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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-1606-2020 (O&M)  
Date of decision: 30.04.2024

**PRADEEP AGARWAL (DECEASED) THROUGH HIS LRs**

**...Petitioner**

**VERSUS**

**SARVA HARYANA GRAMIN BANK AND ANR.**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present:- Mr. Sandeep Thakan, Advocate  
for the petitioner.

Mr. Bhushan Bhatia, Advocate  
for the respondents.

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**JASGURPREET SINGH PURI, J. (Oral)**

**CM-17668-CWP-2023**

Prayer in this application is for impleading LRs of the petitioner  
Pradeep Agarwal, who is stated to have died on 03.12.2022.

Notice in the application was issued to the  
non-applicant/respondents.

Mr. Bhushan Bhatia, Advocate, accepts notice on behalf of the  
non-applicant/respondents and submitted that he has no objection in case the  
aforesaid application is allowed.

In view of the above, the present application is allowed. LRs of the  
petitioner as mentioned in para No.3 of the application are permitted to be  
impleaded as party to this petition, subject to all just exceptions. Amended

memo of parties is taken on record. Office to tag the same at appropriate place in the file.

**CWP-1606-2020**

1. The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 14.03.2018 (Annexure P-5) and order dated 26.07.2018 (Annexure P-10) to the extent to grant subsistence allowance to the petitioner as per Notification dated 03.04.2001 (Annexure P-7) and to release all consequential benefits and further to direct the respondents to grant interest to the petitioner on the delayed payment.

2. The brief facts of the present case are that the petitioner was working as a Clerk in the respondent-Bank and while he was in service, an enquiry was instituted against him and thereafter, he was dismissed from service by the respondent-Bank in the year 1990. The petitioner assailed the aforesaid dismissal order before the learned Labour Court and the same was dismissed. Thereafter, the petitioner filed a petition bearing CWP-13105-1998 before this Court, which was disposed of by a Coordinate Bench of this Court on 24.10.2016 vide Annexure P-1. The order of removal of the petitioner from service dated 01.12.1990 was set aside by this Court and the matter was remitted to the disciplinary authority to commence the enquiry from the defective stage i.e. examination of witnesses. Since the petitioner at that point of time was of the age of 59 years and the age of superannuation was 60 years, the disciplinary authority was directed to complete the enquiry proceedings within a period of three months and it was also directed that respondents are liable to pay subsistence allowance to the petitioner for the intervening period

from the date of dismissal till the concluding of disciplinary proceedings in view of the decision rendered by Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad versus B. Karunakar, 1993 (4) SCC 727.**

3. Thereafter, in pursuance of the order passed by this Court vide Annexure P-1, the respondent-Bank paid an amount of Rs.14,83,879/- and Rs.31,049.07/- to the petitioner through two cheques dated 20.05.2017 and 30.05.2017, respectively, and photocopy of the cheques are appended with the present writ petition as Annexure P-2. Thereafter, the petitioner filed a contempt petition bearing COCP-302-2017 before this Court, which was disposed of by a Coordinate Bench of this Court on 07.02.2018 vide Annexure P-3, whereby the respondent-Bank apprised the Contempt Court that the amount of subsistence allowance has been paid to the petitioner. However, this Court also observed and directed that in case the petitioner is still aggrieved in any manner and if less amount has been paid to him, then he is at liberty to move representation to the competent authority and the respondent is directed to take action thereupon in accordance with law. Thereafter, vide Annexure P-4, the petitioner moved a representation to the respondent-Bank on 26.02.2018 by stating that by virtue of Regulation No.45 of the Haryana Kshetriya Gramin Bank (Officers and Employees) Service Regulations, 2000 (hereinafter called as Service Regulations of 2000), he was entitled to get full pay as subsistence allowance, whereas he has been granted only half of the pay and therefore, he may be granted full pay in accordance with the aforesaid Regulation. On the basis of the aforesaid representation, the General Manager of the respondent-Bank passed the impugned order dated 14.03.2018 vide Annexure P-5, in which it was stated that as per the provisions of Haryana Kshetriya Gramin Bank (Staff)

Service Regulations, 1980 (hereinafter called as Service Regulations of 1980), the subsistence allowance was to be paid to him in terms of Regulation No.30(4) of the Service Regulations of 1980, which has been paid to him. Thereafter, vide Annexure P-9, the petitioner filed an appeal against the aforesaid order and the same was dismissed by the respondent-Bank vide Annexure P-10. The present petition has been filed by the petitioner challenging the aforesaid orders i.e. Annexure P-5 and Annexure P-10.

