

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.137/2012 & CM No.270/2012**

% **Date of Decision: 31.01.2012**

Hukum Singh & Ors. .... Petitioners

Through Mr.A.K.Bajpayee, Mr.G.K.Chauhan &  
Mr.M.F.Khan, Advocates

Versus

Central Public Works Department & Anr. .... Respondents

Through Mr.R.N.Singh & Mr.A.S.Singh,  
Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KUMAR**

**HON'BLE MR. JUSTICE J.R.MIDHA**

**ANIL KUMAR, J.**

\*

1. The petitioners have challenged the order dated 22<sup>nd</sup> September, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1328/2010, titled as 'Hukum Singh & Ors. v. Central Public Works Department & Anr.' declining to grant them back wages while setting aside their suspension order dated 4<sup>th</sup> October, 1986, as the order was challenged by the petitioners after a lapse of about 25 years without disclosing any reason. However the Tribunal did direct the respondents to treat the period of suspension as period spent on duty for the purpose of pensionary benefits but not for any other purpose.

2. Brief facts to comprehend the controversies raised by the petitioners are that they were working as gardeners with the Horticulture Department of Respondent no.1, when at the relevant time since they were members of a Union which was on strike, according to the petitioners, the Management had falsely alleged that the petitioners had beaten up their superior which had led to the filing of an FIR against them. Petitioners further disclosed that in the said criminal case against them, the Metropolitan Magistrate by order dated 26<sup>th</sup> March, 1988 sentenced the petitioners to undergo imprisonment for three months for the offences punishable under Sections 186 & 335 of Indian Penal Code and four months for the offence punishable under Section 332 of the Indian Penal Code. The petitioners thereafter, also preferred an appeal against their conviction by order dated 26<sup>th</sup> March, 1988 being Criminal Appeal No.70/1985 which was partly allowed and the sentence of four months under Section 332 of the Indian Penal code was modified to imprisonment for three months. However, the sentence of three months for the offences punishable under Sections 186 & 335 of the Indian Penal code was maintained.

3. Pursuant to their conviction, the petitioners were dismissed from the service by order dated 24<sup>th</sup> March, 1986 w.e.f. 15<sup>th</sup> March, 1986. The order of dismissal was, however, superseded by another order dated 4<sup>th</sup> October, 1986, on account of a settlement arrived at between the Union and the respondents, whereby instead of dismissal from

service, the petitioners were deemed to have been placed under suspension w.e.f. 15<sup>th</sup> March, 1986 till further orders.

4. Meanwhile the petitioners had also filed a revision petition being Criminal Revision No.76/1986 on 17<sup>th</sup> March, 1988 against the order passed in the criminal appeal No.70/1985 modifying their sentence to three months for all the offences under Sections 332, 335 & 186 of the Indian Penal Code had. In the said criminal revision petition, the sentence was suspended by order dated 1<sup>st</sup> April, 1986 though the criminal revision petition remained pending in the High Court. The criminal revision petition was finally decided on 29<sup>th</sup> May, 2007 holding that it would be appropriate to explore the possibility of placing the petitioners on probation. Consequently, the notices were issued to the probationer officers. Considering the various relevant factors, the Court had granted the benefit of probation to the petitioners under the provisions of the Probations of Offenders Act, 1958 and the petitioners were released on probation for a period of six months by order dated 29<sup>th</sup> May, 2007.

5. On being granted probation the petitioner filed their representations before the Deputy Director, Horticulture requesting for their reinstatement in their services with full back wages. The petitioners even followed up their representations with legal notices to the respondent no.1 on 9<sup>th</sup> March, 2009, who thereafter received a reply

dated 17<sup>th</sup> April, 2009 from the respondents stating that their reinstatement would not be possible.

6. Since the suspension of the petitioners had continued for a long time, they challenged their continued suspension by filing an original application being OA No.1328 of 2010, titled as 'Hukum Singh v. Central Public Works Department', contending inter-alia that since they had been released on probation, they should be reinstated in service instead of still continuing under suspension and receiving subsistence allowances. It was further contended that even though the respondents had withdrawn their dismissal, however, even after a lapse of 27 years, they were neither being reinstated in the service nor were any departmental proceedings initiated against them, without any justifiable reason.

