



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

216 (3 cases)

CWP-11357-2021 (O&M)

Date of Decision: 10.01.2025

Mahinder Ram

...Petitioner

Versus

Commandant General, Punjab Home Guards and others

...Respondents

With

CWP-7091-2023

Shokin Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

And

CWP-15385-2024

Jagir Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: - Mr. Narender Pal Bhardwaj, Advocate for the petitioner
(in CWP-11357-2021)

Mr. Baljinder Singh, Advocate for the petitioner
(in CWP-7091-2023)

Mr. Amit Dhawan, Advocate for the petitioner
(in CWP-15385-2024)

Mr. Aman Dhir, Deputy Advocate General, Punjab

Mr. Bhisham Kumar Majoka, Advocate
for respondent No.3-Union of India in CWP-11357-2021



JAGMOHAN BANSAL, J. (Oral)

1. As common issues are involved in the captioned petitions, with the consent of all the parties, the same are hereby disposed of by this common order. For the sake of brevity and convenience, facts are borrowed from *CWP-11357-2021*.

2. Affidavit dated 17.09.2024 filed on behalf of respondent No.3 is taken on record. Registry is directed to tag the same at an appropriate place.

3. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of suspension order dated 30.08.2019 (Annexure P-4) whereby the District Commander, Punjab Home Guards, Patiala has suspended him. He is further seeking subsistence allowance during the period of suspension.

4. The petitioner was enrolled as member of Punjab Home Guards on 05.08.1992. He continuously worked with the respondent as member of Home Guards till the date of passing impugned order of suspension. For the ready reference, the suspension order is reproduced as below: -

“As per report received from the office of Commander Training Center, Punjab Home Guards, Patiala vide letter no-561 dated 30.08.2019 Guard Mahinder Ram No-30617 is posted on duty at Police Station Handesra stands suspended from duty immediately from today due to case registered against him by Vigilance Department.

*Sd/-
District Commander,
Punjab Home Guards, Patiala”*

5. The petitioner is assailing aforesaid suspension order. Mr. Aman Dhir, learned State Counsel, during the course of hearing, handed over copy

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of order dated 21.10.2024 whereby petitioner has been called off. The order dated 21.10.2024 is reproduced as below: -

“Guard Mahinder Ram No.30617 against F.I.R. No.14 Dated 28.09.2019 under Section 7 P.C. Act, 1988 as amended by P.C (amendment) Act, 2018 at Police Station Handesra due to registered said FIR through this office’s Endtt. No.PHG 2019/B-2/3078-83 on dated 30.08.2019 had been suspended. Standing Order issued by State Head Office Punjab Home Guards Chandigarh PHG-2023/A-9/ Memo no.5468-91 dated 05.09.2023 and Call out-2024/A-9/PHG/386-409 on dated 10.01.2024 taking action accordingly, the concerned is Call Off from the date of suspension. No allowance will be paid to the concerned during this period.

*Sd/-
District Commander,
Punjab Home Guard,
Patiala”*

6. Faced with aforesaid order, learned counsel for the petitioner confines his prayer qua subsistence allowance and seeks liberty to avail remedy, as permissible by law, against the said order. Petition qua challenge to suspension order, with liberty aforesaid, stands dismissed.

7. In view of aforesaid development, issue before this Court is confined to entitlement of petitioner to subsistence allowance for the period of suspension.

8. Learned counsel for the petitioner submits that members of Home Guards are governed by Punjab Home Guards Act, 1947 (for short ‘1947 Act’) read with Rules made thereunder. There are Rules governing conditions of service of members which include pay and allowances, discharge from service, resignation, dismissal from service etc. There is no Rule which governs suspension period. The respondent has power to discharge/dismiss from service but there is no provision with respect to



suspension from service. The Government of India has made a Compendium of Instructions wherein there is power with Commandant General or Commandant to suspend any Home Guard. The petitioner has been dismissed from service during the pendency of instant petition. The order of dismissal from service confirms that he was under suspension. No disciplinary proceedings were ever pending against him. The respondent cannot deprive him from the benefit of subsistence allowance.

