag Singh. Learned senior counsel submitted that the petitioner cannot make such a submission as he has not impleaded Sh. Dilbag Singh who is a necessary party to the present proceedings, and hence, the present petition in this regard is not maintainable.

11. It is also submitted that in view of the above said FIR, the respondent college placed the petitioner under suspension *vide* the office order dated 23rd December 2011. Further, one Mr. Raje Singh was also placed under suspension *vide* another office order dated 30th December 2011.

12. It is submitted that on 3rd January 2017, the respondent college issued a show cause notice Sh. Dilbag Singh after it came to know about the fact that Sh. Dilbag Singh was also involved in the incident of grant of admission to the students by unfair means in the Academic Year 2010-2011 on the basis of forged mark-sheet and that he is an accused in an FIR.

13. It is also submitted that the governing body of the college had resolved to place Sh. Dilbag Singh under suspension *vide* office order dated 24th March 2017. Meanwhile, the University of Delhi *vide* its communication dated 30th March 2017, informed the respondent college that term of the governing body of the college was only up to 31st December 2016 and thus, all the decisions taken by the college after the expiry of the governing body were to be treated as null and void. Accordingly, the decision to suspend Sh. Dilbag Singh was withdrawn and therefore, he was allowed to join his duties.

14. Learned senior counsel, in regard to the averment of the petitioner that he is not treated in parity with Sh. Dilbag, submitted to the effect that



the petitioner attained the age of superannuation on 30th April 2018, whereas, Sh. Dilbag Singh continues to be an employee of the respondent college and has about 17 years of service remaining. Therefore, both cannot be treated at par with each other.

15. It is submitted that in pursuance to the order dated 5th February 2018, passed by this Court in W.P (C) No. 5102/2017, the respondent college passed the office order dated 21st April 2018, thereby, stating that the petitioner would be reinstated in case he gets acquitted in the criminal cases pending against him.

16. It is submitted that the petitioner superannuated on 30th April 2018, and continues to claim subsistence allowance post retirement while the college discontinued the same w.e.f. 1st May 2018. The same was examined by a committee constituted by the college in a meeting held on 26th July 2018, and the said committee held that the petitioner is not entitled for any such relief, however, he is entitled for the payment of retirement benefits. Thereafter, the University of Delhi *vide* its communication dated 16th October 2018, fixed the gross provisional pension of the petitioner payable @ Rs. 3,919/-, w.e.f. 1st May 2018.

17. Learned senior counsel for the respondent submitted that in view of the above facts and circumstances, the instant petition is devoid of any merits and is liable to be dismissed.

18. Heard learned counsel for the parties and perused the material on record including the pleadings, and judicial precedents cited.

19. At this stage, it is pertinent to form the following issues for adjudication of the instant petition:

i. Whether the petitioner is entitled for subsistence allowance



for the month of May, 2018, i.e., after attaining the age of superannuation on 30th April 2018, and for retirement benefits?

ii. *Whether the petitioner's claim seeking treatment at par with Sh. Dilbag Singh is maintainable?*

Whether the petitioner is entitled for subsistence allowance for the month of May, 2018, i.e., after attaining the age of superannuation on 30th April 2018, and for retirement benefits?

20. At the outset, the petitioner is seeking subsistence allowance w.e.f. May, 2018 and the release of retirement benefits. In its rival submissions, it has been contended on behalf of the respondent college that arrears amounting to Rs. 4,04,176/- has been released to the petitioner. Further, provisional pension of the petitioner has been fixed at Rs. 3,919/- w.e.f. 1st May 2018.

21. Before delving further, it is noted that a Coordinate Bench of this Court *vide* order dated 5th February 2018, in W.P (C) No. 5102/2017, had directed the respondent college to disclose whether the petitioner would be reinstated with consequential benefits, if they are acquitted in the criminal case pending against him, and if not so, the respondent college cannot keep the petitioner under suspension without initiating any departmental enquiry.

22. Upon perusal of the Counter Affidavit filed by the respondent college and the steps taken by them in pursuance to the directions passed by the Coordinate Bench of this Court, it is manifestly clear that the governing body of the respondent college, in its meeting held on 21st April 2018, had resolved to reinstate the petitioner with all the consequential benefits in terms of 'University Non-Teaching Employees, Rules of University of



Delhi' subject to the petitioner's acquittal in the criminal cases pending against him. Relevant paragraph of the office order dated 21st April 2018, is reproduced herein-

"Considering the above directions of the Hon'ble Court, the Governing Body resolved that petitioners i.e. Sh. Suresh Chand and Raje Singh would be reinstated with all the consequential benefits in terms of the University Non-Teaching Employees (Terms and Conditions of Service) Rules of the University of Delhi if they are acquitted in the criminal cases."