7. Before the Tribunal, the application was contested by the respondents on the ground that the application is barred by limitation besides other pleas that the application was not in accordance with the rules and that the Central Public Works Department could not be sued through the Deputy Director, Horticulture.

8. The respondents had also disclosed that the petitioners are still under suspension and that they are in the habit of breaking the conduct rules and Govt. directions. It was also pointed out that one of

the petitioners had even contested the Lok Sabha Election as a candidate of a political party and consequently had violated the provisions of the CCS(Conduct) Rules, 1964. The respondents further disclosed that the Deputy Director, Horticulture had already recommended the dismissal of the petitioners by letter bearing No.10(15)/86/HSD/EWC/126 dated 2<sup>nd</sup> August, 2000.

9. The Tribunal while considering the pleas and contentions of the parties noted that the order of dismissal was changed to that of deemed suspension w.e.f. 15<sup>th</sup> March, 1986 as per an agreement arrived between the Central P.W.D., Mazdoor Union and the Director and Directorate General of Works, Central P.W.D., New Delhi. The order dated 4<sup>th</sup> October, 1986 reads as under:-

“In supersession to this office order No. 10(15)/86/HSD/1468-74 dated 24.3.86, Shri Karan Singh, S/o Shri Lal Singh, Mali deem to have suspended from the date of his dismissal from service i.e. 15.3.86 and will be remain under suspension till further order.

These orders are issued as per agreement arrived between Central P.W.D., Mazdoor Union and Director and Directorate General of Works, Central P.W.D., New Delhi. Communicated to this office vide his officer Memorandum No.9/10/85-EC-V dated 12.9.86.”

10. The Tribunal also noticed that after the suspension order dated 4<sup>th</sup> October, 1986, no disciplinary proceedings were initiated against the petitioner. Rather the subsistence allowances had been paid to the petitioners for a period of 25 years without taking any work from them.

The Tribunal also observed that despite the recommendation by the Deputy Director, Horticulture on 2<sup>nd</sup> August, 2000 recommending the dismissal of the petitioners, some of the officers of the department had extended undue favor/benefit to the petitioners and connived with them whereby their suspension had been continued and the subsistence allowance was also paid to them continuously.

11. In the circumstances, in view of Sub Rule (vii) of Rule 10 of the CCS (CCA) Rules, 1965, the suspension of the petitioners for indefinite period was set aside by the Tribunal. However, as the petitioners had not challenged their suspension for about 25 years, nor had they disclosed any grounds or sufficient cause for not challenging their suspension for 25 years even in their original application and also noticing the fact that they continued getting the subsistence allowances for their entire period of suspension, it was directed by the Tribunal that the petitioners be reinstated. However, the back wages were declined to them, but the benefit of computing the suspension period as the period spent on duty for the purpose of pensionary benefit was given to the petitioners.

12. The Tribunal has also directed the Secretary, Ministry of Urban Development to probe into the matter and fix the responsibility upon the officers who were responsible for the payment of the subsistence

allowance to the petitioners for the period of about 25 years without taking any work from them.

13. The petitioners have challenged the non-payment of the entire back wages to them by the impugned order of the Tribunal in the present writ petition on the ground that there was no fault on their part and that it was the duty of the respondents to have revoked their suspension. Though in the writ petition, the petitioners did not plead specifically that they were entitled for full back wages under Fundamental Rule 54-B, however, the learned counsel for the petitioners has contended the same during the course of the arguments. Learned counsel for the petitioners, Mr.A.K.Bajpayee, also relied on a decision of this Court in the matter of Hira Lal v. DDA & Ors., 1995 (2) AD (Del) 466. Reliance has also been placed on Jaipur Vidyut Vitran Nigam Ltd. & Ors. v. Nathu Ram, 2010 (1) SCC 428.

