



2024 : DHC : 1060



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

% **Pronounced on: 13th February, 2024**

+ W.P.(C) 3644/2020, CM APPL No. 12990/2020, 23368/2020,
31350/2023 & 32640/2023

DR. AMIT KUMAR

..... Petitioner

Through: Mr.Vishwendra Verma, Ms.Shivali
and Mr.Archit Verma, Advocates

versus

BHARATI COLLEGE

..... Respondent

Through: Ms.Beenashaw N. Soni, Ms.Mansi
Jain and Ms.Ann Joseph, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner praying for the following reliefs:

“It is therefore most respectfully prayed that this Hon 'ble Court may graciously be pleased:

(a)To set aside the order dated 04.03.2020 alongwith the Auditor memo No. 08 dated 20.01.2020;

(b)To direct the respondent to pay the complete salary alongwith the arrears and increments to the Petitioner in accordance with law;



(c) To direct the respondent to refund the deducted amount vide the impugned order as per Annexure P1 (Colly);
(d) Pass any such other further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case;"

FACTUAL MATRIX

2. The petitioner was employed with Bharati College, University of Delhi (hereinafter "respondent College") at the post of Assistant Professor.
3. The respondent college, vide letter dated 9th March, 2018, intimated the petitioner that he was being sent on leave w.e.f. 6th February, 2018 since the College's Internal Complaint Committee (hereinafter "ICC") had received several complaints of sexual harassment against the petitioner.
4. Further, vide letter dated 2nd May, 2018 the petitioner's forced leave was extended by a month, i.e., w.e.f. 6th May, 2018 to 5th June, 2018 on the ground that the inquiry against the petitioner was incomplete.
5. On 9th June, 2018, a meeting convened by the Governing Body of the respondent college (hereinafter "Governing Body"), it was recommended that the petitioner would be suspended from his services with immediate effect.
6. Meanwhile, on 20th August, 2018 the ICC submitted its enquiry report and recommendations to the Governing Body for further approval, pursuant to which, in a meeting held by the Governing Body on 6th October, 2018 it recommended "compulsory retirement" of the petitioner



from the services of the respondent college and the said recommendation was upheld in a meeting convened by the Governing Body on 29th October, 2018.

7. In the interim, the petitioner sought a no-objection certificate from the respondent college, in order to apply for jobs as vacancies had arisen at different educational institutions, and however, there was no response to the same.

8. Thereafter, vide Audit Memo bearing no.8 dated 20th January, 2020, issued by Audit Party-III (hereinafter “audit memo”), the principal of the respondent college informed the petitioner that the Governing Body had recommended his suspension w.e.f. 9th June, 2018 however, the record of the respondent college revealed that the petitioner had been paid full salary till date and on the basis of the Fundamental Rule, Chapter VIII, FR. 53 (1) (a) (hereinafter “FR 53”) an overpayment amounting to Rs. 6,42,131/- had been made to the petitioner which had to be verified from the record.

9. Subsequently, vide letter dated 4th March, 2020 the petitioner was apprised of the fact that as per the aforesaid audit objections, the overpaid amount of Rs. 6,42,131/- has to be recovered from the petitioner and accordingly, the petitioner was directed to deposit the same at the earliest and vide the said letter, it was informed to the petitioner that he was only entitled to receive the subsistence allowance from the month of February, 2020.

10. The petitioner submitted his reply to the aforesaid letter dated 6th May, 2020, thereby, seeking the withdrawal of letter dated 4th March,



2020; full salary for the month of February, 2020 and payment of increments along with the arrears of pay and allowance.

11. Pursuant to the same, the petitioner made several representations, requesting the respondent college to permit the petitioner to rejoin his duties and further requested that he is entitled to his monthly salary along with arrears/ increments as there was neither any sanctioned suspension nor there was any punishment awarded to him by any authority.

12. Subsequently, vide letter dated 14th May, 2020, the Acting Principal of the respondent college responded to the representations made by the petitioner specifically addressing the query related to the payment of salary, thereby, advising the petitioner to comply with the instructions as communicated to him vide letter dated 4th March, 2020 and to deposit the overpaid amount of Rs. 6,42,131/- in favour of the respondent college.

