

**HIGH COURT OF JAMMU & KASHMIR  
AT JAMMU**

*LPASW No. 371/2001*

Date of Order: 26.08.2015

New India Assurance Co. Ltd. And anr.

v.

Vinay Kumar and ors.

**Coram:**

***Hon'ble Mr. Justice, Muzaffar Hussain Attar, Judge  
Hon'ble Mr. Justice B. S. Walia, Judge***

**Appearing counsel:**

For the appellant(s) : Mr. U. K. Jalali, Sr. Advocate with  
Ms. Shivani Jalali, Advocate  
Mr. R. K. Gupta, Sr. Advocate with  
Mr. Prem Sadotra, Advocate

For the Respondent(s): Mr. Sachin Dogra, Advocate

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| i)  | Whether approved for reporting in Digest/Journal/Media | Yes |
| ii) | Whether approved for reporting in Digest/Journal       | Yes |

Muzaffar Hussain Attar (Oral)

On the allegations of mis-conduct, respondent No. 1 was awarded punishment. During the period proceedings were conducted, respondent No. 1 remained under suspension. Respondent No. 1 feeling aggrieved of the order of punishment as also order of his transfer from Jammu to Bhawani challenged the same by filing writ petition bearing SWP No. 661/1984.

Learned Single Judge vide order/judgment dated 10.08.2001 ruled that no fault can be found with the punishment imposed on the respondent writ petitioner No. 1. The grievance about transfer order was not also sustained. The learned writ Court while disposing of the writ petition observed that respondent –writ petitioner would be entitled to the wages for the period for which he was placed under suspension.

After hearing learned counsel for the parties and placing reliance on the General Insurance (Conduct, Discipline & Appeal) Rules 1975 (for short "1975 Rules"), what emerges is that the impugned direction could have not been issued in law.

Rule 21 of the above said Rule reads as under:-

**"21. Subsistence Allowance**

- (1) An employee under suspension shall be entitled to draw subsistence allowance equal to 50% the monthly gross emoluments (comprising of basic salary, dearness allowance city compensatory allowance, house rent allowance, hill stations allowance, qualification pay, personal pay, special pay and deputation allowance ) drawn on the date immediately prior to the date on which the employee is suspended.
- (2) Where the period of suspension exceeds six months, the authority which made or is deemed to have made the order of suspension shall be competent to vary the amount of subsistence allowance for any period subsequent to the period of the first six months as follows:-
  - (i) The amount of subsistence allowance may be increased to 75 percent of the monthly gross emoluments (comprising of basic salary, dearness allowance, city compensation allowance, house rent allowance, hill station allowance, qualification pay, personal pay special pay and deputation allowance) drawn on the date prior to the date on which the employee is suspended has been prolonged due to the reasons to be recorded in writing not directly attributable to the employee under suspension.
  - (ii) The amount of subsistence allowance may be reduced to 25 percent of the monthly gross emoluments (comprising of basic salary, dearness allowance, city compensatory allowance, house rent allowance hill station allowance qualification pay, personal pay, special pay and deputation allowance) drawn on the date prior to the date or which the employee is suspended, if in the opinion of the said authority, the period of suspension has been prolonged due to the reasons to be recorded in writing directly attributable to the employee under suspension
- . 3. If an employee is arrested by the police on a criminal charge and bail is not granted, no subsistence

allowance is payable. On grant of bail, if the appropriate authority decides to continue the suspension, the employee shall be entitled to subsistence allowance from the date he is granted bail.

We are of the view that the direction issued for payment of salary for the aforesaid period, the respondent-writ petitioner remained under suspension is unsustainable. The case of respondent-writ petitioner was to be dealt in terms of rule 22 which is also taken note of :-

## **22. Treatment of the period of suspension**

When the suspension of an employee is held to be unjustified or not wholly justified; or when an employee who has been dismissed, removed or suspended is reinstated, the competent authority whose decision shall be final, may grant to him or the period of his absence from duty;

- (a) If he is honorably acquitted, the full pay and allowance which he would have been entitled to if he had not been dismissed, removed or suspended, less the subsistence allowance;
- (b) If otherwise, such proportion of pay and allowance as the competent authority may prescribe."

Applying Rule 22 to the facts of this case, respondent-writ petitioner No. 1 would not be entitled to salary for the period he remained under suspension, as he was not, honorably acquitted of the charges leveled against him, but suffered punishment for his mis-conduct.

The respondent –writ petitioner No. 1 was entitled to subsistence allowance for the period he remained under suspension and not the wages/salary.

For the aforesaid reasons, we dispose of the appeal

and the observations made by the learned Single Judge that “respondent-writ petitioner No. 1 is entitled to wages for the period he remained under suspension” is set aside. Respondent –writ petitioner will be entitled to subsistence allowance for the aforesaid period in accordance with the mandate of Rule 22 of the Rules 1975.

Disposed of.

**(B. S. Walia)**  
**Judge**

**(Muzaffar Hussain Attar)**  
**Judge**

**Jammu**  
26.08.2015  
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