

Santosh Kumar land and whether the same is authorised by the Act or not.  
 v. In view of what I have said above that question need not  
 The Chief Commissioner, detain me at all. The words "deal with any land acquired"  
 Delhi and in section 10 and the language of section 14(2) (a) supplies  
 others further support to the view that I have taken.  
 Kapur, J.

That leaves the question of discrimination. The fact that some of the plots have been returned to owners because they were not required by the Government cannot constitute violation of Article 14 of the Constitution. In such matters the necessary latitude has to be given to the authorities as to how best the object of the Act is to be achieved. In case the authorities *bona fide* come to the conclusion that the petitioner's plot be utilised for construction of school building and other plots which are not capable of being utilised by them should be returned to the owners, the guaranteed right of equality or equal protection of laws is not infringed. The legislature has laid down the principles for the guidance of the agencies to whom the power to administer the Act has been committed. Some amount of discretion has to be left with the agencies in the matter of execution of laws. If land turns out to be surplus, it has to be returned, and there is no violation of any right involved in leaving it to the authorities concerned as to which plots would be utilised and which plots returned. So far as the allegations of *mala fide* are concerned, I find no material on this record for coming to that conclusion. In the result the petition fails and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

*Before Shamsher Bahadur and Gurdev Singh, JJ.*

K. K. JAGGIA,—*Petitioner.*

*versus*

THE STATE OF PUNJAB.—*Respondent.*

Civil Writ No. 1645 of 1964

1965

May, 28th

*Punjab Civil Services Rules, Volume I Part I—Rules 7.2 and 7.3—Petitioner, a government servant, was suspended on 16th May, 1956 pending departmental enquiry and dismissed on 6th October, 1961 as a result thereof—Order of dismissal quashed by High Court in a petition under Article 226 of the Constitution on 20th September,*

1963 and petitioner reinstated on 20th September, 1963—Whether entitled to full pay and emoluments for the period from 16th May, 1956 to 19th September, 1963—Limitation Act (IX of 1908)—Art. 102—Period of limitation applicable to the suit for recovery of arrears of pay—Terminus a quo for such suit—Whether the date of quashing of the order of dismissal.

*Held*, that Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, is not applicable to the case of the petitioner as he was reinstated as a result of the order of the High Court and not as a result of a departmental appeal. Rule 7.2 of the said rules applies also to cases of interim suspension pending a departmental enquiry or criminal proceedings and not only to cases of suspension as a punishment. But the order of suspension merges in the order of dismissal when it is passed as a result of the departmental enquiry and if the order of dismissal is quashed by the High Court or a Civil Court, the order of suspension is not revived. Consequently the petitioner is entitled to his full emoluments for the period of his interim suspension, as well as for the period from the date of his dismissal to the date of reinstatement, i.e., from 16th May, 1956 to 19th September, 1963, after deducting the amount which the petitioner has already received as subsistence allowance for the period of his suspension prior to his dismissal. The petitioner will, however, have to satisfy the Government that during the period to which his claim relates, he had not engaged in any other gainful employment or business, and if any income had accrued to him from such business or employment, the same shall be adjusted in determining the amount payable to the petitioner on account of arrears of his pay and allowances for the above period.

*Held*, that the High Court will not help a petitioner in recovering a time-barred claim in a petition under Article 226 of the constitution and thus get over the bar of limitation. The period of limitation for a suit to recover arrears of salary by a Government servant is governed by Article 102 of the Indian Limitation Act, 1908, which prescribes a period of three years, the *terminus a quo* being "when the wages accrued due." In this case the right to recover full pay and allowances for the period of his interim suspension accrued to the petitioner on the day the order of his dismissal was quashed by the High Court, and it was from that day that the period of three years prescribed by Article 102 has to be reckoned. Even if the period of three years is reckoned from the date of his wrongful dismissal, the petitioner's claim is within time as he approached the High Court well within three years of the date of his dismissal.

