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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-1901-1992 (O&M)
Date of decision: 13.01.2025

Haryana Land Reclamation and Development Corporation (Ltd.)

...Appellant

Versus

Veer Bhan

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Piyush Bansal, Advocate for the appellant.

Mr. Shvetanshu Goel, Advocate and
Ms. Shabnam Mahajan, Advocate for the respondent.

VIKAS BAHL, J. (ORAL)

1. Challenge in the present Regular Second Appeal is to the judgment dated 23.02.1991 vide which the suit filed by the respondent-plaintiff had been decreed. Challenge is also to the judgment dated 28.04.1992 vide which appeal filed by the present appellant against the said judgment had been dismissed.

2. Learned counsel for the appellant has submitted that as per Rule 7.2(1) of the Punjab Civil Services Rules Volume 1 Part 1, a Government employee is entitled to the payments while being on suspension and as per sub Clause (ii), the subsistence allowance which is to be given to the employee is to be an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on



half pay and in addition is to be given dearness allowance, if admissible. It is submitted that even as per the proviso to the said Rule, it has been stated that in case the period of suspension exceeds six months then the authority which has made the order of suspension would be competent to vary the amount of subsistence allowance for any period subsequent to the period of first six months and in such a situation subsistence allowance can be suitably increased. It is further submitted that once the trial Court and the First Appellate Court had come to the conclusion that the respondent-plaintiff had not delayed the proceedings then also, the Court should have directed the competent authority to take a decision in the matter instead of the Court itself granting the relief to the respondent-plaintiff and directing the defendant to increase the subsistence allowance of the plaintiff-respondent w.e.f. 28.10.1983 by 50% of the subsistence allowance admissible during the period of first six months along with interest at the rate of 12% per annum. It is submitted that on the said ground, the judgments of the trial Court as well as of the First Appellate Court deserve to be set aside and at best the competent authority of the present appellant be directed to decide the matter in accordance with Rule 7.2.

3. Learned counsel for the respondent, on the other hand, has opposed the present Regular Second Appeal and has submitted that as per Note-2 appended to Rule 7.2 of the Punjab Civil Services Rules, it was obligatory for the authority to have reviewed each case in which the period of suspension was likely to exceed six months and the same was not done in the present case and thus, the authorities had failed to perform their statutory duty. It is further submitted that in case the higher rate was not to



be given to the respondent-plaintiff then, a specific order with specific reason was required to be passed which was not passed in the present case and thus, the judgments of the Courts below are in accordance with law. It is submitted that it had been held by the trial Court and the First Appellate Court that the plaintiff was not in any way responsible for the delay in the proceedings and has further submitted that the present plaintiff is now more than 65 years of age and even the amount which would accrue to his benefit would be a very meager amount and in case, the argument of the appellant is accepted and the judgments of the trial Court and the First Appellate Court are modified and the competent authority is directed to decide the matter afresh then, the same would cause irreparable loss to the plaintiff, inasmuch as, it would delay the culmination of the proceedings which had been initiated in the year 1986. It is submitted that since the facts in the present case have been proved beyond doubt and there is no substantial issue involved in the present appeal, thus, the same be dismissed in toto.

4. This Court has heard learned counsel for the parties and has perused the paper book and finds that the judgments of the trial Court as well as the First Appellate Court are in accordance with law and deserve to be upheld and the present Regular Second Appeal deserves to be dismissed for the reasons stated hereinafter.

5. The respondent-plaintiff had filed a suit for declaration to the effect that he was entitled to an increase of subsistence allowance in view of the provisions of Rule 7.2 of the Punjab Civil Services Rules w.e.f. 28.10.1983, on the plea that he was an employee under the defendant/present appellant-Corporation in the capacity of Store Clerk and



he was placed under suspension by the order of Managing Director on 28.04.1983 and that after the expiry of the period of six months i.e., 28.10.1983, he was entitled to subsistence allowance on an increased basis by 50%, which would amount to 75% of the total emoluments but the defendant/appellant failed to pay the aforesaid subsistence allowance. It was further specifically pleaded that there was no delay attributable to the respondent-plaintiff as the proceedings were delayed by the appellant-Corporation. A written statement was filed by the present appellant-Corporation opposing the said plea and it was stated in the written statement that the proceedings had been prolonged due to the acts which were attributable to the plaintiff. In the replication, the said averments were controverted by the plaintiff-respondent.