13. Thereafter, vide letter dated 18th December, 2020, the Vice-Chancellor of the University approved the decision of the Governing Body, i.e., sanctioning compulsory retirement of the petitioner from the services, on the basis of Clause 7 of Annexure to Ordinance XII read with Clause 7 (9) of Ordinance XVII of the University of Delhi, Act, Statutes and Ordinances, 2004 (hereinafter “the Act”).

14. Pursuant to the aforesaid approval, the same was communicated to the petitioner vide letter dated 23rd December, 2020 and the petitioner’s services stood compulsorily retired w.e.f. 18th December, 2020.

15. Aggrieved by the orders dated 20th January, 2020 and 4th March, 2020, the petitioner has preferred the instant petition.



SUBMISSIONS

(on behalf of the petitioner)

16. Learned counsel appearing on behalf of the petitioner submitted that the action of the respondent college is arbitrary in nature and is violative of the petitioner's legal rights.

17. It is submitted that the directions issued to the petitioner by way of the audit memo, to deposit a sum of Rs. 6,42,131/- has been passed without any valid reasoning and the said direction of depositing the overpaid amount is illegal and not applicable to the case of the petitioner.

18. It is submitted that on 6th February, 2018 there was no complaint against the petitioner and the order recommending forced leave of the petitioner was issued on 9th May, 2018. However, , the petitioner was sent on forced leave w.e.f. 6th February, 2018.

19. It is submitted that vide letter dated 2nd May, 2018 the forced leave recommended to the petitioner was extended till the date the ICC submitted its report and the petitioner raised questions in respect of the alleged inquiry and showcased his willingness to rejoin his duties at the respondent college during the pendency of the said inquiry.

20. It is also submitted that the audit memo refers to FR 53 (1) (a), which specifically deals with the subsistence allowances to be paid to the government employees placed under suspension, however, the said provision is not applicable to the case of the petitioner as he was never placed under suspension by the concerned authority. It is further submitted that the audit memo has wrongly quoted FR 53 (1) (a) and no such provision is applicable on the petitioner. exists.



21. It is submitted that even though there were certain complaints made against the petitioner in February, 2018, he was never placed under suspension or deemed suspension and therefore FR 53 is not applicable to the case of the petitioner and the recovery sought from the petitioner is not in accordance with the law.

22. It is further submitted that despite several objections raised by the petitioner with regards to the direction issued by the respondent regarding recovery of the alleged overpaid amount, the respondent college did not stop the deductions from the salary of the petitioner.

23. It is submitted that as per the official record of the Governing Body, the petitioner's suspension was merely recommended, however, the said suspension was never authorised by the concerned authority.

24. It is also submitted that as per the enquiry report dated 28th August, 2018 issued by the ICC, which thereby, recommended the petitioner's suspension to the Governing Body, it is evident that the authority concerned did not arrive at a final decision vis-à-vis the suspension of the petitioner and no order had been passed sanctioning any suspension of the petitioner.

25. It is further submitted that the audit memo was a mere repercussion of the fact that the petitioner demanded a no-objection certificate from the respondent college in order to apply for the teaching positions at various educational institutes.

26. It is further submitted that as per the Act, the Appointing Authority is the Vice Chancellor and no order was passed by the Vice-Chancellor with regard to the petitioner's suspension and therefore, FR 53 is not applicable to the case of the petitioner.



27. It is also submitted that the petitioner is entitled to full salary as per law and not only the subsistence allowance.

28. In view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs as prayed for may be granted.

(on behalf of the respondent)

29. Per contra, learned counsel appearing for the respondent college vehemently opposed the instant petition submitting to the effect that the acts of the respondent College is in accordance with the law and there is no arbitrariness of any kind thereto which makes the petition liable to be dismissed being devoid any merits.

30. It is submitted that the respondent College had received various complaints of sexual harassment against the petitioner and thus, the matter was referred to the ICC of the College, which in turn recommended that the petitioner should be restrained from entering the college premises.

31. It is submitted that the aforesaid recommendation was placed before the Governing Body in its meeting held on 7th March, 2018 and the convener of the ICC, namely Ms. Shobhana Sinha attended the meeting and shared that several students had shared a sense of anger and insecurity due to the presence of the petitioner and given representations to that effect.