9. *Per contra*, learned State counsel submits that petitioner as per judgment of Supreme Court is a volunteer. He is not an employee of the respondent-State. He, in true sense, is a daily wager and can be called off at any point of time. The volunteers are called on as per requirement and can be called off in case of absence of need. The petitioner was found guilty of misconduct, thus, he was placed under suspension and by order dated 21.10.2024 has been called off. By said order, he has been called off from the date of suspension and in the aforesaid order, it has been specifically clarified that he shall not be entitled to pay and allowances during the period of suspension. Supreme Court in ***Grah Rakshak, Home Guards Wel. Association v. State of H.P. and others, 2015 (6) SCC 247***, has clearly held that Home Guards are volunteers and they cannot claim regularization. They are not paid salary whereas they are paid daily allowance. In the absence of work, they are not entitled to salary, thus, they are not entitled to subsistence allowance during the period of suspension. In the absence of specific provision, they cannot be extended benefit of subsistence allowance. Instructions issued by Government of India and Standing Orders of State Government permit to place any member under suspension. The petitioner is

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required to challenge order dated 21.10.2024 whereby he has been called off from retrospective date.

10. On being asked, learned State counsel confirmed that petitioner was enrolled as member on 05.08.1992 and he continuously worked till his date of suspension. He was regularly paid allowances and at the time of suspension, he was paid approximately ₹35,000/- per month. The said calculation was made on the basis of daily allowance as fixed by the State Government.

11. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

12. The State Legislature has enacted 1947 Act. The said Act came into force w.e.f. 04.12.1947. The State Government in exercise of power conferred by Section 9 of 1947 Act has framed Rules known as Punjab Home Guards Rules, 1963 (for short '**1963 Rules**'). As per Section 3 of 1947 Act, the State Government may appoint as members of Punjab Home Guards so many persons who are fit and willing to serve, as the State may think fit. As per Section 4 of 1947 Act, the State Government in any area, at any time, may call out a member of the Home Guards for training or to discharge any of the function assigned to the Home Guards. As per Section 5, a member of the Home Guards shall have same powers, privileges and protection as an officer of police appointed under any law for the time being in force. As per Section 7, if a member of the Home Guards is found guilty of misconduct, he is liable to punishment of simple imprisonment for a term which may extend to three months. Sections 3, 4, 5 and 7 of 1947 Act are reproduced as below: -

“3. Appointment of members. - The State Government may appoint as members of the Punjab Home Guards so many persons who



are fit and willing to serve as such, as the State Government may see fit to appoint and may appoint any such member to any office of command in the Punjab Home Guards.

4. Calling out of members. - *The State Government in any area at any time may call out a member of the Punjab Home Guards for training or to discharge any of the functions assigned to the Punjab Home Guards in accordance with the provisions of this Act and the rules made thereunder.*

5. Powers, protection and control. - (1) *A member of the Punjab Home Guards when called out under section 4 shall have the same powers, privileges and protection as an officer of police appointed under any law for the time being in force.*

(2) *No prosecution shall be instituted against a member of the Punjab Home Guards in respect of anything done or purporting to be done by him in the discharge of his functions as such member, except with the previous sanction of the State Government.*

7. Penalty. - (1) *If any member of the Punjab Home Guards on being called out under section 4, without sufficient excuse neglects or refuses to obey such order, or to discharge his functions as a member of the Punjab Home Guards, or to obey any lawful order or direction given to him for the performance of his duties, he shall, on conviction by a competent Court, be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.*

(2) *An offence under this Act shall be cognizable”*

Section 9 empowers the State Government to frame Rules with respect to organization, appointment, conditions of service, duties, discipline, arms, accoutrements and clothing of members of the Home Guards and the manner in which they may be called out for service. Section 9 of 1947 Act is reproduced as below: -

“9. Rules. - *The State Government may make rules consistent with this Act -*



(a) providing for the exercise of control by officers of the police force over members of the Punjab Home Guards when acting directly in aid of the police force;

(b) regulating the organisation, appointment, conditions of service, duties, discipline, arms, accoutrements and clothing of members of the Punjab Home Guards and the manner in which they may be called out for service;

(c) conferring on members of the Punjab Home Guards according to their office any powers, other than magisterial or judicial powers, exercisable by any person under any law for the time being in force; and

(d) generally for giving effect to the provisions of this Act.”