23. Adverting back to the issue, this Court is preliminary of the view that the submissions made on behalf of the petitioner are unsustainable in light of Article 14 of the Constitution of India and the law settled behind the principle of equality.

24. As per the settled law, the concept of subsistence allowance is the salary paid to an employee placed under suspension so that the said employee may sustain himself. The same is normally less than the salary he is actually entitled for and the very expression 'subsistence allowance' has an undeniable penal significance. The said principle has been enunciated by the Hon'ble Supreme Court in ***M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679***. The relevant paragraph of the aforementioned judgement is reproduced herein:

"29. ... When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court, in O.P. Gupta v. Union of India¹ made the following observations with regard to subsistence allowance: (SCC p. 340, para 15)

"An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the



order of suspension. The real effect of suspension as explained by this Court in Khem Chand v. Union of India is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance generally called - subsistence allowance I which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford English Dictionary. Vol. II at p. 2171 is to remain alive as on food; to continue to exist. Subsistence' means means of supporting life specially a minimum livelihood.'"

25. Upon perusal of the minutes of meeting dated 26th July 2018, which is annexed as Annexure R-3, it is observed by this Court that the payment of subsistence allowance post retirement and release of the retirement benefits were examined by the committee constituted by the respondent college. The said committee had resolved that as per the 'Swamy's - Clause 9 of the CCS (CCA) Rules, in respect of Suspension and Subsistence Allowance', the petitioner is not entitled to the subsistence allowance after retirement.

26. Further, the payment *qua* the 'retirement benefits' was taken into consideration by the above said committee. In pursuance of the same, the respondent college had submitted papers to the University of Delhi for fixation of the provisional pension of the petitioner *vide* the letter dated 30th July 2018, and consequently, *vide* the letter dated 16th October 2018, the University of Delhi approved and fixed the gross provisional pension of the petitioner w.e.f. 1st May 2018, @ Rs. 3,919/-.



27. It is also apparent that the arrears of payment in lieu of retirement benefits which included 'encashment of earned leave and provident fund' amounting to Rs. 4,04,176/-, was released in favour of the petitioner.

28. It is also observed by this Court that the petitioner was getting subsistence allowance before his retirement. Therefore, after attaining the age of superannuation on 30th April 2018 and in view of the above mentioned CCS (CCA) Rules, the respondent college had stopped the petitioner's subsistence allowance and released the arrears as mentioned herein above, and further fixed the provisional pension. Therefore, the respondent college has already considered the request of the petitioner for retirement benefits and thus, the grievance of the petitioner stands decided.

29. In addition to the abovesaid observation, it is also indisputable that the respondent college has resolved to grant consequential benefits to the petitioner subject to his acquittal and therefore, the claim of the petitioner is already deliberated upon.

30. This Court is of the view that there is nothing material before this Court for adjudication as the reliefs sought by the petitioner have already been addressed. The relief of release of subsistence allowance cannot be granted to the petitioner since he superannuated on 30th April 2018, and allowance was stopped w.e.f. May, 2018.

31. Moreover, the petitioner's claim of seeking retirement benefits already stands addressed *vide* the letter dated 16th October 2018, by the concerned authority i.e., the University of Delhi, whereby, the gross provisional pension of the petitioner was fixed at Rs. 3,919/-, w.e.f. 1st May 2018.

32. Accordingly, 'issue no. i' stands decided. Now adverting to 'issue no.



ii’.

Whether the petitioner’s claim seeking treatment at par with Sh. Dilbag Singh is maintainable?

33. It is also the case of the petitioner that he is not being treated at par with Sh. Dilbag Singh who continues to be in service despite him being an accused in similar criminal cases, whereas, the petitioner was suspended from his service outrightly. Learned senior counsel while opposing the said averment of the petitioner has contended to the effect that Sh. Dilbag Singh is left with 17 years of service and therefore, the petitioner cannot be treated at par with him.

34. In regard to the instant issue, this Court has the preliminary view that the submissions made on behalf of the petitioner are unsustainable in light of Article 14 of the Constitution of India and the law settled behind the principle of equality.

35. This Court is of the view that Article 14 is a positive concept and does not promote negative equality. Article 14 cannot be enforced in a negative manner i.e., if one person is penalised for committing an offence, the other person placed in a similar situation, cannot be penalised on behest of equality.

36. Irregularity and illegality cannot be perpetuated to all, on the ground that illegal benefits have been extended to others. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently, such an order does not confer any legal right on others to get the same relief as well.

37. In the judgment of *Jaipur Development Authority v. Daulat Mal Jain*, (1997) 1 SCC 35, the Hon’ble Supreme Court while observing the



following held that a wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the said wrong decision.