32. It is also submitted that the petitioner himself expressed feeling unsafe in the college premise and keeping in mind the gravity of the situation and the restlessness among the students at the respondent college, the Governing Body directed that the petitioner be placed on



forced leave from 6th February, 2018 till 9th June, 2018 or till, the ICC submits its final report whichever is earlier.

33. It is submitted that the petitioner has not been taking classes since 6th February, 2018 and an alternate guest lecturer has been appointed to take classes in place of the petitioner.

34. It is further submitted that on the basis of the complaints received against the petitioner, the Governing Body in its meeting held on 9th June, 2018 recommended that the petitioner may be suspended from services with immediate effect and the said recommendation was sent to the University of Delhi for the approval of the Vice Chancellor vide letter bearing no. BC/2018/462, dated 11th June, 2018, and the same has been appended as Annexure-III to the instant petition.

35. It is submitted that subsequent to the ICC's submission of its enquiry report, the petitioner was afforded an opportunity to present his case before the Governing Body and it was only after hearing the petitioner at length that the Governing Body accepted the ICC's report and unanimously endorsed its recommendation for the petitioner's compulsory retirement.

36. It is submitted that the respondent College sent almost 22 reminders to Delhi University, thereby, requesting them to expedite the approval of the petitioner's suspension, however, the University failed to provide any response to the same.

37. It is further submitted that even though the respondent college has made several representations to the University, thereby seeking clarity with regard to the petitioner's salary, there has been no response at the hands of the University.



38. It is submitted that during the pendency of the aforesaid approval from the University, the Government of NCT Delhi conducted an internal audit in the respondent College and the auditor raised an objection *qua* the petitioner receiving full salary. The auditor further directed the respondent college to only pay subsistence allowance to the petitioner and recover the amount overpaid to the petitioner in the past.

39. It is also submitted that the aforesaid audit objection was placed before the Treasurer of the Governing Body which in turn decided to proceed as per the audit objections and to pay only the subsistence allowance to the petitioner and in view of the same the respondent College issued letter dated 4th March, 2020 thereby, initiating the process to recover the overpaid amount of Rs. 6,42,131/- from the petitioner.

40. It is further submitted that the suspension as well as the compulsory retirement of the petitioner has been recommended by the Governing Body, which is the Appointing and Disciplinary Authority of the respondent College.

41. It is submitted that the petitioner is bound by the audit objections raised by the Government of NCT of Delhi, which is the funding Authority of the respondent College and hence the respondent College is bound to comply with the observations made by the auditor.

42. It is submitted that the respondent college kept releasing full salary (minus TA/DA) to the petitioner as per the rules. The respondent College wrote to the University stating clearly that this situation is creating serious financial implications for the college as the petitioner only has three years of permanent service in the college and if some recovery is



required to be made from the amount already disbursed to him it would create a strained situation for the respondent.

43. It is submitted that it was only due to non-communication and pending approvals from the University that the petitioner was being paid the full salary.

44. It is further submitted that as per Clause 7 of Ordinance XII, the petitioner cannot be terminated or suspended without the prior approval of the Vice Chancellor and the respondent college has made several representations to the Vice-Chancellor with regard to the petitioner's case, however, there was no response to the same.

45. It is also submitted that the petitioner is not entitled to annual increments as he is on forced leave and his suspension has been approved and recommended by the Governing Body since 6th February, 2018. Moreover, an increment is an incidence of employment and only an employed individual can reap the benefit of the same.

46. It is further submitted that the disciplinary proceedings against the petitioner have been completed and the punishment of compulsory retirement has been awarded to the petitioner by the Governing Body which is pending approval from the University, moreover, till the time the same is decided or concluded by University, no decision with respect to the payment of increment can be taken as that would decide as to whether the period when the petitioner was on forced leave would be treated on duty or not. The aforesaid has been settled by the Courts in cases titled ***Chander Sekhar v UOI***, SCC OnLine Del 7013, ***UOI v Devi Krishan Sharma***, SCC OnLine Del 13382 and ***State of Punjab v Jagwant Singh***, (2014) 13 SCC622.



47. It is submitted that the petitioner cannot be granted no objection certificate since the respondent is not in a position to issue any such certificate as the petitioner has not worked, i.e., taken any classes since 6th February, 2018.