*Case referred by the Hon'ble Mr. Justice Gurdev Singh on 5th October, 1964 to a larger Bench for decision of an important question*

*of law involved in the case and the case was finally decided by a Division Bench consisting of the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice Gurdev Singh on 28th May, 1965.*

*Petition under Article 226 of the Constitution of India praying that a writ of certiorari, mandamus, or any other appropriate writ, order or direction be issued to the respondent to pay full salary and allowances admissible to the petitioner for the entire period of his suspension and dismissal, i.e. from 12th April, 1956 to 16th April, 1956 and then from 16th May, 1956 to 26th September, 1963, along with the costs of this petition.*

S. K. JAIN AND S. S. DEWAN, ADVOCATES, for the Petitioner.

M. S. PANNU, ADVOCATE, FOR THE ADVOCATE-GENERAL,— for the Respondent.

#### ORDER OF THE DIVISION BENCH

**Gurdev Singh, J.** GURDEV SINGH, J.—The petitioner K. K. Jaggia entered the service of the State of Punjab (respondent) on 18th January, 1949, as Sub-Divisional Officer in the Irrigation Branch of the Public Works Department in the scale of 250—25—550/25—750, with usual allowances. While so employed on 16th May, 1956 he was placed under suspension with retrospective effect from 11th April, 1956, pending a departmental enquiry against him. On a civil suit brought by him, the order of his suspension was modified and he was treated as on duty from 11th April, 1956 to 15th May, 1956, and was awarded full pay and allowances for that period. He, however, continued to be under suspension till 6th October, 1961, when on completion of the departmental enquiry held against him he was dismissed from service. The order of the petitioner's dismissal was later quashed by this Court on 22nd August, 1963, on his petition under Article 226 of the Constitution (Civil Writ No. 279 of 1962), on the finding that the departmental enquiry was vitiated because of the refusal to supply to the petitioner previous statements of witnesses taken under sections 161 and 164 of the Criminal Procedure Code. Consequent upon this verdict of the Court, the petitioner was reinstated on 20th September, 1963, by an order of the Governor, Punjab (copy of which is Annexure E), but by the same order he was again placed under suspension with immediate effect pending completion of the departmental enquiry against him "after giving him a reasonable opportunity to defend

himself". It was further stated in that order that during the period of suspension the petitioner, K. K. Jaggia, would be allowed subsistence allowance admissible to him under rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I.

K. K. Jaggia  
vs.  
The State of  
Punjab

Gurdev Singh, J.

During the subsequent enquiry (which, we are told, is still pending) the petitioner applied for payment of the arrears of his full salary and allowances for the period during which he had remained suspended prior to the order of his dismissal, dated 6th October, 1961, as well as for the period that had elapsed between the date of his dismissal and reinstatement. In reply, he received a copy of the note (annexure C) addressed by the Director-cum-Under Secretary (Vigilance Department), Punjab Government to the Secretary, Government, Punjab (Irrigation and Power Departments) directing that the petitioner's claim be disposed of in accordance with the following decision of the Government:—

- (a) For the period of the officer's suspension prior to his dismissal, he was to be paid only subsistence allowance permissible under the rules applicable to such officers;
- (b) for the period between the officer's dismissal and his subsequent reinstatement, he should be allowed full pay and allowances; and
- (c) before making the payment, it should be verified from the officer what amount, if any, he had earned during the period he remained dismissed, and that amount should be deducted from the pay and allowances due to him.

Aggrieved by this decision of the Government, the petitioner approached this Court by way of this petition under Article 226 of the Constitution praying that a writ of *mandamus* be issued to the respondent State of Punjab directing it to pay him full salary and allowances not only for the period between his dismissal and reinstatement but even for the period during which he had remained suspended prior to the order of his dismissal dated 6th October, 1961.

So far as the period between his dismissal and subsequent reinstatement is concerned, the petitioner's right

K. K. Jaggia to receive full pay and allowances was conceded in the return filed on behalf of the State. It was, however, asserted that before such payment could be made it was incumbent upon the petitioner to disclose if he had earned anything during the period, since according to the rules a Government servant could not undertake any other gainful employment during this period. The petitioner's claim for full pay and allowances for the period between his suspension and dismissal (16th May, 1956 to 6th October, 1961), was, however, disputed on the plea that he was entitled only to subsistence allowance as fixed by the Competent Authority under rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I, and the decision of the Government contained in annexure C referred to above on the point being in conformity with rule 7.3 of the said Rules was valid.

The State of  
Punjab  
Gurdev Singh, J.