14. Fundamental Rule 54-B contemplates that when a Govt. servant is reinstated then the competent authority who ordered the said reinstatement shall consider and make a specific order regarding the pay and allowance to be paid to the Govt. servant for the period of suspension ending with the reinstatement and also determine whether or not such period should be treated as spent on duty. Sub Rule (3) of the said Rule contemplates that when the competent authority who ordered the reinstatement is of the opinion that suspension was wholly

unjustified, subject to sub Rule (8), such an employee may be paid the full pay and allowance to which he would have been entitled had he not been suspended. The said rules also contemplates that if the reinstating authority is of the opinion that if the proceedings had been delayed due to reasons directly attributable to the Govt. servant, it may after giving an opportunity to such an employee and after considering his representation, pass such order for such amount, not being the whole amount as it may determine.

15. Rule 54-B of the Fundamental Rules is as under:

**“F.R. 54-B.** (1) When a Government servant who has been suspended is re-instated or would have been so re-instated but for his retirement on superannuation while under suspension, the authority competent to order re-instatement shall consider and make specific order-

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with re-instatement or the date of his retirement on superannuation, as the case may be, and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in rule 53, where a Government servant under suspension dies before the disciplinary or court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order re-instatement is of the opinion that the suspension was wholly unjustified, the Government servant shall subject to the

provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reason directly attributable to the Government servant it may, after giving him an opportunity to make his representation[within 60 days from the date on which the communication in this regard is served in him] and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such [amount (not being the whole)] of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3) the Government servant shall subject to the provisions of sub-rules (8) and (9) be paid such [amount (not being the whole) of the full pay and allowances] to which he would have been entitled had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the notice has been served as may be specified in the notice].

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub -rule (1) before the conclusion of the proceedings, against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1) who shall make an order according to the provisions of sub-rule (3) or sub-rule (5) as the case may be.

(7) In a case falling under sub-rule (5) the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

**Note.-** The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of-

(a) extraordinary leave in excess of three months in the case of temporary Government servants; and

(b) leave of any kind in excess of five years in the case of permanent or quasi-permanent Government servant.

(8) The payment of allowances under sub-rule (2), sub-rule (3) or sub-rule (5) shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or under sub-rule (5) shall not be less than the subsistence allowance and other allowances admissible under rule 53.”

16. Perusal of the above mentioned rule reflects that the Govt. servant whose suspension is revoked is not entitled to get full back wages on reinstatement under the said rule as an absolute right. The rule contemplates giving a notice to the Govt. employee and considering his representation regarding the claim for full back wages and thereafter, the competent officer to pass an order in writing giving reasons as to why such amount is payable to the Govt. servant, if not the whole amount, as may be deemed fit and proper in the facts and circumstances.

17. The Tribunal has considered the case of the petitioners and has also considered the fact that the petitioners have not disclosed any cogent reasons as to why they did not challenge their suspension for almost 25 years and continued to get subsistence allowance without doing any work and without any whisper or protest regarding the violation of any right. Rather one of the petitioners even contested the Elections to the Lok Sabha. Though the respondents have contended that contesting the Election by one of the petitioners, was in violation of the provisions of CCS(Conduct) Rules, 1964, however, this Court does not have to adjudicate whether or not contesting the Lok Sabha Elections by one of the petitioner when under suspension was in violation of CCS(Conduct) Rules, 1964 or not, since in the present writ petition none of the parties have canvassed this point before this Court during the arguments.

18. Considering the facts and circumstances, this cannot be disputed that in restricting the claim for back wages what is contemplated is the consideration of the representation of the suspended employee and an order in writing giving reasons for not allowing the full back wages if that is the case. The Tribunal has held that the petitioners have not disclosed any cogent reasons for not challenging their continued suspension, while they recovered their subsistence allowance for 25 years. Neither in the petition, nor before this Court during the arguments, has the learned counsel disclosed any grounds for not

challenging the suspension order for such a long period. Therefore the only possible inference is that the petitioners were satisfied with the subsistence allowance that they received for not doing any work. In the circumstances, apparently, the petitioners are not entitled for full back wages in accordance with the mandate and requirement of Rule 54-B of the Fundamental Rules, nor have any such grounds been shown by the petitioners which would show any illegality, irregularity or perversity in the order of the Tribunal declining them full back wages.