3. Learned counsel for the petitioner submitted that during the pendency of the present writ petition, the petitioner has died on 03.12.2022 and his LRs are on the record. He further submitted that earlier when the aforesaid writ petition i.e. CWP-13105-1998 was disposed of by a Coordinate Bench of this Court vide Annexure P-1, the order of dismissal of the petitioner from service dated 01.12.1990 was set aside and the matter was remitted back to the disciplinary authority to commence the enquiry from the defective stage i.e examination of witnesses and the reason for setting aside the aforesaid dismissal order was that the respondent-Bank did not proceed in accordance with the provisions and the three witnesses which have been cited in the disciplinary proceedings were not summoned to adduce evidence before the Enquiry Officer and it was also observed in the aforesaid order Annexure P-1 that it was the bounden duty of the respondent-Bank to prove the charge by leading evidence of the authors of the cited documents and considering the totality and circumstances, the Coordinate Bench of this Court had set aside the order of dismissal and directed the respondent-Bank to commence the enquiry from the defective stage i.e examination of witnesses. He further submitted that it was also directed that subsistence allowance is to be paid to the petitioner for the

intervening period from the date of dismissal till concluding of the disciplinary proceedings in view of the judgment of Hon'ble Supreme Court as aforesaid but at the time when the aforesaid subsistence allowance was paid to the petitioner vide Annexure P-2, it was paid in accordance with the Service Regulations of 1980, which were not even in existence and they stood repealed by the Service Regulations of 2000.

4. While referring to the Service Regulations of 2000, which were prevalent at the time when the aforesaid order Annexure P-1 was passed by a Coordinate Bench of this Court, he referred to Regulation No.73 of the Service Regulations of 2000, which deals with the clause of repeal and savings and submitted that since the old Service Regulations of 1980 stood repealed, there was no question of invoking the aforesaid provision of Service Regulations of 1980 and instead of applying the Service Regulations of 2000, the respondent-Bank has not granted the subsistence allowance to the petitioner in terms of Regulation No.45 of Service Service Regulations of 2000. He further submitted that in the old Service Regulations of 1980, the rate of subsistence allowance was 50% of the basic pay, whereas as per Regulation No. 45 of the new Service Regulations of 2000, different criteria has been provided which is so contained in Regulation No.45(2)(A), which provides that for the first three months of suspension, one-third of the basic pay is to be given as subsistence allowance and thereafter, for the subsequent period, if enquiry is held departmentally by the Bank then half of the basic pay is to be given which the employee was drawing on the date prior to the date of suspension and after one year, full pay is to be given if the departmental enquiry is not delayed for reasons attributable to the concerned employee or any of his representatives and rather the petitioner

was entitled for subsistence allowance in terms of Regulation No.45(2)(A)(ii) (b) of the Service Regulations of 2000, which has not been paid to the petitioner.

5. On the other hand, Mr. Bhushan Bhatia, learned counsel for the respondent-Bank submitted that although the aforesaid judgment was passed by this Court in year 2016 vide Annexure P-1 but since the petitioner was dismissed from service in the year 1990 initially, then when the subsistence allowance was to be paid to the petitioner then it had to be paid in terms of those Regulations which were prevalent at the time when he was dismissed from service and under the old Service Regulations of 1980, the amount which was to be paid was 50% of the basic pay as subsistence allowance and there was no provision pertaining to full pay after one year and that was the reason as to why the petitioner has been paid half of his pay as subsistence allowance in terms of the old Service Regulations of 1980. He further submitted that even otherwise also in terms of Regulation No.45(2)(A)(ii)(b) which has been so referred by the learned counsel for the petitioner, full pay is to be paid only when the departmental enquiry is not delayed for the reasons attributable to the concerned employee, whereas in the present case there was no delay attributable to the employer, which is a Bank but the delay was attributable to the petitioner, who was the employee because he had laid a claim before the learned Labour Court and the learned Labour Court also dismissed his plea but later on this Court in the aforesaid writ petition had set aside the order of dismissal vide Annexure P-1 and therefore, it cannot be said that the respondent-Bank was attributable with any delay.