13. The Government in exercise of power conferred by Section 9 has made 1963 Rules. Title ‘*Conditions of Service*’ comprises of Rules 14 to 25 and title ‘*Discipline*’ comprises of Rules 26 to 31. Rule 14 provides that members including Gazetted Officers shall be paid pay and allowances as determined by the Government from time to time. As per Rule 17, a member cannot resign unless he has served for a minimum of 3 years and gives one month notice. As per Rule 18, any member may be discharged at any time by the authority which has appointed him when his services are no longer required. Rule 27 provides that any member, for misconduct or absence of duty, may be dismissed from service. The said Rule further provides for appellate remedy. Rules 14, 17, 18 and 27 of 1963 Rules are reproduced as below :-

“14. Pay and allowance. [Section 9(b)] - The Pay allowances (sic) any admissible to the members including Gazetted officers (sic) shall be such as may be determined by the Government from time to time.

17. Members not to resign without permission or notice. [Section 9(b)] - No member shall resign unless –

(a) he has served for a minimum period of three years; and



(b) *has given one month's notice of his intention to resign:*

Provided that any member may, at any time, be allowed to resign by the Commandant-General or the Gram Raksha Dal Chief, as the case may be, for any cause which may be considered sufficient by either of them.

18. Discharge of members. [Section 9(b)] - *Any member may be discharged at any time by the authority which had appointed him when his services are no longer required.*

27. Dismissal. [Section 9(b)] - (1) *Any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service :*

Provided that no order of dismissal shall be passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

(2) *The authority competent to pass an order of dismissal in the case of a Gazetted Officer shall be the Government and that in the case of a Non-gazetted Officer and other members, the Commandant-General or the Gram Raksha Dal Chief, as the case may be.*

(3) *An appeal against an order of dismissal passed by the Commandant General or Gram Raksha Dal Chief shall lie to the Government.*

(4) *the order of the Government passed under sub-rule (2) or sub-rule (3) shall be final and shall not be called in question in any proceedings whatsoever."*

14. From the perusal of Rule 14, it is evident that a member of Home Guards is entitled to pay and allowances as determined by the State Government. As conceded by both sides, the petitioner at the time of suspension was getting approximately ₹35,000/- per month. The said amount was determined by the State Government in the form of daily allowances. The appointing authority may discharge any member if his services are no longer required. This shows that if work is not available, the member may be

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discharged from service. This Rule is not in the form of punitive action whereas Section 7 of 1947 Act and Rule 27 of 1963 Rules are punitive in nature. As per Section 7, a member may be subjected to punishment of simple imprisonment for a term which may extend to three months. As per Rule 27, he may be dismissed for misconduct or absence from duty.

From the perusal of statutory provisions, it is evident that there is no power vested in the officers to suspend any member of the Home Guards. The Government of India has made Compendium of Instructions on Home Guards which includes Para 14.4 permitting the Commandant General or Commandant to suspend any member. The State Government from time to time has issued instructions including Standing Orders dated 05.09.2023 and 10.01.2024 whereby procedure for suspension of a volunteer of Home Guards has been prescribed. It is apt to notice here that neither Compendium of Government of India nor Standing Orders of the State Government are embodying provision with respect to subsistence allowance.