48. It is further submitted that there are serious allegations of sexual harassment against the petitioner which have been upheld by the ICC and approved by the Governing Body and in light of the same the petitioner is not entitled to any such certificate.

49. In view of the foregoing submission, it is prayed that the instant petition may be dismissed, being devoid of any merits.

ANALYSIS AND FINDINGS

50. Heard the parties and perused the record.

51. The crux of the petitioner's grievance lies in the fact that pursuant to allegations of sexual harassment, the petitioner was recommended for a forced leave. Subsequently, the petitioner's force leave was extended and ultimately was termed to be compulsory retirement. It has been contended that the aforesaid suspension was a mere recommendation on the basis of the enquiry report submitted by the ICC to the governing body, which in turn upheld the said report and the petitioner was compulsorily retired from the services. Consequently, an audit was conducted by the government of Delhi and as per the observations made by the auditor, the full salary being disbursed to the petitioner was brought to the notice of the respondent College. By way of the audit memo, it was alleged by the College that an amount of Rs. 6,42,131/- had been overpaid to the petitioner and the same was to be



recovered from him. It has also been contended that the said audit memo bears certain errors pertaining to FR 53 being quoted incorrectly, since the same is applicable only in the event that the individual has been placed under suspension, however, the petitioner's suspension was never approved by the Vice-Chancellor and therefore, the respondent college cannot ask the petitioner to deposit a sum of Rs. 6,42,131/- which has been paid to him during the period the petitioner was deemed to be on forced leave.

52. In rival submissions, it has been contended that serious complaints alleging sexual harassment were made against the petitioner, as a result of which the respondent college was constrained to place the petitioner on forced leave as recommended by the ICC. Subsequent to the ICC submitting its enquiry report, the matter was referred to the Governing Body for further adjudication. Subsequently, the Governing Body upheld the enquiry report as submitted by the ICC and the petitioner was recommended to be retired compulsorily from the services of the respondent College. It has been contended that the respondent college time and again reached out to the University in order to expedite the process of approval of the petitioner's suspension, however, even after 25 representations, the University failed to respond to the respondent college, vis-à-vis the status of the petitioner's suspension being approved. It has also been contended that the audit had been conducted by the Government of NCT of Delhi and the respondent college's hands were tied with regard to the overpaid amount being recovered from the petitioner since the said direction was issued directly by the State and the respondent college is bound to comply with the same. Moreover, the



respondent college has made several representations to the University, thereby, seeking clarity regarding the salary of the petitioner and whether he would be entitled to subsistence allowance or full salary and therefore, the respondent college cannot take any decision with respect to the payment of increment as it would decide as to whether the period when the petitioner was on forced leave would be treated on duty.

53. Bearing in mind the aforesaid facts and submissions, this Court will now adjudicate the instant petition limited to the following issues:

- i. Whether the order dated 4th March, 2020 and the audit memo dated 20th January, 2020 suffer from any illegality?*
- ii. Whether the petitioner is entitled to receive full salary and increments?*

54. In order to adjudicate the first issue i.e., whether the order dated 4th March, 2020 and the audit memo dated 20th January, 2020 suffer from any illegality, it is apposite for this Court to reproduce the aforesaid orders. The relevant portion of the order dated 4th March, 2020 has been reproduced hereunder:

“SUBJECT: INTIMATION REGARDING SALARY

Dear Dr. Amit Kumar

In response to your communications regarding salary, this is to inform you that as per Audit Objections raised by the Audit party No. III, Government of NCT of Delhi (Copy enclosed).

1) An over payment amounting to Rs.6,42,13 1/- is recoverable.

2) You will get only subsistence allowance.

The approval has been taken from the Competent Authority of the College; you will get only subsistence allowance from



the month of February 2020.

You are also required to deposit the amount of Rs.6.42.,131% to the College as per the audit objections at the earliest."

55. The aforesaid order was issued in pursuance to the internal audit conducted by the Audit Party No. III, Government of NCT of Delhi, by way of which it was disclosed by the auditor that an amount of Rs. 6,42,131/- had been overpaid to the petitioner and additionally that the petitioner was only entitled to receive subsistence allowance commencing from February, 2020, since he was on recommended suspension.

