

Before K. Kannan, J.

RAJINDER KUMAR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

CWP No. 11445 of 2009

21st May, 2010

Constitution of India, 1950—Art. 226—Punjab Civil Services Rules—Rl. 7.2—Suspension from service—Claim for subsistence allowance—Whether amount of subsistence allowance can be adjusted against amount recoverable for misappropriation of funds—Held, no—Liability to pay subsistence allowance is preemptory and it cannot suffer any form of adjustment against what an employee perceives as an amount due to be paid—Petition allowed.

Held, that the rules as to payment of subsistence allowance are to ensure that an employee, during the suspension period gets living wage on humanitarian grounds, irrespective of whether the enquiry ultimately lead to guilt or discharge of the imputation of misconduct attributed to the employee. The liability to pay the subsistence allowance is preemptory and it cannot suffer any form of adjustment against what the employee perceives as an amount due to be paid from the delinquent employee.

(Para 2)

Vipul Dharmani, Advocate, *for the petitioner.*

Anil Kumar Sharma, Additional Advocate General, Punjab, *for respondent No. 1.*

Harish Aggarwal, Advocate, *for respondents No. 2 and 3.*

K. KANNAN, J. (ORAL)

(1) The petitioner's claim in the writ petition is for subsistence allowance during the period of suspension. The claim is anchored to Rule 7.2 of the Punjab Civil Services Rules, which provides for payment of subsistence allowance during the period of suspension. The learned counsel appearing on behalf of the respondents does not deny the applicability of the rule and entitlement of the subsistence allowance. On the other hand his contention is that the proceedings had been initiated against him for misappropriation of funds and the petitioner himself had admitted that he had misappropriated to the tune of Rs. 20 lakhs. He would, therefore, contend that the amount which was liable to be paid as subsistence allowance was adjusted against the amount recoverable by the respondents from the petitioner.

(2) The rules as to payment of subsistence allowance are to ensure that an employee, during the suspension period gets living wage on humanitarian grounds, irrespective of whether the enquiry ultimately leads to guilt or discharge of the imputation of misconduct attributed to the employee. The liability to pay the subsistence allowance is preemptory and it cannot suffer any form of adjustment against what the employee perceives as an amount due to be paid from the delinquent employee.

(3) There shall therefore be a mandamus issued against the respondents to pay the subsistence allowance during the period of suspension which shall be treated as independent of any right of enforcement of what the employer claims against the petitioner for a proven act of misappropriation. The subsistence allowance be calculated in the manner provided under rule 7.2. The amount shall be released to the petitioner within a period of 6 weeks with interest at 9% per annum from the date when the amount fell due to the date of payment.

(4) The writ petition is allowed on the above terms.