15. Learned State counsel is heavily placing reliance on judgment of Supreme Court in ***Grah Rakshak (supra)*** while contending that petitioner was not getting salary and was a volunteer, thus, he is not entitled to subsistence allowance. The Supreme Court in the aforesaid case was adverting to question of regularization. The Court noticed that petitioners have been enrolled as Home Guards and there is no appointment on regular basis. They have never been paid salary/wages and there is no provision to make any payment of salary/wages other than duty allowance and other allowances. The Court further noted that volunteers are paid duty allowance and other allowances to which they are entitled. There is nothing on record to suggest that they performed duties throughout the year and on the other hand, it is specific case



of the State that as and when there is requirement they were called for duty and otherwise, they remained in their homes. Paragraphs 33 and 37 of the aforesaid judgment are reproduced as below:-

“33. In the cases before us though some of the Home Guards (Grah Rakshak) produced their appointment letters to show that they are serving as Platoon Havaldar for 10 to 28 years, we find that they have been enrolled and there is no appointment on regular basis. They have never been paid salary/wages and there is no provision to make any payment of salary/wages other than the duty allowance and other allowances.

37. It is not the case of the State Government that enrolment/appointments of the Home Guards were back door engagement and illegal made in violation of Articles 14 and 16 of the Constitution of India. Therefore, the decision of this Court in Umadevi (3) [State of Karnataka v. Umadevi (3)(2006) 4 SCC 1 : 2006 SCC (L&S) 753] , is not applicable in the case of the appellant Home Guards. Admittedly, there is no concept of wages. These volunteers are paid duty allowance and other allowances to which they are entitled. There is nothing on the record to suggest that they performed duties throughout the year.”

16. In the case in hand, the petitioner continuously i.e. without any break worked from 1992 to 2019. He was regularly paid salary in the form of daily allowance. Section 9 of 1947 Act empowers the State Government to make rules regarding conditions of service of Home Guards. As per Rule 14 of 1963 Rules, a volunteer is entitled to pay and allowances as may be determined by the Government from time to time. From the conjoint reading of Section 9 and Rule 14, it is evident that a Home Guard is entitled to pay and allowances as determined by Government from time to time. In the case in hand, the petitioner at the time of his suspension was drawing approximately ₹35,000/- per month which was neither DC rate nor minimum



wages as per Minimum Wages Act, 1948. The said amount is determined as per direction of Supreme Court in *Grah Rakshak (supra)*.

The Supreme Court in the afore-cited judgment was advertent to question of regularization and it was not advertent to question of subsistence allowance during suspension period. The factual position of the petitioner is entirely different from the factual position discussed in the afore-cited judgment of the Supreme Court. In the case in hand, the petitioner never remained at home during the period in question. He, without interruption, worked for 27 years. He was regularly paid allowances as per Rule 14 of 1963 Rules.

17. The petitioner uninterruptedly worked for 27 years. The respondent is pleading that he was a volunteer and was not getting salary whereas petitioner uninterruptedly worked and got monthly salary in the form of allowances. Position of a volunteer of Home Guards who works uninterruptedly cannot be worse than a workman. As per Section 2(s) of Industrial Disputes Act, 1947 (for short '**ID Act**'), a 'workman' means any person employed in any industry to do manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. Section 2(s) of the ID Act reads as :-

"2. Definitions.

XXXX XXXX XXXX XXXX

[(s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of,



that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- (ii) who is employed in the police service or as an officer or other employee of a prison; or*
- (iii) who is employed mainly in a managerial or administrative capacity; or*
- (iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”*

18. Section 25F of ID Act provides for compensation in case of retrenchment of an employee. It provides that if a workman who has been in continuous service for not less than one year is entitled to one month's notice in writing as well as compensation equivalent to 15 days average pay for every completed year of continuous service. Section 25F of ID Act is reproduced as below :-

“25F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*



(c) *notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].”*

19. The Supreme Court in ***Devinder Singh v. Municipal Council, Sanaur, (2011) 6 SCC 584***, has held that every workman either casual, temporary or part time is entitled to protection granted by Section 25B read with Section 25F of ID Act. The Supreme Court in ***Devinder Singh (supra)*** has clearly held that Section 2(s) contains an exhaustive definition of workman. The source of employment, terms and conditions of employment, quantum of wages and mode of payment are not at all relevant for deciding whether or not a person is workman within the meaning of Section 2(s) of 1947 Act. There is no distinction between full time and part-time employee. The relevant extracts of the judgment are reproduced as below:

“12. Section 2(s) contains an exhaustive definition of the term “workman”. The definition takes within its ambit any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward and it is immaterial that the terms of employment are not reduced into writing. The definition also includes a person, who has been dismissed, discharged or retrenched in connection with an industrial dispute or as a consequence of such dispute or whose dismissal, discharge or retrenchment has led to that dispute. The last segment of the definition specifies certain exclusions. A person to whom the Air Force Act, 1950, or the Army Act, 1950, or the Navy Act, 1957, is applicable or who is employed in the police service as an officer or other employee of a prison or who is employed mainly in managerial or administrative capacity or who is employed in a supervisory capacity and is drawing specified wages per mensem or exercises mainly managerial functions does not fall within the definition of the term “workman”.



13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full-time and part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on a regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of “workman”.

20. If the matter is examined in the light of provisions of ID Act, the petitioner would be entitled to compensation as per Section 25F of ID Act.

21. Intent and purport of subsistence allowance is to prevent the employee and his family from being driven to destitution. Suspension does not snap employer and employee relationship. It is discharge or dismissal from service which snaps said relationship. As a general rule, a person after working for 10-15 years in a particular field, cannot work elsewhere. Every person on attaining age of majority, for the initial 10-15 years is active and energetic to get job in a particular field. After attaining age of 35-40 years, it becomes difficult to adjust or get work in a field other than of his experience



and choice. Completion of enquiry and final conclusion normally takes quite long time. Loss of job financially as well as socially affects not only employee but also entire family. In the absence of funds, an employee can neither maintain his family nor pursue his case. In the departmental or criminal proceedings, the delinquent may be found innocent and if he is not paid subsistence allowance during enquiry, it may ruin his life. His acquittal may become meaningless. Taking note of all these facts and circumstances, the legislature has framed rules for subsistence allowance.

22. The petitioner was placed under suspension vide impugned order dated 30.08.2019. He has been called off vide order dated 21.10.2024. The 1947 Act and Rules made thereunder do not contemplate suspension of a volunteer of Home Guards. It is compendium of instructions and standing orders of the State Government which permit suspension of a Home Guard. The respondent has power to discharge or dismiss a volunteer. The respondent, as per its wisdom, did not discharge or dismiss the petitioner whereas placed him under suspension. By passing order dated 21.10.2024, the respondent has further made it clear that earlier order was order of suspension and now the petitioner has been dismissed from service. A member of Home Guards is a part of Punjab Police though his service is governed by 1947 Act. Section 5 of the 1947 Act provides that a member shall have the same powers, privileges and protection as an officer of police appointed under any law for the time being in force. He, for his misconduct, may be subjected to punishment of sentence as well as dismissal from service. The petitioner has served respondent for 27 years without interruption. He, at this stage, particularly after working with police force and having stigma of suspension/dismissal, cannot be expected to get job elsewhere except small



time job of security guard with a private agency. On account of suspension instead of dismissal, he had legitimate expectation of re-instatement. The respondent has dismissed the petitioner without conducting enquiry and this order could be passed at the first available opportunity. There was no reason to keep the matter pending for 5 years. Action of respondent cannot be justified in any manner. Denial of subsistence allowance would be violative of Articles 14 and 21 of the Constitution of India.