6. I have heard the learned counsel for the parties.

7. The short controversy involved in the present case is as to out of two Service Regulations, i.e. Service Regulations of 1980 and Service Regulations of 2000, which Service Regulations are applicable to the present petitioner for the purpose of determination and payment of subsistence allowance in pursuance of the order passed by a Coordinate Bench of this Court vide Annexure P-1 in the year 2016. As per both the learned counsel for the parties, the rate of grant of subsistence allowance under the Service Regulations of 1980 was only 50% of the basic pay. However, as per the Service Regulations of 2000, criteria has been mentioned in Regulation No.45(2)(A), whereby initially for the first three months of suspension, one-third of the basic pay will be given to an employee as subsistence allowance and for subsequent period, half of the basic pay which the employee was drawing on the date prior to the date of suspension will be given but in case the enquiry is held for more than 1 year, then full pay is to be given. After the passing of the order by this Court vide Annexure P-1, the respondent-Bank paid subsistence allowance to the petitioner in terms of old Service Regulations of 1980 on the ground that the petitioner was dismissed from service in the year 1990 and at that point of time, Service Regulations of 1980 were applicable and also on the ground that the respondent-Bank was not at fault in the delay of the departmental proceedings even if assumingly Service Regulations of 2000 are to be made applicable.

8. A perusal of the aforesaid judgment passed by a Coordinate Bench of this Court vide Annexure P-1 would show that it was so observed that when the departmental proceedings were drawn up against the petitioner, wherein he was dismissed from service in the year 1990, then in the enquiry the respondent-Bank did not adhere to the procedure and it was because of non-

adherence to the procedure by the respondent-Bank that this Court had set aside the order of dismissal of the petitioner. Paras No.8, 9 and 10 of the aforesaid judgment (Annexure P-1) are reproduced as under:-

xxx-xxx-xxx-xxx

*“8. Perusal of the Inquiring Officer’s report, it is evident that there is no assessment of evidence. Cited witnesses have not been examined. In fact, the Manager of the Branch was one of the witness, while placing material relating to manipulation of record. The Manager should have been examined and cross-examined in the enquiry both in the inquiring proceedings as well as before the Labour Court. The contention of the respondent-Bank that the petitioner has admitted the guilt is not to the extent that misconduct committed by him for the reasons that what has been admitted is that relating to entries made in the register as well as remitting a sum of ₹ 20,000/- in the account of M/s Ajanta Furniture. He has never admitted that in order to misappropriate a sum of ₹ 20,000/-, he has made entries. When these things stood, it was the bounden duty of the respondent-Bank to prove the charge by leading evidence of the authors of the cited documents. Even, though three witnesses have been cited in the disciplinary proceedings, they were not summoned to adduce evidence before Inquiring Officer or before the Labour Court. The Inquiring Officer as well as Labour Court held that the charges were proved with reference to documents whereas the authors of the documents have not been examined or cross-examined. Supreme Court in the case of “S.C. Girotra Vs. United Commercial Bank (Uco Bank) 1995 Supp (3) SCC 212” held that author of the documents is to be examined.*

9. *In the present case, even, the FDR holder Sh. Radha Kishan, who has also opened account in the firm, namely, M/s Ajanta Furniture for the reasons that, within two days after remitting a sum of ₹ 20,000/- in the name of M/s Ajanta Furniture, the same has been remitted back when the Manager and the petitioner noticed that there was excess payment made in the account of M/s Ajanta Furniture. In view of these discrepancies, the Labour Court order dated 06.11.1997 is set aside. Consequently, the removal order dated 01.12.1990 is also set aside. The matter is remitted to disciplinary authority to commence the enquiry from the defective stage i.e. examination of witnesses.*