56. It is now apposite to analyse audit memo No. 08, dated 29th January, 2020 issued by the Directorate of Audit, Government of NCT of Delhi. The relevant portion of the said audit memo has been reproduced herein:

"Subject: Irregular payment in r/o Dr.Amit Kumar under suspension."

*As per reply of the record memo, the Governing Body of college had decided to recommend suspension in r/o Mr. Amit Kumar, Asstt. Professor (Pol. Science) w.e.f. 09.06.2018 . But as per records till date of full amount of salary is released. However as per FR. 53(1)(a)" a subsistence allowance at an amount equal to leave salary which the government servant would have drawn, if he had been on leave on half average pay or on half pay an in addition DA if admissible on the basis of such leave salary". Hence w.e.f. 09.6.2018 till 31st Dec. 2019 an overpayment of amounting **Rs.6,42,131/- (Due drawn statement enclosed)** has been made and which is also accumulating every month. Reasons for above discrepancies may be elucidated to Audit. The recovery of Rs. 6,42,131/- may be made from the*



concerned staff under intimation to audit after due verification from the record.”

57. The aforesaid audit memo essentially states that the Governing Body of the respondent College had recommended that the petitioner may be placed under suspension w.e.f. 9th June, 2018. It further noted that as per the records of the respondent College, the full amount of salary had been released to the petitioner till the date of issuance of the said audit memo. It also states that as per FR 53 (1) (a), any government servant who is under suspension or deemed suspension shall be paid a subsistence allowance at an amount equal to the leave salary which the government servant would have drawn, if he had been on leave on half average pay or on half pay and in addition to the dearness allowance, and the same should be paid only in the event, wherein, the period of suspension exceeds three months. Therefore an amount of Rs. 6,42,131/- was considered to be overpaid to the petitioner and the same was directed to be recovered from him.

58. Pertinently, the primary grievance of the petitioner is that he was never placed under suspension however, the audit memo seeking recovery of the overpaid amount of Rs. 6,42,131 /- was issued to him.

59. At this juncture, it becomes imperative for this Court to analyse the term suspension. In layman terms, the word suspension can be defined as not being allowed to do your job for a period of time, usually as a form of punishment. The law recognizes three types of suspension, *firstly* as a punitive measure for public servants, *secondly* during an ongoing inquiry if specified by the appointment order or statutory regulations, and a situation where a servant is prohibited from performing duties during an



inquiry, termed as suspension. The authority to suspend for disciplinary reasons or during an inquiry is guided by employment contracts or service conditions. *Thirdly* it involves the master preventing the servant from work under the contract while maintaining the master's obligations, essentially allowing the servant to refrain from service while fulfilling the contractual commitments.

60. In the present case, the petitioner was recommended to be placed under suspension in light of the complaints of sexual harassment received against him. Additionally, vide letter dated 9th March 2018, the respondent college clearly intimated to the petitioner that he would be placed under forced leave w.e.f. 6th February, 2018 to ensure a conducive environment of safety and protection to the complainant as well as other women students studying at the respondent College and in light of the same, the ICC recommended that the College has to take immediate steps to restrain the petitioner from entering the college premises during the pendency of the proceedings against him. However, the recommended suspension was not approved by the Vice-Chancellor as on the date of issuance of the letter dated 4th March, 2020. As per the documents on record, it is evident that the petitioner's suspension was only approved by the Vice-Chancellor on 18th December, 2020.

61. At this stage, it is imperative to analyse the letter dated 18th December, 2020 whereby, the petitioner's suspension was approved by the Vice chancellor of the University of Delhi. The relevant portion of the aforesaid letter has been reproduced herein:



*“The Principal
Bharti College.
C-4, Janakpuri,
New Delhi-110058.*

Madam,

With reference to your letter No. BC/2019/653/ dated 10.06.2019, I am directed to inform you that the Vice-Chancellor has approved the decision taken by the Governing Body in its meeting held on 29.10.2018 for compulsory retirement of Dr. Amit Kumar in terms of Clause 7 of annexure to Ordinance XII read with Clause 7(9) of Ordinance XVIII of the University.

Yours faithfully,

Joint Registrar (Colleges)....”

62. Insofar as the issue pertaining to suspension is concerned, it is apposite for this Court to analyse the settled law along-with the provisions governing suspension as provided under the Act.