23. The members of Punjab Police are governed by Punjab Police Rules, 1934 (for short '**1934 Rules**') as well as Punjab Civil Services Rules and Fundamental Rules. As per Rule 10.70 of 1934 Rules, a police official placed under suspension is entitled to one quarter of his pay as subsistence allowance pending enquiry. Rule 16.20 of 1934 Rules also provides that a Police Officer under suspension shall be given subsistence grant. Relevant extracts of Rules 10.70 & 16.20(1) are reproduced as below:

***“10.70 Allowances of officers, suspended or dismissed – (1)**
Subsistence allowance at a rate not exceeding one-quarter of his pay maybe granted by the authority suspending him to police officer placed under suspension pending enquiry into his alleged misconduct.
(Fundamental Rules 43 and 53).*

***16.20 Subsistence Grants- (1)** A Police officer under suspension shall he given a subsistence grant. If as the result of an enquiry, a police officer under suspension is punished, his subsistence grant for the time spent under suspension may not exceed one-fourth of his pay (Fundamental Rule 53); if he is acquitted either as the result of an original enquiry or on appeal, the assessment of the subsistence grant is governed by Fundamental Rule 54.”*

24. Rule 53 of Fundamental Rules provides for subsistence allowance during the period of suspension. Extracts of Rule 53 of Fundamental Rules 53 are reproduced as below:



“F.R. 53: (1) A Government servant under suspension or deemed to have been placed under suspension by an order of the appointing authority shall be entitled to the following payments, namely:

(i) in the case of a Commissioned Officer of the Indian Medical Department or a Warrant Officer in Civil employ who is liable to revert to Military duty, the pay and allowances to which he would have been entitled had he been suspended while in military employment:

(ii) in the case of any other Government servant

(a) a subsistence allowance at an amount equal to the leave safari’ which the Government servant would have drawn, if he had been on leave on half average pay or on half-pay and in addition dearness allowance, if admissible on the basis of such leave salary:

Provided that where the period of suspension exceeds three 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 three months as follows:

(i) the amount of subsistence allowance may be increased by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government servant:

(ii) the amount of subsistence allowance, may be reduced by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first three months, if in the opinion of the said authority, the period of suspension has been prolonged due to reasons, to be recorded in writing, directly attributable to the Government servant;



(iii) *the rate of dearness allowance will be based on the increased or, as the case may be, the decreased amount of subsistence allowance admissible under sub-clauses (i) and (ii) above.*

(b) *Any other compensatory allowances admissible from time to time on the basis of pay of which the Government servant was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawl of such allowances.*

(2) *No payment under sub-rule (I) shall be made unless the Government servant furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:”*

25. All the Government servants of the State of Punjab are governed by Punjab Civil Services Rules. Rule 7.2 of Punjab Civil Services Rules provides for subsistence allowance during suspension period. Relevant extracts of Rule 7.2 read as:

“7.2. (1) A Government employee under suspension shall be entitled to the following payments, namely:—

(i) *in the case of a Warrant Officer in Civil employ who is liable to revert to military duty, the pay and allowances to which he would have been entitled had he been suspended, while in military employment.*

(ii) *in the case of any other Government employee –*

(a) *a subsistence allowance at an amount equal to the leave salary which the Government employee would have drawn if he had been on leave on half pay, and in addition dearness allowance, if admissible, on the basis of such leave salary:*

Provided that 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 by a suitable amount not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged for reasons to be recorded in writing, not directly attributable to the Government employee.*

(ii) *the amount of subsistence allowance may be reduced by a suitable amount, not exceeding 50 per cent of the subsistence allowance admissible during the period of the first six months, if, in the opinion of the said authority, the period of suspension has been prolonged due to reasons to be recorded in writing, directly attributable to the Government employee.*

(iii) *the rate of dearness allowance will be based on the increased, or as the case may be, the decreased amount of subsistence allowance admissible under clauses (i) and (ii) above;*

(b) *any other compensatory allowances admissible from time to time on the basis of pay of which the Government employee was in receipt on the date of suspension subject to the fulfilment of other conditions laid down for the drawal of such allowances.*

(2) *No payment under sub-rule (1) shall be made unless the Government employee furnishes a certificate that he is not engaged in any other employment, business, profession or vocation:*

Provided that in the case of a Government employee dismissed, removed or compulsorily retired from service, who is deemed to have been placed or to continue to be under suspension from the date of such dismissal or removal or compulsory retirement and who fails to produce such a certificate for any period or periods during which he is deemed to be placed or to continue to be under suspension, he shall be entitled to the subsistence allowance and other allowances equal to the amount by which his earnings during such period or periods as the case may be, fall short of the amount of subsistence allowance and



other allowances that would otherwise be admissible to him, where the subsistence and other allowances admissible to him are equal to or less than the amount earned by him, nothing in this proviso shall apply to him.