“26. In Coromandel Fertilizers Ltd. v. Union of India [1984 Supp SCC 457 : 1984 SCC (Tax) 225] , it was held in para 13, that wrong decision in favour of any party does not entitle any other party to claim the benefit on the basis of the wrong decision. In that case, one of the items was excluded from the schedule, by wrong decision, from its purview. It was contended that authorities could not deny benefit to the appellant, since he stood on the same footing with the excluded company. Article 14, therefore, was pressed into service. This Court had held that even if the grievance of the appellant was well founded, it did not entitle the appellant to claim the benefit of the notification. A wrong decision in favour of any particular party does not entitle another party to claim the benefit on the basis of a wrong decision. Therefore, the claim for exemption on the anvil of Article 14 was rejected.

27. In Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745] , allotment of the sites was the subject-matter under several proceedings in the High Court; ultimately some persons had the benefit of allotment while others were denied of the same. When Article 14 was pressed into service, this Court in para 8 at p. 750 had held that the basis of the principle, if it can be called one, on which the writ petition had been allowed to be taken was unsustainable in law and indefensible in principle. The mere fact that the respondent-Authority had passed a particular order in the case of another person similarly situated, can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order could not be made the basis of issuing a writ compelling the respondent-Authority to repeat the illegality to cause another



unwarranted order. The extraordinary and discretionary power of the High Court under Article 226 cannot be exercised for such a purpose.”

38. Further, the Hon’ble Supreme Court while discussing on the angle of adverse effects of Article 14 has held that the said provision imparts a positive obligation under which the State brings about necessary social and economic changes, to ensure that every person enjoys equal protection. It is imperative to understand that the same is not a negative concept, as it would imply that a benefit which has been granted wrongly to one can be claimed by others. The Hon’ble Court enunciated the above said in the judgment of ***Union of India v. M.K. Sarkar, (2010) 2 SCC 59***, and observed as under:

“A claim on the basis of guarantee of equality, by reference to someone similarly placed, is permissible only when the person similarly placed has been lawfully granted a relief and the person claiming relief is also lawfully entitled for the same. On the other hand, where a benefit was illegally or irregularly extended to someone else, a person who is not extended a similar illegal benefit cannot approach a court for extension of a similar illegal benefit. If such a request is accepted, it would amount to perpetuating the irregularity. When a person is refused a benefit to which he is not entitled, he cannot approach the court and claim that benefit on the ground that someone else has been illegally extended such benefit. If he wants, he can challenge the benefit illegally granted to others. The fact that someone who may not be entitled to the relief has been given relief illegally, is not a ground to grant relief to a person who is not entitled to the relief.”

39. This Court is of the view that the wrong exemption under wrong action taken by the authorities will neither entitle others to get the same benefit nor can Article 14 be pressed to seek the relief, on the ground of such alleged discrimination.



40. In view of the facts of the instant case, it is observed that the petitioner has suffered no real prejudice by the fact that Sh. Dilbag Singh is being allowed to continue his service and enjoy the consequential benefits despite being an accused and charged with the allegations similar to that of the petitioner. If a person has been wrongly extended a benefit, the same cannot be cited as a precedent for claiming similar benefit by others. The guarantee of equality before law under Article 14 is a concept that needs to be followed by taking a pragmatic approach.

41. Article 14 is a positive concept and if there is a commission of any illegal or irregular acts in favour of any person, others cannot invoke the writ jurisdiction of Courts for perpetuating the same illegality or irregularity. The said reasoning implies that a party before a Court cannot plead that they have been denied the benefits which have been illegally extended to others, such as in the present petition.

42. Therefore, it is intelligible that the plea of parity between the petitioner and Sh. Dilbag Singh is unsustainable in view of the factual matrix and the legal position discussed hereinabove.

43. This Court is persuaded by the view taken by the Hon'ble Supreme in a catena of judgments, whereby, it has been held that if a wrong is committed in an earlier case, it cannot be perpetuated. It is well settled that Article 14 is a positive concept and no direction can be issued on the plea of discrimination, wherein the earlier decision itself was improper and wrong.

44. In view of the above findings, this Court finds no merit in the averments made by the petitioner. This Court is of the view that no prejudice has been caused to the petitioner and the respondent college has already addressed the reliefs sought by him, in view of the relevant facts and



circumstances.

45. Accordingly, 'issue no. ii' stands decided.

46. In view of the above discussion, this Court finds nothing substantial in the present petition that would amount to irregular and illegal, and which goes to the root of the matter, thereby, warranting the intervention of this Court while exercising its writ jurisdiction.

47. This Court discerns no material to establish the propositions put forth by the petitioner. Based on the aforementioned arguments, this writ petition is accordingly dismissed.

48. Pending applications, if any, also stand dismissed.

49. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 21, 2023

SV/ RYP

Click here to check corrigendum, if any