63. The law with regard to the appropriate body’s approval vis-a-vis suspension has been reiterated time and again by different Courts. In the case titled *Supdt. Of Police, Manipur and Ors. vs R.K. Tomalsana Singh (Dead) By Lrs*, AIR 1984 SC 535, the Hon’ble Supreme Court dealt with the fact that in the event the statute mandates prior approval or sanction, the concerned governing body must obtain prior approval before implementing the suspension. The relevant portion of the judgment has been reproduced herein:

“A bare reading of Section 12 of the Police Act, 1861 shows that the power to make rules and issue orders as maybe deemed expedient relating to the organisation, classification and distribution of Police Force etc. is conferred on the Inspector General of Police subject to the approval of the State Government. The power is conferred by the statute on



a statutory authority called Inspector General of Police and the power is hedged in with a condition that it can be exercised subject to the approval of the State Government. It must at once be confessed that the approval of the State Government was not obtained and it is futile to contend that as the order issuing authority was simultaneously holding office of Chief Commissioner of Manipur State, the order dated July 27, 1951 would be deemed to have been issued with the approval of the State Government. Section 12 does not recognise the authority of Chief Commissioner to make rules, on behalf of the State Government nor any such authority was brought to our notice. Even Rules of Business, if any, were not shown either to the learned Judicial Commissioner or to this Court which would spell out such authority of Chief Commissioner of State. In fact, the learned Judicial Commissioner was of the opinion that the enquiry ought to have been held in accordance with the Central Civil Services (Classification, Control and Appeal) Rules, 1951 and that having not been done the order is vitiated. This finding is unassailable. The situation as at present stands is that the order issued by the Chief Commissioner dated July 27, 1951 is being relied upon to show that the rules contained in Assam Police Manual have been validly prescribed for the administration of Manipur Police Force. The learned Commissioner was right in holding the order dated July 27, 1951 is ineffective to incorporate and apply provisions contained in Part I-V of Assam Police Manual for Police Force in Manipur State and therefore, the departmental enquiry was not held in accordance with the relevant law and rightly set aside the order of dismissal of deceased respondent from service and declared that the original-petitioner, respondent herein shall continue to be in service and will be entitled to all the benefits which he would have had if he had continued in service.”

64. The aforesaid judgment essentially states that it is a well established principle of law that if the provisions of a particular rule or a



statute require an act to be done in a certain manner, then, the said act is to be done in that manner or not done at all. Therefore, when there is no power with the governing body to suspend a person and prior approval of the Vice-Chancellor is needed for this purpose, there cannot be said to be any power with the governing body to force a person to go on leave and not to take work from him/her which has the effect of "suspending the person".

65. At this juncture, it is necessary to analyse the Clause 7 of Ordinance XII-A, which governs the suspension as provided under the Act. The said ordinance has been reproduced hereunder:

“7. The question of termination of the services of the Principal/Teacher or his suspension, shall not be decided by the College/Institution without the prior approval of the Vice-Chancellor.”

66. In the backdrop of the facts, the settled law as well as the Statute governing the present petition, it is crystal clear that an individual will only be suspended when the approval for the said suspension has been granted by the Vice-Chancellor. The Governing Body may only recommend the suspension of the individual, but the ultimate approval must be granted by the Vice-Chancellor for the said suspension to come into effect.

67. In the instant petition, the petitioner was placed under forced leave due to certain allegations of sexual harassment against him. Evidently, the petitioner’s suspension only stood to be recommended and was not sanctioned by the Vice-Chancellor till the audit was conducted and the recovery of the overpaid amount demanded from him.



68. Therefore, this Court is of the view that since the petitioner's suspension was only approved on 18th December, 2020 any amount overpaid to him prior to that cannot be recovered as the petitioner was never suspended.

69. Inasmuch as the issue pertaining to subsistence allowance to be paid to the petitioner as per the audit memo is concerned, it is well settled that the concept of subsistence allowance refers to the salary provided to an employee placed under suspension to support themselves. This allowance is lower than the employee's entitled salary and carries a distinct penal importance. The said principle has been reiterated by the Hon'ble Supreme Court in case titled as ***M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679***. The relevant paragraph of the said judgment is reproduced herein:

“29. ... 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 India¹ made the following observations with regard to subsistence allowance : (SCC p. 340, para 15)

“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 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 of supporting life specially a minimum livelihood.'"