When this petition was originally laid before me, a preliminary objection was taken on behalf of the respondent that the petitioner's claim being for payment of money alleged to be due to him from his employer, he should not be permitted to resort to the proceedings under Article 226 of the Constitution, and thereby avoid payment of the requisite court-fee when the normal remedy by way of a suit was available to him. After hearing the parties' counsel and due consideration of the matter, I, however, rejected the preliminary objection and proceeded to hear the petition on merits.

In the course of arguments, a controversy arose before me about the applicability of rules 7.2 and 7.3 of the Punjab Civil Services Rules, Volume I, Part I, to the petitioner's claim for the period of his first suspension. A complication arose because of the recent decision of their Lordships of the Supreme Court in *Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and others* (1) in which rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh, which is similarly worded as rule 7.3 referred to above, was declared not to apply to the cases of Government servants who are reinstated because of the decision of a Court of law. In view of the importance of the question involved, which is likely to affect quite a number of cases of suspended Government

(1) A.I.R. 1962 S.C. 1384.

servants, and absence of any reported decision on this matter, I referred the case to a larger Bench in accordance with proviso (b) to sub-rule (xx) of rule 1 of Chapter 3-B of the High Court Rules and Orders, Volume V. Under the orders of my Lord the Chief Justice, this petition of Shri K. K. Jaggia has now come up before this Bench for disposal.

K. K. Jaggia  
v.  
The State of  
Punjab  
Gurdev Singh, J.

Shri M. S. Pannu, learned Deputy Advocate-General, has reiterated his preliminary objection and urged that the petition be thrown out without hearing on merits as the ordinary remedy by way of suit to enforce his claim for arrears of pay and allowances was available to the petitioner, and he cannot be permitted to get over the bar of limitation or to avoid the payment of court-fee payable in a suit for recovery of the amount claimed. Shri S. K. Jain, appearing for the petitioner, has contended that the preliminary objection having been rejected by me sitting in Sing'e Bench after due consideration of the matter cannot be permitted to be raised again. This contention is, however, devoid of all force. The reference to the larger Bench was made under proviso (b) to sub-rule (xx) of rule 1 of Chapter 3-B of the High Court Rules and Orders, Volume V, which enables a Single Judge to obtain the assistance of another Judge for disposal of a petition under Article 226 of the Constitution, and now the entire case is before this Bench. When a preliminary objection had been raised before me sitting in Single Bench, an expression of opinion on the same had become necessary. Had I found some substance in the preliminary objection, there would have been no occasion for me to refer the case to the larger Bench to resolve the difficult question that had arisen on merits. Now that the whole case is before us, even if we are convinced that the petitioner's claim to salary and allowances has merit, we have still to consider whether it is a fit case for exercise of our jurisdiction under Article 226 of the Constitution. The learned Deputy Advocate-General has, however, not been able to convince us that the view expressed in the referring order about the maintainability of this petition under Article 226 of the Constitution requires re-consideration or that the petition merits dismissal merely because it was open to the petitioner to agitate his claim for arrears of salary and allowances in a civil Court. It is well-settled that the existence of other legal remedies

K. K. Jaggia is not *per se* a bar to the issue of a writ under Article 226, and there is no obligation imposed on the Court to relegate the aggrieved party to other legal remedies available.

*v.*  
The State of  
Punjab

Gurdev Singh, J. Even in *Messrs Burmah Construction Company v. The State of Orissa and others* (2) while observing that the High Court normally does not entertain a petition under Article 226 of the Constitution to enforce a civil liability arising out of a breach of contract or a tort to pay an amount of money due to the claimant and leaves it to the aggrieved party to agitate the question in a civil suit for that purpose, it has been held that an order for payment of money may sometimes be made in a petition under Article 226 of the Constitution against the State or against an officer of the State to enforce a statutory obligation. In *Calcutta Gas Company (Proprietary) Limited v. State of West Bengal and others* (3) it was ruled that persons other than those claiming fundamental rights can also approach the High Court for relief under this Article if their legal rights are infringed, and the question whether the Court would or would not interfere by issue of a writ would depend upon the facts and circumstances of each case. It is not disputed that in appropriate cases their Lordships of the Supreme Court and this Court have not hesitated to direct payment of money acting under Articles 32 and 226 of the Constitution. In *Shyam Sunder Derey and others v. Union of India* (4) a Division Bench of Calcutta High Court specifically ruled that a writ of mandamus directing the authority concerned to pay arrears of salary lies.