10. *Learned counsel for the petitioner submitted that the petitioner is aged about 59 years and age of retirement is 60 years. Therefore, the disciplinary authority is directed to complete the inquiry proceedings within a period of three months from the date of receipt of certified copy of this order. The petitioner is directed to cooperate in the disciplinary proceedings. The respondents are liable to pay subsistence allowance for the intervening period from date of dismissal till concluding of disciplinary proceedings in view of the decision rendered in the **“Managing Director, ECIL, Hyderabad Vs. B. Karunakar 1993 (4) SCC 727.”***

9. Thereafter, when the petitioner filed a contempt petition bearing COCP-302-2017 before this Court, the following order was passed:-

*“Learned counsel for the petitioner submits that order dated 24.10.2016 has not fully been complied with as only the disciplinary proceedings have been concluded but the petitioner has not been paid the subsistence allowance for the intervening period i.e from the date of dismissal till the conclusion of the disciplinary proceedings, whereas, learned*

*counsel for the respondent submits that whatever was due to the petitioner has been paid to him.*

*On perusal of Annexure R-1, it appears that the petitioner has been paid the subsistence allowance for the period as directed by this Court.*

*In view of the above, the present petition is disposed of.*

*However, in case, the petitioner is still aggrieved in any manner and if less amount has been paid to him, he is at liberty to move representation to the competent authority and the respondent is directed to take action thereupon in accordance with law.”*

10. Thereafter, on the representation made by the petitioner vide Annexure P-4, the impugned order dated 14.03.2018 (Annexure P-5) was passed and the same is also reproduced as under:-

***Sarva Haryana Gramin Bank***

***Head Office, Plot No. 1, Sector-3, Rohtak-124001, Tel. 01262-243120, 243121***

***SPEED POST***

***Ref: HO/DAC/18/ 624***

***Date: 14.03.2018***

***Sh. Pardeep Aggarwal,***

***56, Park Colony,***

***Bhiwani-127021***

***Reg: To pay balance Subsistence Allowance***

*Please refer your letter No. PA 14/2018 dated 26.02.2018 on the captioned subject vide which you have submitted that you were paid half pay as subsistence allowance against your entitlement for full pay as subsistence allowance as per sub section 2(A) (ii) b of Section 45 of service rules of "Haryana Kshetriya Gramin Bank (Officers and Employees) Service Regulations, 2000".*

*In this regard you are informed that your above letter was put up to the Disciplinary Authority (Chairman) who has ordered that Disciplinary action against you was taken under the provisions of "Haryana Ksetriya Gramin Bank (Staff) Service Regulation, 1980" and the Subsistence Allowance has been paid to you in terms of Regulation no.30 (4) of these Regulations. So there is no merit in your claim preferred vide your letter under reference.*

*Please be informed accordingly.*

**GENERAL MANAGER**

11. A perusal of the aforesaid impugned order would show that the only reason as to why the claim of the petitioner for grant of full salary as subsistence allowance has been rejected was that according to the respondent-Bank, the petitioner was entitled for subsistence allowance only under the Service Regulations of 1980.

12. There are two aspects of the present case. Firstly, in pursuance of the order passed by this Court vide Annexure P-1, which Service Regulations will apply and secondly, in case the Service Regulations of 2000 were to be made applicable then as to whether in terms of Regulation No.45(2)(A)(ii)(b), any delay was attributable to the petitioner or not. The Regulation No.45(2) of the Service Regulations of 2000 is reproduced as under:-

***2. In case of an employee***

***(A) Basic Pay***

*(i) For the first three months of suspension 1/3rd of the basic pay which the employee was drawing on the date prior to the date of suspension irrespective of the nature of enquiry*

*(ii) For subsequent period*

*(a) Where the enquiry is held departmentally by the Bank, 1/2 of the basic pay, the employee was drawing on the date prior to the date of suspension*