6. On 25.02.1987, the trial Court had framed the following issues:-

- “1) *Whether the plaintiff is entitled to receive increased subsistence allowance in view of Rule 7.2 of the Punjab Civil Service Rules w.e.f. 28.10.1983? OPP.*
- 2) *Whether the suspension of the plaintiff beyond the period of six months, from 27.10.83 was because of the acts of the defendants, if so to what effect? OPP.*
- 3) *Whether the suit has not been defended by a proper person if so to what effect? OPP.*
- 4) *Whether the suit is not maintainable as alleged in additional pleas of the written statement? OPD.*
- 5) *Whether the civil court has no jurisdiction to try the present suit? OPD.*
- 6) *Whether the suit is bad for want of notice? OPD*
- 7) *Relief.”*



7. The trial Court decided all the issues except issue No.3 in favour of the plaintiff and granted the following relief in his favour:-

“Relief:

18. In view of aforesaid discussion, suit of the plaintiff is decreed against defendant with costs and defendant is directed to increase the subsistence allowance of plaintiff w.e.f. 28.10.83 by 50% of the subsistence allowance admissible during the period of first six months alongwith interest at the rate of 12% P.A. from the date of accrual of the said amount till the date of actual payment. Decree-sheet be prepared and file be consigned to record room after due compliance.”

8. An appeal filed by the present appellant was dismissed by the First Appellate Court vide judgment dated 28.04.1992. It would be relevant to note that even cross-objections were filed by the respondent-plaintiff which were also dismissed. Relevant portion of the judgment of the First Appellate Court is reproduced hereinbelow:-

*“13. For the sake of facility reference to **Rule 7.2 of Punjab Civil Services Rule is also being made :-***

7.2(1) A Government employee under suspension shall be entitled to the following payments, namely :-

(i) In the case of a warrant officer in civil employment who is liable to revert to military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment.

(ii) In the case of any other Government employee-

(a) A subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on half pay and in addition dearness allowance, if admissible, on the basis of such leave salary:



Provided that 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 any period subsequent to the period of the first six months as follows:-

(i) the amount of subsistence allowance may be increased by a suitable amount not exceeding 50 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;

(ii) the amount of subsistence allowance may be reduced by a suitable amount not exceeding 50 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 due to reasons to be recorded in writing, directly attributable to the Govt. employee;

(iii) the rate of dearness allowance will be based on the increased or as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above.;

(b) any other compensatory allowances admissible, from time to time on the basis of pay of which the Govt. employee was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.

14. Learned counsel for the appellant has argued that proviso appended to Rule 7.2 (1) (ii) (a) stipulates that on the expiry of six months of suspension the authority shall be competent to vary the amount of subsistence allowance and **that it is not**



incumbant on such authority to increase the subsistence allowance. I am afraid it is not so. Reference to Gajraj Singh's case (supra) has already been made. Note-3 reproduced below and appended to Rule 7.2 makes it quite clear that such increase or decrease is obligatory:

Note 3: *It is obligatory under this Rule in sufficient time before the expiry of the six months of suspension the competent authority should 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.*

15. *I have already mentioned that notice was given to the plaintiff on 7.2.83; he submitted his reply on 3.3.83; Enquiry Officer was appointed on 24.3.83; plaintiff was suspended on 28.4.83 and the Enquiry Officer submitted his report on 10.7.83 i.e. much before expiry of six months of suspension counted from 28.4.83. Despite that no decision was taken to serve the plaintiff with show cause notice till 23.11.83. When the report of Enquiry Officer had already been submitted on 10.7.83 decision could certainly have been taken by the defendant- appellant Corporation before 28.10.1983 i.e. before the expiry of six months of suspension of the plaintiff. No plausible explanation is forthcoming why the decision was not taken on or before 28.10.83. It cannot be said that delay suspension of the plaintiff beyond 28.10.83 was on account of any act or conduct of the plaintiff. It was the defendant Corporation which was responsible for not taking any decision within six months of suspension of the plaintiff despite the fact that report of Enquiry Officer had been received on 10.7.83. That being so, the plaintiff was certainly*



entitled to increased subsistence allowance in accordance with Rule 7.2 of the Punjab Civil Services Rules and without any hesitation I affirm the findings of the trial Court on issues Nos. 1 and 2.”

9. A perusal of the above judgment would show that the First Appellate Court had taken into consideration the facts of the case and had come to the conclusion that the delay in deciding the case beyond 28.10.1983 was not on account of any act or conduct of the plaintiff and that it was the defendant/present appellant-Corporation which was responsible for not taking any decision within six months of suspension of the plaintiff in spite of the fact that the report of the Enquiry Officer had been received on 10.07.1983, yet the show cause notice was issued on 23.11.1983 and it was thus, affirmatively found that the plaintiff was entitled to increased subsistence allowance.

