
(2003) 02 AHC CK 0041
In the Allahabad High Court
Case No : C.M.W.P. No. 5934 of 1993

Ganesh Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Citation : (2003) 3 AWC 2430(2) : (2003) 97 FLR 1129 : (2003) 2 UPLBEC 1142

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : R.K. Mishra and A.K. Dwivedi, for the Appellant; S.S. Sharma, Sandeep Mukherjee and J.N. Verma and S.C., for the Respondent

Judgement

R.B. Misra, J.—Heard Sri Ashok Kumar Dwivedi, learned counsel for the petitioner as well as Sri S.S. Sharma and Sri Sandeep Mukherjee, learned standing counsel for the State.

2. In this writ petition, writ of mandamus has been sought directing the respondents to pay the salary of the petitioner due from the suspension order dated 25.3.1992 and to pay the salary of the petitioner in future regularly. It appears that petitioner was appointed as Assistant Salesman in Central Consumer Cooperative Stores Ltd., Azamgarh, in the year 1986 and while working as such, was involved in embezzlement, and misappropriation of fund, dereliction of duty, inefficiency, causing financial loss to the department and facts to such effects have been narrated in para 4 a, b, c, d and e of the counter-affidavit for such allegations the petitioner was placed under suspension on 25.3.1992 (Annexure-5 to the writ petition). The petitioner is asking for the salary for the period of suspension.

3. It is well-settled law that salary is not paid during the suspension period, it is the subsistence allowance which is to be paid in accordance with law. In view of the judgment of Supreme Court in Union of India and Ors. v. Asit K. Sarkar, (1999) 1 SCC 251, an employee under suspension is entitled to the subsistence

allowance and not the salary under fundamental Rule 53 and not the salary.

4. It has also been brought to the notice of this Court by learned counsel for the petitioner, the petitioner is no more in service, however he could not indicate the exact date and in what circumstances he is not in service, i.e., by virtue of superannuation, removal or retirement or any other manner. However, if the petitioner has not received the subsistence allowance, the petitioner is only entitled of subsistence allowance for the period of 10.8.1992 till revocation of his suspension if he has not been paid any subsistence allowance earlier during the suspension period. The salary of the petitioner from 23.5.1992 could only be given to the respondent/employee if the continued employment of the petitioner in the said department is acknowledged in accordance with law otherwise for suspension period, he is only to get subsistence allowance.

5. In view of the above observation, the writ petition is disposed of accordingly.