So far as the case in hand is concerned, we find that the petitioner was suspended as far back as year 1956 and after enquiry which lasted for some years he was dismissed from service in the year 1961, but the order of his dismissal was set aside by this Court on 22nd August, 1963. He received nothing but subsistence allowance for all these years during which he remained suspended. On the respondent's own admission he is entitled to full pay and allowances from the date of his dismissal to the date of his reinstatement but even that amount has not

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(2) A.I.R. 1962 S.C. 1820.

(3) A.I.R. 1962 S.C. 1044.

(4) A.I.R. 1965 Cal. 281.

so far been paid to him. If he is now asked to go to a civil Court that will further delay the recovery of the amount to which he may be lawfully entitled. We thus find no justification for summary dismissal of the petition merely because of the existence of alternative remedy.

K. K. Jaggia  
v.  
The State of  
Punjab

Gurdev Singh, J.

The petitioner's claim for pay and allowances covers two distinct periods; one being the period of his suspension prior to the order of his dismissal dated 6th October, 1961, and the other between the date of his dismissal and the date of his reinstatement on 20th September, 1963. As has been observed earlier, so far as the latter period is concerned the respondent has not disputed the petitioner's right to claim full pay and allowances and the learned Deputy Advocate-General has stated before us that as soon as the petitioner satisfies the Government that he was not gainfully employed during this period he would be paid full pay and allowances. The petitioner's learned counsel, while stating at the bar that during this period between the order of his dismissal and reinstatement the petitioner though engaged in petty contract work has not earned any profit out of it, has argued that the respondent was not entitled to compel the petitioner to disclose his earnings for the period between his dismissal and reinstatement nor can the amount earned by him, if any, during this period be adjusted towards his pay and allowances. He argued that on his dismissal the petitioner ceased to be in the employment of the Government and thus he was free to take to any other business or employment to earn his living. This argument, in our opinion, is no longer open to the petitioner as he had never previously disputed the Government's right to adjust the amount which he may have earned after the period of his dismissal. In view of the statement of Shri S. K. Jain that the petitioner had not made any profit from his business during the period in question and he has also furnished the necessary information to the respondent the question raised is merely of academic importance and need not detain us.

In support of the respondent's decision to pay only subsistence allowance fixed under rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I, to the petitioner for the period of his suspension prior to the order of his dismissal dated 6th October, 1961, the learned Deputy



K. K. Jaggia Advocate-General has placed reliance on rule 7.3 *ibid* relating to "Allowances on Reinstatement". The relevant portion of which runs thus :

*v.*  
The State of  
Punjab  

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Gurdev Singh, J.

"7.3 (1) When a Government servant, who has been dismissed, removed, compulsorily retired or suspended, is reinstated, the authority competent to order the reinstatement shall consider and make a specific order :—

- (a) regarding the pay and allowances to be paid to the Government servant for the period of his absence from duty; and
  - (b) whether or not the said period shall be treated as a period spent on duty.
- (2) Where the authority mentioned in sub-rule (1) is of opinion that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed, compulsorily retired or suspended, as the case may be.
- (3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent authority may prescribe.

Shri S. K. Jain has, however, drawn our attention to the decision of the Supreme Court in *Devendra Pratap Narain Rai Sharma v. State of Uttar Pradesh and others* (1) (*supra*) where their Lordships while dealing with rule 54 of the Fundamental Rules framed by the State of Uttar Pradesh, which is almost in the same words as the Punjab rule 7.3 reproduced above, held that the rule had no application to cases like the present in which the dismissal of a public servant is declared invalid by a civil Court and thereafter he is reinstated. Shah J. speaking for the Court summed up the legal position in these words :—

"This rule undoubtedly enables the State Government to fix the pay of a public servant whose dismissal is set aside in a departmental appeal. But in this case the order of dismissal was declared invalid in a civil suit. The effect of the decree of

the civil suit was that the appellant was never to be deemed to have been lawfully dismissed from service and the order of reinstatement was superfluous. The effect of the adjudication of the civil Courts is to declare that the appellant had been wrongfully prevented from attending to his duties as a public servant. *It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work.*"