10. It was observed by the First Appellate Court that the notice was issued to the plaintiff on 07.02.1983 and he had filed his reply on 03.03.1983 and the Enquiry Officer in the present case was appointed on 24.03.1983. Thereafter the plaintiff was suspended on 28.04.1983 and the Enquiry Officer had submitted his report on 10.07.1983. It was further highlighted that although the enquiry report was submitted on 10.07.1983 i.e., within six months from the date of suspension which was 28.04.1983 but the decision to issue show cause notice, which was issued on 23.11.1983, was highly delayed and there was no plausible reason for the same. The dates as mentioned in para 15 of the judgment passed by the First Appellate Court have not been disputed before this Court. It is thus,



apparent that the plaintiff-respondent was not even remotely responsible for the proceedings having not been decided within six months from the date of suspension i.e., 28.04.1983 and rather inordinate time was taken by defendant-present appellant in issuing show cause notice dated 23.11.1983 although the enquiry report had been submitted on 10.07.1983. The said finding has not been shown to be either illegal or perverse and is in accordance with law and deserves to be upheld.

11. Although, a perusal of Rule 7.2, more so, proviso shows that the authority who has passed the suspension order shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of first six months but the said proviso when read with Note-2 (wrongly mentioned as Note-3 in the judgment of the First Appellate Court) further shows that it is obligatory for the competent authority to review each case, in which the period of suspension is likely to exceed six months and thus, as per the wholesome reading of the same, the competent authority is mandated to review the cases in the circumstances detailed in Note-2. In the present case, it is not in dispute that although, the period of suspension had exceeded the said period of six months and that too on account of the inaction of the appellant-Corporation, yet the competent authority neither reviewed the case nor had passed any order with respect to altering subsistence allowance. A further perusal of the said Note would show that in case the authority comes to the conclusion that the rate is not to be altered having regard to all the circumstances of the case then, specific order to that effect is required to be passed detailing the circumstances under which the decision had to be taken. In the present case, it is not in dispute that no



specific order, much less, an order containing specific reasons has been passed.

12. Moreover, a perusal of Sub Clause (i) of proviso to Rule 7.2(1) (ii)(a) of the Punjab Civil Services Rules would further highlight the fact that subsistence allowance is to be varied upto 50% of the subsistence allowance admissible during the period of first six months, if the period of suspension has been prolonged for reasons not directly attributable to the Government employee. A reading of the abovesaid Rule along with Note-2 shows that where suspension is likely to continue even after the lapse of six months on account of delay in departmental proceedings, not attributable to the employee, then subsistence allowance is to be altered in favour of the employee and in case the same is not to be altered in favour of the employee then specific order giving specific reason is required to be passed. Since in the present case, it has been found as a matter of fact that the delay is not attributable to the plaintiff, thus, the competent authority was obligated to pass an order for increasing the subsistence allowance in accordance with Sub Clause (i), which was not done in the present case. It is thus, apparent that as per Rule 7.2(1) read along with Note-2, in the facts of the present case, the plaintiff had a right to receive higher subsistence allowance and the judgments and decrees of the trial Court as well as First Appellate Court were passed after duly appreciating the said provisions and law on the point and the same deserve to be upheld.

13. The judgments and decrees of the trial Court and the First Appellate Court do not deserve to be set aside on the plea raised by the defendant, to the effect that the competent authority should be directed to



pass a fresh order, in view of the abovesaid facts and circumstances and also in view of the fact that on account of no order having been passed by the competent authority as required under Rule 7.2(1) at the appropriate time, the plaintiff had to institute the present suit which was instituted in the year 1986 and was successful before the trial Court as well as before the First Appellate Court and a period of more than 38 years has lapsed. On a pointed query raised by this Court, learned counsel for the appellant has fairly submitted that the total benefit which will accrue to the respondent-plaintiff along with interest would be approximately Rs.26,000/- and thus, directing the authorities at this stage to pass a fresh order, when the respondent-plaintiff is admittedly a senior citizen, would further prolong the litigation and could lead to multiplicity of litigation, which is not desirable in the peculiar facts and circumstances of the present case.

14. Keeping in view the abovesaid facts and circumstances, the judgments passed by the trial Court as well as by the First Appellate Court are upheld and the present Regular Second Appeal deserves to be dismissed and is accordingly, dismissed.

15. All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

13.01.2025

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No