70. This Court discerns that firstly, the petitioner's suspension was only recommended as on 4th March, 2020 i.e., date of issuance of the order for recovery of the overpaid amount of Rs. 6,42,131/- from the petitioner. Secondly, as per Clause 7 of the Ordinance XII-A, it is necessary for the Vice-Chancellor to approve such recommended suspension and the same decision cannot be taken solely by the Governing Body. The Governing Body acts only as a recommending authority and is not the appropriate authority for approving such suspensions.

71. As already noted above, it is well settled that when there is no power with the governing body to suspend a person and prior approval of the Vice-Chancellor is the required, and hence there cannot be any power with the governing body to force a person to go on leave which has the effect of "suspending the person".

72. In light of the aforesaid discussions of law and facts, it is evident that since the petitioner's suspension was not approved by the Vice-Chancellor as on the date of issuance of the audit memo dated 20th January, 2020 and the subsequent letter dated 4th March, 2020 the respondent college is not authorized to recover the overpaid amount of Rs. 6,42,131 /- from the petitioner .



73. It was only after the Vice-Chancellor's approval, i.e., 18th December, 2020 the petitioner's suspension was approved and any amount paid to him prior to that cannot be recovered from him. Additionally, as per the audit memo, the respondent college was directed to pay the petitioner subsistence allowance, however, the petitioner's suspension was not approved till 18th December, 2020 and therefore, the question of payment of subsistence allowance to the petitioner does not arise prior to 18th December, 2020.

74. Accordingly, issue no. (i) stands decided in favour of the petitioner.

75. Now adverting to issue No. (ii) i.e., Whether the petitioner is entitled to receive full salary and increments?

76. Insofar as issue no. 'ii' is concerned, it is evident that the petitioner is seeking full salary as well as certain increments. It has been contended by the respondent college that as per Clause 19.1 of the Notification dated 18th July, 2018, issued by the University Grants Commission ("UGC"), all the advance increments are "non-compounding" implying that additional qualifications do not entitle any individual to additional increments and that only highest qualification at the time of entry shall be considered.

77. It is also pertinent to note that in light of the aforesaid notification, the petitioner was granted increments at the time of his appointment. Since the petitioner was degree holder of M. Phil and PhD degree, the increments were extended to the petitioner in accordance with his the higher qualification i.e., the PhD degree. Evidently, any increments thereto cannot be compounded, hence two non-compounding advance increments on account of holding M.Phil degree are not



admissible to the 5 non-compounding advance increments for holding Ph.D. degree.

78. With regards to travel allowance (hereinafter “TA”) it has been contended that the said allowance is only applicable to employees who have attended the College for at least one day in a calendar month and the petitioner has been paid the said allowance up till the time he had attended the office. Additionally, it has been stated that the petitioner’s double TA from October, 2017 along-with arrears has been paid to him along-with his salary in November, 2017 and thereafter, double TA of Rs. 6400/- has been paid continuously with his salary till he attended College, i.e., 6th February, 2018.

79. At this stage, it is apposite for this Court to analyse the Notification dated 18th July, 2018, issued by the UGC. The relevant portion has been reproduced hereunder:

“19.0 Other Terms and Conditions

19.1 Incentives for Ph.D/M.Phil. and other Higher Qualification

- i. Five non-compounded advance increments shall be admissible at the entry level of recruitment as Assistant Professor to persons possessing the degrees of Ph.D. awarded in a relevant discipline by the University following the process of admission, registration, course work and external evaluation as prescribed by the UGC.*
- ii. M.Phil degree holders at the time of recruitment to the post of Assistant Professor shall be entitled to two non-compounded advance increments.*
 - ii. Those possessing Post-graduate degree in the professional course such as LL.M./M.Tech/M.Arch./*



iii. M.E./M.V.Sc/M.D., etc. recognized by the relevant statutory body/ council, shall also be entitled to two non-compounded advance increments at the entry level.”