K. K. Jaggia  
v.  
The State of  
Punjab  
Gurdev Singh, J.

In view of this dictum of their Lordships of the Supreme Court, the learned Deputy Advocate-General had to concede that the petitioner's pay and allowances for the period of first suspension prior to the order of his dismissal could not be fixed under rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I. He, however, urges that the subsistence allowance fixed under rule 7.2 of the Punjab Rules at the time the first order of suspension was passed against the petitioner will continue to govern the petitioner's case, and he cannot claim anything in excess of the same on his reinstatement. He argues that the effect of the order of the petitioner's reinstatement was merely to put him back in the same position in which he was on the day the order of his dismissal was made, and since on that day he was under suspension he could claim only the subsistence allowance fixed under rule 7.2. This position is clearly untenable in view of the decision of their Lordships of the Supreme Court in *Om Parkash Gupta v. State of Uttar Pradesh* (5), wherein it was held that where an order of suspension is made against a Government servant pending an enquiry, and as the result of enquiry an order of dismissal by way of penalty has been passed, the order of suspension lapses with that order and the subsequent declaration by a civil Court that the order of dismissal is illegal cannot revive the order of suspension which did not exist. That the State Government in this case was under no misapprehension with regard to the effect of the order of this Court setting aside the petitioner's dismissal is apparent from the fact that subsequently when it directed the reinstatement of the petitioner but considered it necessary to proceed with the enquiry against him, fresh orders for his suspension were

K. K. Jaggia passed. Though in that case the claim for arrears of salary for the period of suspension was given up, it was observed:—  
**The State of Punjab**

**Gurdev Singh, J.**

“The order of suspension made against the appellant was clearly one made pending an enquiry. It certainly was not a penalty imposed after an enquiry. As the result of the enquiry, an order of dismissal by way of penalty had been passed against the appellant.

With that order the order of suspension lapsed. The order of dismissal replaced the order of suspension which then ceased to exist. That clearly was the position between the Government of the United Provinces and the appellant. The subsequent declaration by a civil Court that the order of dismissal was illegal could not revive an order of suspension which did not exist.”

The learned Deputy Advocate-General has, however, submitted that these observations do not justify the contention that once the order of dismissal is set aside the order of suspension is also rendered void or ineffective. He points out that while setting aside the dismissal of the petitioner nothing was said about his order of suspension, the validity of which had not even been challenged in the writ petition, and argues that if the order of suspension remained valid, the respondent was justified in directing that the petitioner be paid only the subsistence allowance for the period of his suspension in accordance with rule 7.2 of the Punjab Civil Services Rules, Volume I, Part I. Shri S. K. Jain has, however, urged that rule 7.2 applies only to cases of suspension of a Government servant as a punishment and not because of the pendency of a departmental enquiry against him. In fact, he has gone to the extent of urging that since there is no specific rule in the Punjab Civil Services Rules empowering the Government to suspend its employee pending a departmental enquiry against him, the order of his suspension passed by the Government itself was void and no action for fixing subsistence allowance of the employee concerned for such period under rule 7.2 could be taken. It is true that the Punjab Civil Services Rules do not contain any rule enabling the Government to suspend its employee

pending departmental enquiry against him, yet, as has been held in *R. P. Kapur v. Union of India and another* (6), the Government like any other employer has an inherent right to suspend a public servant pending departmental enquiry or criminal proceedings against him. This is what has been called "interim suspension", and it is quite distinct from suspension which is inflicted as penalty or punishment.

