

Date of Decision: 17th June 1995

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE M.R. CALLA

1. Whether Reporters of Local Papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the Judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or ..
5. Whether it is to be circulated to the Civil Judge?

Mr. R.R. Vakil, learned Counsel for Mr.Y.N. Oza, for the petitioner

Mr. B.A. Vaishnav, learned Counsel for the respondents.

Coram : M.R. Calla, J.
17th June 1995

ORAL JUDGMENT:

Issue Rule. Learned Counsel for the respondents waives the service of the Rule.

Heard learned Counsel for the parties. On the request of both the sides, this Special Civil Application

is taken up for final hearing.

This Special Civil Application is directed against the petitioner's suspension orders dated 4th May 1992 and 20th May 1992. There were prayers with regard to the payment of salary for certain period prior to the date of suspension order and also with regard to the subsistence allowance after the date of the suspension order. On 31st March 1994, the petition with regard to the reliefs claimed in para 26(b) and (c) was dismissed as not pressed and the Notice was issued with regard to the reliefs claimed in para 26(d) and (e), prayer in para 26(a) being to admit the petition. No return has been filed on behalf of the respondents, despite the service of the Notice. Today, when the matter came up before the Court, the learned Counsel for the petitioner submitted that during the pendency of this petition, the suspension has already been revoked in February 1995 and now, the only dispute is about the salary for certain period prior to the date of suspension and subsistence allowance during the period of suspension and as to how the period of suspension is to be regulated.

According to the learned Counsel for the petitioner, the petitioner who was earlier on sick leave had joined on 27th October 1991, but he was not treated as on duty and therefore, the disputes are as under:

- (1) The question of the salary from 27th October 1991 upto 23rd May 1992 for which the petitioner claims that he should be treated as on duty;
- (2) The question of subsistence allowance for the period of 4th May 1992 till the date of revocation of the suspension order and his joining duties thereafter in February 1995; and
- (3) As to how the period of suspension from 4th May 1992 till February 1995 is to be treated when the petitioner joined back on revocation of the suspension.

In the facts and circumstances of this case, the factual controversy is as to whether the petitioner was, in fact, on duty from 27th October 1991 or not and as to whether the petitioner has complied with the conditions of the suspension order, during the period of suspension or not and its consequences etc. as also as to how the suspension period has to be regulated, cannot be adjudicated upon by this Court in absence of any order to

this effect. These are the matters to be decided by the concerned competent authorities. The petitioner would, therefore, be well advised to make a proper representation in detail before the concerned authorities agitating all these grievances with documents in support of the same, if any. Should the petitioner make any such representation to the concerned authorities within a period of 15 days from today, the concerned authorities shall decide such representation within a period of three months thereafter, i.e. by 30th September 1995 and shall pass a reasoned and speaking order and convey the same to the petitioner. In case the petitioner claims an opportunity of hearing to address the concerned authorities, the concerned authorities shall also grant such opportunity to the petitioner and hear him before passing the final orders on his representation. It will be open for the petitioner to challenge the order passed by such authorities, in accordance with law, if need be.

With the directions as aforesaid, this Special Civil Application is disposed of. Rule is hereby discharged with no order as to costs.