*(b) After one year full pay if the departmental enquiry is not delayed for reasons attributable to the concerned employee or any of his representative(s)*

*(c) Where the enquiry is done by an outside agency and the said agency has come to the conclusion not to prosecute the employee, full pay will be payable after six months from the date of receipt of report of such agency or one year after suspension, whichever is later, and in the event the enquiry is not delayed for reasons attributable to the employee or any of his representative(s)*

13. So far as the first aspect is concerned, the dismissal of the petitioner from service was in the year 1990 and the same was set aside by this Court in the year 2016 vide Annexure P-1 and the matter was remitted back to the disciplinary authority to commence the enquiry from the defective stage i.e. examination of witnesses. It was also directed by a Coordinate Bench of this Court that the respondents are liable to pay subsistence allowance to the petitioner for the intervening period from the date of dismissal till concluding of disciplinary proceedings in view of the decision rendered by Hon'ble Supreme Court in the **Managing Director, ECIL, Hyderabad versus B. Karunakar (supra)**. Therefore, it is clear that the subsistence allowance was to be paid to the petitioner after the aforesaid order has been passed by this Court in the year 2016 vide Annexure P-1. The right to claim subsistence allowance accrued to

the petitioner in the year 2016 as his dismissal has been set aside in the year 2016 and therefore, the Service Regulations which were invoked in the year 2016 were to be applied and there can be no justification for application of the old Service Regulations of 1980 because at the time when the aforesaid judgment was passed vide Annexure P-1 in the year 2016, Service Regulations of 1980 already stood repealed by virtue of Regulation No.73 of the Service Regulations of 2000. Therefore, when the aforesaid judgment of this Court was to be implemented, then it could not have been implemented on the basis of repealed Regulations and therefore, the argument put forward by the learned counsel for the respondents is totally misconceived and against the law.

14. So far as the second aspect is concerned, as per the learned counsel for the respondent-Bank even if applying Regulation No.45(2)(A)(ii)(b) of the new Service Regulations of 2000, full salary can be paid only when the departmental enquiry is not delayed for the reasons attributable to the concerned employee or any of his representatives. Therefore, it has to be seen as to whether in the present case any reason for delay was attributable to the petitioner or not. The facts of the present case suggest that this Court had set aside the order of dismissal vide Annexure P-1 because of the fault of the respondent-Bank and it was not because of the fault of the petitioner and therefore, it cannot be said that the petitioner was at fault at that point of time. So far as the argument raised by the learned counsel for the respondent-Bank that it was the petitioner who had raised the claim before the learned Labour Court and filed a petition before this Court which caused delay is concerned, the same is absolutely unsustainable and misconceived. For invoking a legal remedy by lodging of any appropriate proceedings either in the learned Labour

Court or any other Court of law cannot be termed as a reason of making a delay. Approaching a Court by filing an appropriate proceedings is a vested right of any employee and therefore, such kind of argument raised by learned counsel for the respondents is totally rejected. There is nothing on the record to show that the petitioner was instrumental in causing the delay in the departmental enquiry.

15. In view of the aforesaid facts and circumstances, the present writ petition is allowed. The impugned order dated 14.03.2018 (Annexure P-5) and order dated 26.07.2018 (Annexure P-10) are hereby set aside. The respondents are directed to calculate the subsistence allowance of the petitioner (since deceased) in pursuance of the judgment passed by a Coordinate Bench of this Court dated 24.10.2016 vide Annexure P-1 and in terms of Regulation No.45(2) of the Haryana Kshetriya Gramin Bank (Officers and Employees) Service Regulations, 2000 (Annexure P-7) and pay the same to his LRs proportionately after adjusting the amount already paid, along with interest @ 6% per annum (simple), within a period of three months from today. In case the aforesaid amount is not paid to the LRs of the petitioner within a period of aforesaid three months, then they shall be entitled for future rate of interest @ 9% per annum.

**30.04.2024**  
Chetan Thakur

**(JASGURPREET SINGH PURI)**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether reportable        | : | Yes/No |