K. K. Jaggia  
v.  
The State of  
Punjab  
Gurdev Singh, J.

We do not find it possible to agree with Shri S. K. Jain that the provisions with regard to the fixation of subsistence allowance for the period of suspension contained in rule 7.2 of the Punjab Civil Services Rules, Volume I Part I, relate only to suspension which are ordered as punishment. Once a Government servant is suspended pending an enquiry or criminal proceedings against him and during that period he is not to discharge the duties of his office, the Government may consider it desirable not to pay him the full pay and allowances till enquiry or criminal proceeding against him is concluded. Thus, for the period of his interim suspension he is granted subsistence allowance under rule 7.2. The proviso to sub-section (1) of that rule contemplates the reconsideration of the original order fixing subsistence allowance. It lays down *inter alia* that "the subsistence allowance may be increased by a suitable amount not exceeding fifty per cent of the subsistence allowance admissible during the period of first twelve 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 servant." The reference to the prolongation of the period of suspension due to the conduct of the Government servant concerned clearly indicates that it covers cases of what their Lordships of the Supreme Court call as "interim suspension" pending departmental enquiry or criminal proceedings. If the intention was to confine this rule only to cases of suspension by way of punishment, it was hardly necessary to make such a provision, because while passing an order of suspension by way of punishment the authority will have to specify definite period for which the punishment is to last and there will be no question of that period being prolonged by the conduct of the Government servant or

K. K. Jaggia otherwise. The mere fact that Chapter 7, in which rule  
 v. 7.2 occurs, bears the heading "Dismissal, Removal and  
 The State of Suspension," does not justify the argument that suspen-  
 Punjab sion to which this rule relates is suspension by way of  
 Gurdev Singh, J. punishment. Rules 7.5 and 7.6, which are found in the  
 same Chapter, relate to suspension during the pendency  
 of criminal proceedings or proceedings for arrest for debt  
 or during detention under law provided for preventive  
 detention. We are, accordingly, of the opinion that the  
 provision contained in rule 7.2 applies even to cases of  
 interim suspension pending departmental enquiry or  
 criminal proceedings.

This rule, in our opinion, however, governs subsistence allowance that is to be paid so long as the interim suspension lasts and the departmental enquiry or criminal proceedings are still pending. Chapter 7 in which this rule occurs itself contemplates that a final decision with regard to the pay and allowances of the Government employee concerned for the period of his interim suspension has to be taken after the enquiry or the criminal proceedings against him are over and he is reinstated. It is for that purpose that rule 7.3, which has been reproduced earlier, was made. Under that rule, if a Government servant is exonerated and suspension is found to be wholly unjustified, he is entitled to receive full pay and allowances for the period during which he had remained suspended. In view of the decision of the Supreme Court in *Devindra Pratap Narain Rai Sharma v. State of Uttar Pradesh and others* (1) (supra) that rule, however, would not apply to the petitioner's case since his dismissal was set aside by this Court and not by the authorities themselves. Can it be said that because of the non-applicability of that rule and absence of any corresponding provision for reconsideration of the subsistence allowance fixed for the period of the petitioner's interim suspension, he is to be deprived of the full pay and allowances for the period of his suspension despite the fact that the order of his dismissal, which had replaced the order of his suspension, had been set aside by the Court? In my opinion the answer to this question must be in the negative.

The order of the petitioner's interim suspension was not revoked but it lapsed when the order of his dismissal

was passed. Subsequently, the order of the petitioner's dismissal was set aside by this Court and a formal order of his reinstatement was passed by the Government on 20th September, 1963. The effect of the decision of this Court quashing the order of his dismissal, as has been observed in *Devendra Pratap Narain Rai Sharma's* case (supra), was "to declare that the petitioner had been wrongfully prevented from attending to his duties as a public servant". Proceeding further, their Lordships said :—

K. K. Jaggia  
v.  
The State of  
Punjab  
Gurdev Singh, J.

"It would not in such a contingency be open to the authority to deprive the public servant of the remuneration which he would have earned had he been permitted to work."

Thus, the petitioner must be deemed to have remained on duty all along, and as such he was entitled to full pay and allowances for the entire period. Though the Government may have inherent right to order interim suspension of its employees pending a departmental enquiry against him, as held in *R. P. Kapur's* case (6), there is no such inherent right to deprive its employee of the full emoluments for that period as would appear from the following observations made by their Lordships in that case :—

"But what amount should be paid to the public servant during interim suspension will depend upon the provisions of the statute or rule in that connection. If there is such a provision, the payment during suspension will be in accordance therewith. But if there is no such provision, the public servant will be entitled to his full emoluments during the period of suspension. This suspension must be distinguished from suspension as a punishment which is a different matter altogether depending upon the rules in that behalf....."

