

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

**CWP No. 24475 of 2013 (O & M)**

**Date of decision: 31.03.2014**

M/s. The Gidharwindi Co-operative Agricultural Service Society Ltd.

...Petitioner(s)

Versus

Presiding Officer, Industrial Tribunal, Ludhiana and another

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. A.P. Kaushal, Advocate,  
for the applicant-petitioner.

**G.S.SANDHAWALIA, J. (Oral)**

**C.M. No. 4054 of 2014**

Application for placing on record Annexures P-10 and P-11 is  
allowed, subject to all just exceptions.

The said Annexures are taken on record.

**CWP No. 24475 of 2013**

Challenge by the petitioner-society is to the order dated  
19.08.2011 (Annexure P-8) whereby, the Industrial Tribunal, Ludhiana has  
held that the respondent-workman is entitled to get subsistence allowance  
w.e.f. 26.04.1993, the date of suspension till 11.05.1997, the date of  
superannuation. The petitioner was directed to calculate and make the  
payment to the workman within two months from the receipt of the order.

A perusal of the paper book would go on to show that an  
application under Section 33-C(2) of the Industrial Disputes Act, 1947 (in

short 'the Act') was filed before the Labour Court taking the plea that he was entitled for suspension allowance w.e.f. 26.04.1993 to 03.06.2003 @ ₹1,275/- per month with interest @ 18% per annum.

The application was resisted on various grounds including that the workman did not fall within the definition of workman under the Act and he had completed the age of superannuation on 04.06.1997 and the plea taken was that various amounts were payable to the society by the workman, which were liable to be adjusted. The Labour Court framed the following issues:-

*“1) Whether the applicant is entitled to the amount claimed?*

*2) Whether the applicant is a 'workman'?*

*3) Whether this court has got no jurisdiction to entertain and decide this application?*

*4) Whether the dispute between the parties is not an industrial dispute?*

*5) Whether the application is belated? If so, its effect.*

After taking into consideration the statement of the workman and Paramjit Singh, Secretary of the petitioner-society, it was noticed that the services were terminated on 03.06.2003 and before that he had been placed under suspension from 26.04.1993 and superannuation fell on 11.05.1997. The Deputy Registrar of the society set aside the appellate order and ordered to hold further inquiry. Accordingly, it was held that he would be deemed to be under suspension till the date of retirement and, therefore, was entitled to the suspension allowance, as claimed. The objection that the proceedings under Section 33-C(2) of the Act were in the nature of execution proceedings and not maintainable was rejected rightly

since it is the right of the workman to get the suspension allowance during his suspension period.

Counsel for the petitioner has vehemently submitted that the Labour Court did not deal with the issue that there were outstanding amounts of awards and thus, the amount of suspension allowance was not payable.

The said argument is without any basis. The right of the employee to get the suspension allowance cannot be denied during his period of suspension.

The Apex Court in ***Ghanshyam Das Shrivastava vs. State of Madhya Pradesh, 1973 AIR (SC) 1183*** went on to hold that if no subsistence allowance is paid and if the employee has no money during the inquiry proceedings, the inquiry proceedings itself would stand vitiated and accordingly, the dismissal order was also quashed. This Court in ***Gopal Krishan Saini vs. State of Punjab, 2001 (2) RSJ 279*** held that even if there was no specific directions for payment of subsistence allowance during the period of suspension, the employee would be entitled to the same on the principle of equity, justice and fair play. It was also held that the non-payment of subsistence allowance would vitiate the entire proceedings as the same would be violative of the principles of natural justice. The relevant portion reads thus:-

*“12. It is true that the Civil Service rules are applicable only to Government employees and had not been made applicable to the Members of the Commission vide notification issued by the Governor as provided under Regulation 15 ibid. If it is presumed that the ex post facto approval granted by the Council of Ministers was void and Sh. Gopal Krishan Saini was*

*rightly placed under suspension even then there is no provision in the regulations which governed the conditions of service of the Member of Punjab Public Service Commission, which would specifically bar the payment of subsistence or any kind of allowance to such Member of the Commission. Under the Civil Service Rules, a Government servant is entitled to subsistence allowance during the period of suspension. Therefore, on account of equity, justice and fair play, Sh. Gopal Krishan Saini was entitled to subsistence allowance during the period of suspension, even if there is no specific provision in the Regulation of 1958. There is other aspect of the matter. Admittedly, no adverse report had come so far against the misconduct of Sh. Gopal Krishan Saini as it was stated that the matter was referred by the President of India to the Hon'ble Supreme Court for inquiry. Certainly, it cannot remain pending for the last about more than 17 years. The only presumption is that it had ended and nothing adverse has come out against him. Sh. Gopal Krishan Saini superannuated after completing his term of period of six years somewhere in 1986. In such circumstances, he was entitled to the full pay with allowances for the unexpired period of his which was about six years."*

As and when the inquiry proceedings are finalized against the workman and if any recovery order is passed and if there is any amount due then, against the final service benefits, the plea could be taken that the amount can be retained. The submission that the suspension allowance could be thus retained on this ground is thus without any basis. The award passed is well reasoned and there is no scope for interference. Rather the present petition is totally misconceived and is accordingly dismissed in

limine.

31.03.2014  
shivani

(G.S. SANDHAWALIA)  
JUDGE