80. As per the documents placed on record by the respondent College, the petitioner has been paid his dues in terms of increments and the same has been appended by them as Annexure CM-1 and RAA2 appended with the instant petition. Upon perusal of the same, it is evident that all dues of the petitioner have been cleared up to February, 2018 and since, the petitioner's forced leave had commenced post February, 2018, the petitioner was not entitled to any TA/Dearness Allowance , etc.

81. It is also evident that 5 non-compounding advance increments had been extended to the petitioner at the time of his appointment since, he already possessed M.Phil. and PhD degree at that time. Moreover, as per the Office Memorandum dated 7th July, 2017 issued by the Ministry of Finance, Government of India, it has been clearly stipulated that TA is not admissible to an individual who is on leave or during suspension; hence any question pertaining to payment of TA to the petitioner does not arise.

82. Summarily, it can be stated that the petitioner has been paid his dues as on February, 2018, i.e., the date on which his forced leave had commenced. Since all the dues of the petitioner have been cleared as on February, 2018, therefore, nothing survives for adjudication with regard to this issue.

83. Accordingly, issue no. (ii) stand decided.



CONCLUSION

84. As has been discussed in the foregoing paragraphs, the petitioner has challenged recovery of the overpaid amount of Rs. 6,42,131/- as well as increments due to him. Even though the petitioner has not challenged his termination, it is imperative for this Court to bring to light the fact that the allegations against the petitioner were of serious nature. The relationship between students and teachers dates back to the *vedas* and runs through every epic that has overcome evil. Such a relationship is that of knowledge and devotion. A relationship between a student and a teacher is one of the most pious relationships in the world. A teacher is not only a person who teaches in a classroom but one who encourages and inspires the students to become a holistic person. Teachers are gifted with the power to impart wisdom and shape the minds of children who are the future, and it is imperative that such power is not misused. As a society, it is important to understand that parents of such students send their children away from their homes in the hope that their children would be in a safe and conducive environment under the guidance of their teachers, however, the act of sexual harassment by teachers has witnessed a widespread occurrence which is a serious offence and abuse of a position of power.

85. In light of the aforementioned facts and legal principles, this Court is of the opinion that the respondent college cannot recover the overpaid amount of Rs. 6,42,131/- from the petitioner since the same had been paid to him prior to his suspension being approved by the Vice-Chancellor.



86. Additionally, there is a prescribed process which is to be followed in such cases, which clearly establishes the fact that the Governing Body is merely a recommending authority and the final approval must be provided by the Vice-Chancellor of the University. The absence of such approval evidently makes the suspension void and in the event the approval is granted at a later stage, the suspension would commence from the date on which such approval is granted. The petitioner may be granted subsistence allowance from 18th December, 2020, i.e., the date on which his suspension was approved by the Vice-Chancellor and the amount of Rs. 6,42,131/- cannot be recovered from him since the same was paid prior to his suspension being approved.

87. Furthermore, the issue pertaining to the grant of full salary and payment of increments is concerned, this Court is of the view that as per the documents on record, it is evident that the same has been paid to the petitioner as on February, 2018, and pertinently, the petitioner is not entitled to receive any TA since the petitioner had been on forced leave since February, 2018 and TA is only granted to individuals who have attended College for one day in a calendar month.

88. Moreover, as already observed in the foregoing paragraphs and according to the guidelines issued by the UGC, any individual who is on leave or under suspension cannot be granted TA as per the rules governing individuals employed by the colleges under the UGC. Insofar as the grant of increments is concerned, as per the documents on record, it is evident that the petitioner has been granted the mandated increments at the time of his joining.



2024 : DHC : 1060



89. Accordingly, the order dated 4th March, 2020 and audit memo dated 20th January, 2020 are set aside and it is directed that the amount declared as overpaid is not to be recovered from the petitioner, however, the petitioner is not entitled to the increments as prayed for in prayer 'b'.

90. In view of the aforesaid terms, the instant petition stands partly allowed, only to the extent of prayer (a) whereby the amount overpaid to the petitioner cannot be recovered since at the time the audit memo dated 20th January, 2020 and subsequent letter dated 4th March, 2020 were issued, the petitioner's suspension was not approved by the Vice-Chancellor.

91. Accordingly, the instant writ petition stands disposed of along-with pending applications, if any.

92. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

FEBRUARY 13, 2023
Dy/Ds/Ryp