



2026:AHC:61627

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 76 of 2026

Jay Narain Singh

.....Petitioner(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Kunal Shah, Raj Kapoor Upadhyay
Counsel for Respondent(s)	:	C.S.C., Shashi Prakash Singh

Court No. - 52

HON'BLE MRS. MANJU RANI CHAUHAN, J.

1. The petitioner has preferred instant writ petition with the following reliefs:

"i. Issue a Writ, order or direction in the nature of Certiorari quashing the impugned order dated 02.08.2024 passed by the Respondent No. 3, as well as the impugned order dated 22.10.2018 issued by the Respondent No. 4, copy whereof is annexed as Annexure-1 and Annexure-2 respectively to the instant Writ Petition.

ii. Issue a Writ, order or direction in the nature of Mandamus commanding the Respondents to forthwith reinstate the Petitioner in service with all consequential benefits.

Or Alternatively,

iii. Issue a Writ, order or direction in the nature of Mandamus commanding the Respondents to regularly pay the subsistence allowance henceforth each month as and when it falls due.

iv. Issue a Writ, order or direction in the nature of Mandamus commanding the Respondents to disburse and make payment of arrears of subsistence allowance to the Petitioner that has remained withheld since September 2018 till date along with interest at the rate of 6% per annum on delayed payment."

2. Placing the brief facts of the case, learned counsel for the petitioner submits that while the petitioner was working as Assistant Teacher, a first information report was lodged against him on 09.06.2003, for which he was arrested on 03.07.2003 and was placed under deemed suspension on 16.07.2003. The petitioner was released on bail on 14.08.2003 and the suspension order dated 16.07.2003 came to be revoked on 07.09.2003, thereby reinstating the petitioner. On 03.03.2010, the petitioner was promoted on the post of Headmaster and was posted at Primary School, Dubari-I, Shiksha Kshetra Fathepur, Mandav. On 11.10.2018, the petitioner stood convicted and was placed under suspension on 22.10.2018. The

subsistence allowances were being paid to the petitioner up till September, 2020. It came to be withheld from 2020.

3. After conviction the petitioner was released on bail on 06.04.2022 and by order dated 09.10.2023, the conviction and sentence of the petitioner was stayed in Criminal Appeal No. 6084 of 2018. Thereafter, the petitioner moved an application for reinstatement which came to be rejected by the order impugned. Learned counsel for the petitioner submits that the order impugned has been passed without holding any inquiry, which is required in view of the settled position of law as held in **Writ A No.11761 of 2023 (Manoj Kumar Katiyar vs. State of U.P. And 2 Others), Neutral Citation No.2023:AHC:169979** as well as judgement of Division Bench of this Court in **Special Appeal No.190 of 2023 (Fajid Ali vs. State of U.P. through Principal Secretary, Gram Vikas Civil Sectr. Lucknow and Others), Neutral Citation No.2024:AHC-LKO:30348-DB.**

4. With respect to the alternative prayer, regarding payment of subsistence allowance, learned counsel for the petitioner has placed reliance on a judgment of the Apex Court in the case of **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. and another, AIR 1999 SC 1416**, wherein it has been held that the provisions for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee and a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt., on joining the government service. Relevant paragraph nos. 28 to 31 of the said judgement are being reproduced herein below:

"28. Service rules also usually provide for payment of salary at a reduced rate during the period of suspension. (See: Fundamental Rule 53.) This constitutes the "Subsistence Allowance". If there is no provision in the rules applicable to a particular class of service for payment of salary at a reduced rate, the employer would be liable to pay full salary even during the period of suspension.

29. Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of Subsistence Allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of 'Subsistence Allowance', so that the employee may sustain himself. This Court in *O.P. Gupta v. Union of India*, (1987) 4 SCC 328 : (AIR 1987 SC 2257) made the following observations with regard to Subsistence Allowance: (Para-15 of AIR):

"An order of suspension of a Government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension.

The real effect of suspension as explained by this Court in Khem Chand v. Union of India (AIR 1958 SC 300) is that he continues to be a member of the Government service but is not permitted to work and further during the period of suspension he is paid only some allowance - generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a Government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford English Dictionary, Vol. II at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" - means - means of supporting life, especially a minimum livelihood." (emphasis supplied)

30. If, therefore, even that amount is not paid, then the very object of paying the reduced salary to the employee during the period of suspension would be frustrated. The act of non-payment of Subsistence Allowance can be likened to slow-poisoning as the employee, if not permitted to sustain himself on account of non-payment of Subsistence Allowance, would gradually starve himself to death.

31. On joining Govt. service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Govt. The Govt, only because it has the power to appoint does not become the master of the body and soul of the employee. The Govt. by providing job opportunities to its citizens only fulfils its obligations under the Constitution including the Directive Principles of State Policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with the government or any other employer, like Instrumentalities of the Govt. or Statutory or Autonomous Corporations, etc., is regulated by the terms of contract of service or Service Rules made by the Central or the State Govt. under the Proviso to Article 309 of the Constitution or other Statutory Rules including Certified Standing Orders. The Fundamental Rights, including the Right to Life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee. The provision for payment of Subsistence Allowance made in the Service Rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in *State of Maharashtra v. Chanderbhan*, (1983) 3 SCR 337 : (1983) 3 SCC 387 : AIR 1983 SC 803 struck down a Service Rule which provided for payment of a nominal amount of Rupee one as Subsistence Allowance to an employee placed under suspension. This decision was followed in *Fakirbhai Fulabhai Solanki v. Presiding Officer*, (1986) 3 SCC 131 : (1986) 2 SCR 1059 : AIR 1986 SC 1168 and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non-payment of Subsistence Allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in *Ghanshyam Das Shrivastava v. State of M.P.*, (1973) 1 SCC 656 : AIR 1973 SC 1183."

5. In view of the above, this Court finds that a case is made out in favour of the petitioner. The orders impugned are unsustainable, hence the same are quashed. The matter is remitted to the respondent no. 4 - District Basic Education Officer, Mau that in case the petitioner moves a fresh

representation for ventilation of his grievance within two weeks from today, he shall consider the same in accordance with law expeditiously, preferably within a period of three weeks thereafter.

6. The writ petition is accordingly allowed.

7. No order as to costs.

March 25, 2026

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(Mrs. Manju Rani Chauhan,J.)