Note 1.— Mounted Police Officers who are placed under suspension will cease to draw horse, pony or camel allowance, as the case may be, and will hand over their mounts to the Lines Officers or the Officer-in-charge of the Mounted Police who shall be responsible for the feeding and keeping of such animals under the supervision of a Group 'A' or Group 'B' Government employee. The actual expenditure incurred on this account will be debitable to Contingencies under the head "Feeding and keeping of animals of Mounted Police Officers under suspension."

The term "Mounted Police Officer" includes members of the Mounted Police as well as Upper Subordinates who keep mounts.

Note 2.— It is obligatory under this rule that in sufficient time before the expiry of the first six months of suspension the competent authority should review each case in which the period of suspension is likely to exceed six months, and even if it comes to the conclusion that the rule is not to be altered having regard to all circumstances of the case specific orders to that effect are to be passed placing on record the circumstances under which the decision had to be taken."

26. From the conjoint reading of Rule 10.70 & Rule 16.20 of 1934 Rules, Rule 53 of Fundamental Rules and Rule 7.2 of Punjab Civil Services Rules, a legal position governing payment of pay and allowances during suspension, is culled out as below:

- i) A Government Servant shall be entitled to subsistence allowances during suspension period;
- ii) The amount of subsistence allowance shall be equal to the leave salary which he would have drawn if he had been on leave on half average pay or on a half pay in addition to dearness allowance;



- iii) Where the period of suspension exceeds three months, the competent authority shall be competent to vary the amount of subsistence allowances for a period subsequent to three months; and
- iv) No subsistence allowance shall be paid unless Government Servant furnishes a certificate that he is not engaged in any other employment, business and profession or vocation.

27. Taking cue from provisions of ID Act, 1934 Rules, Punjab Civil Service Rules and Fundamental Rules, this Court is of the considered opinion that it would be unjustified, unfair and violative of Articles 14 and 21 of the Constitution of India to deny subsistence allowance to the petitioner who uninterruptedly had worked with the respondent for 27 years prior to his date of suspension. This Court is not oblivious of the fact that there is no statutory provision granting subsistence allowance and this Court is not a law making authority, nevertheless, this Court finds it appropriate to direct respondents to grant a reasonable sum of subsistence allowance because Constitutional Courts are custodian of fundamental rights and right to live like a human being is part of Articles 14 and 21 of Constitution of India. India is a welfare State. Denial of subsistence allowance would abridge petitioner's as well as his family members right to live with dignity. Every member of Home Guard who without interruption had already worked for more than 10 years should be paid subsistence allowance. He cannot be denied said allowance on the ground that he is not a permanent or regular employee. It is apt to notice here that a member of Home Guards is enrolled after following prescribed procedure which includes training. His appointment cannot be



treated as back door entry. Continuous service of more than 10 years gives him some status. Thus, this Court holds that petitioner should be paid reasonable amount as subsistence allowance.

In the absence of specific provision but considering the fact that Government Employees are entitled to 50% of salary as subsistence allowance, this Court deems it appropriate to direct the respondent to pay ₹10,000/- per month as subsistence allowance to the petitioner from the date of suspension till date of dismissal i.e. 21.10.2024. The said payment shall be made within three months from today, failing which it would carry interest @ 9% p.a.

28. At the cost of repetition, it is made clear that only those volunteers of Home Guards would be paid subsistence allowance who uninterruptedly had completed at least 10 years of service at the time of suspension.

29. Disposed of in above terms.

30. Needless to mention, the observations made hereinabove shall not be construed as an expression of opinion of this Court qua dismissal order dated 21.10.2024.

31. Pending application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

10.01.2025
Mohit Kumar

Whether speaking/reasoned	Yes
Whether reportable	Yes