Rule 7.3 of the Punjab Civil Services Rules, Volume I, Part I, being admittedly inapplicable to the petitioner's case as found earlier, the order (annexure E) fixing the amount that is to be paid to the petitioner for the period of his suspension prior to his dismissal is clearly without any legal basis and is of no effect. Since there is no corresponding rule for fixing the amount payable to a

**K. K. Jaggia** Government servant whose dismissal has been set aside by a Court, the Government will have no power to deprive the petitioner of his full emoluments even for the period during which he had remained suspended pending departmental enquiry against him. A different construction would lead to the result that even after the petitioner's order of dismissal had been found to be bad and set aside by this Court, he would suffer punishment by being deprived of a substantial portion of his pay and allowances for the period during which he had remained suspended. This would, in fact, amount to converting his interim suspension into suspension by way of punishment, which obviously could not be done. Once the order of the petitioner's dismissal was set aside, the order of his interim suspension, which it had replaced, must also be taken to have been rendered void and inoperative as that suspension was for the purpose of enabling the authorities to conduct the enquiry against the petitioner, and once the result of the enquiry is quashed, the order of suspension could not be revived or rendered valid. In *Dr. Jnanendra Nath Das v. State of Orissa* (7), a Division Bench of that Court ruled that in such circumstances the Government employee concerned was entitled to full remuneration even for the period of his suspension, and relying upon the dictum in *Devendra Pratap Narain Rai Sharma's case*, it was held that in such a contingency it was not open to the authorities to deprive the public servant of the remuneration which he would have earned if he had been permitted to work.

**The State of Punjab**  
                      
**Gurdev Singh, J.**

I am, accordingly, of the opinion that the petitioner's claim to full pay and allowances for the period during which he had remained suspended prior to the order of his dismissal is justified. Of course, as has been observed by R. N. Narasimham C.J., in *Dr. Jnanendra Nath Das v. The State of Orissa* (supra), if any part of his claim for that period has become barred by time, this Court will not help him in recovering the same and thus get over the bar of limitation. As held in *Punjab Province v. Tara Chand* (8), and recently by their Lordships of the Supreme Court in *Mahan Dev Laxman v. The State of Mysore* (9), period of limitation for a suit to recover arrears of salary

(7) A.I.R. 1961 Orissa 241.

(8) A.I.R. 1947 F.C. 23.

(9) A.I.R. 1962 S.C. 8.

by a Government servant is governed by Article 102 of the Indian Limitation Act, 1908, which prescribes a period of three years, the *terminus a quo* being "when the wages accrued due". The learned Deputy Advocate-General has argued that since this petition was brought more than three years after the petitioner's period of earlier suspension came to an end having been replaced by the order of his dismissal, the entire claim for the suspension period was barred by time. This contention, in our opinion, has no merit and must be repelled. The right to recover full pay and allowances for the period of his interim suspension accrued to the petitioner on the day the order of his dismissal was quashed by this Court, and it was from that day that the period of three years prescribed by Article 102 has to be reckoned, as has been held by a Division Bench of the Orissa High Court in *Dr. Jnanendra Nath Das' case* to which a reference has already been made. Even if the period of three years is reckoned from the date of his wrongful dismissal as was done in *Sudhir Ranjan Halder v. State of West Bengal and another* (10) the petitioner's claim is within time as he approached this Court well within three years, on 29th July, 1964.

K. K. Jaggi  
v.  
The State of  
Punjab

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Gurdev Singh, J.

In the result, I would accept the petition and direct that necessary writ shall issue to the respondent to pay full salary and allowances admissible to the petitioner for the entire period between the dates of his first suspension and reinstatement, i.e., from 16th May, 1956, to 19th September, 1963, after deducting the amount which the petitioner has already received as subsistence allowance for the period of his suspension prior to his dismissal. This order shall, however, be subject to the condition that the petitioner satisfies the respondent that during the period to which his claim relates he had not engaged in any other gainful employment or business, and if any income had accrued to him from such business or employment, the same shall be adjusted in determining the amount payable to the petitioner on account of arrears of his pay and allowances for the above period. In view of the fact that the points requiring consideration in this petition were not free from difficulty, I would leave the parties to bear their own costs in these proceedings.

SHAMSHER BAHADUR, J.—I concur.

Shamsher,  
Bahadur J.

B.R.T.