19. The precedents relied on by the petitioners are also distinguishable and do not support the pleas and contentions of the petitioners. In Jaipur Vidyut Vitran Nigam Ltd. (supra), the Supreme Court dealt with Regulation 41 of the Rajasthan State Electricity Board holding that when an employee who has been dismissed and thereafter reinstated, the competent authority who made the order of reinstatement shall consider the pay and allowances to be paid to the employee for the period of his absence from duty. In the first instance, the said Regulation 41 of Rajasthan State Electricity Board is not applicable to the petitioners. In any case, the case of the petitioners for the grant of full back wages has been considered by the Central Administrative Tribunal in detail and a reasoned order has been passed for denying the same. Consequently, on the basis of the ratio of the Jaipur Vidyut Vitran Nigam Ltd. (supra), the petitioners are not entitled to claim that they should be given full back wages.

20. Similarly, the decision of this Court in the case of Hira Lal (supra) is also distinguishable and does not entitle the petitioner for full back wages. In the instant case, the employee had sought quashing of order dated 26<sup>th</sup> February, 1991 whereby the Delhi Development Authority had declined to treat the period of suspension as period spent on duty and also declined to give anything over and above the subsistence allowance. In the instant case, the suspension of the employee was revoked and he was reinstated on 25<sup>th</sup> July, 1989 without prejudice to the contemplated disciplinary inquiry against him, however, no order with regard to the payment of pay and allowance for the period of his suspension was passed until February, 1991 when the representation of payment of full pay and allowance was rejected. It was held that Fundamental Rule 54-B does not permit a long and inordinate delay in passing the order relating to the payment of pay and allowance to the Govt. servant who is reinstated on revocation of his suspension. In the case of the petitioners in the present writ petition their suspension was revoked by the Tribunal by order dated 22<sup>nd</sup> September, 2011 and by the same order their entitlement under Rule 54-B of the Fundamental Rules has also been adjudicated. In the circumstances, it cannot be held that there is any unreasonable delay in deciding whether the period of their suspension until their reinstatement was to be treated as period spent on duty. It has also been held that the petitioners are not entitled for full back wages under Rule 54-B of Fundamental Rule. The

Division Bench in Hira Lal (supra) had rather clarified that it should not be understood as holding that in every case where an order for payment of pay and allowance is not passed as soon as an order of reinstatement is made, the employee would be entitled to full pay and allowance during the period of suspension. It was held that each case depends upon its own facts and circumstances. In para 7 of the said judgment the Court had held as under:-

“7. ....I should, however, not be understood as holding that in every case when an order for payment of pay and allowances is not passed as soon as the order of reinstatement is made, the employee would be entitled to full pay and allowances during the period of suspension. Each case must depend upon its own facts and circumstances. I would also like to clarify that I am taking this view having regard to the peculiar facts and circumstances of the instant case namely that before his reinstatement, the petitioner remained suspended for more than six years without disciplinary proceedings having been commenced against him. The provisional decision to deny him the salary during the period of his suspension was taken after eighteen months of the order of reinstatement. Therefore, the competent authority acted illegally in directing that the petitioner will not be paid full pay and allowances for the period of suspension till the disciplinary proceedings are finalized. In view of the aforesaid discussion, the writ petition succeeds and the rule is made absolute. The respondents are directed to make full payment of pay and allowances to the petitioner to which he would have been entitled for the period between September 1, 1984 to July 25, 1989, had he not been suspended, after deducting the subsistence allowance received by him during the period of suspension. The payment to the petitioner will, however, be without prejudice to the disciplinary enquiry which has been initiated against him.”

21 For the foregoing reasons and in the totality of the facts and circumstances of the case, the petitioners have not been able to show any illegality, irregularity or perversity in the order of the Central Administrative Tribunal dated 22<sup>nd</sup> September, 2011 declining the full back wages to the petitioners except the subsistence allowance already paid to them and holding that the period of suspension shall be treated as the period spent on duty, which requires any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is without any merit and therefore, it is dismissed.

**ANIL KUMAR, J.**

**J.R.MIDHA, J.**

**January 31, 2012**

vk