

Union of India and Others

Vs

Asit K. Sarkar

Civil Appeal No. 2592 of 1998

(K. Venkataswami, G. B. Pattanaik JJ)

04.05.1998

ORDER

1. Leave granted.

2. The Union of India is in appeal against the direction of the High Court to pay salary to the employee concerned who is still under suspension and is facing a departmental enquiry. Though the employee had moved the High Court with the prayer to quash the departmental proceeding, the High Court did not accede to that prayer and having allowed the departmental proceeding to continue and having held that the employee should continue to be under suspension, yet directed that the salary of the employee should be paid. This order of the High Court, on the face of it, is contrary to the provisions of Fundamental Rule 53. An employee under suspension would be entitled to the subsistence allowance and not to the salary. The High Court obviously committed error in directing that the salary of the employee should be paid.

3. Learned counsel for the respondent, however, brought to our notice that the order of the High Court has been complied with inasmuch as the salary of the employee has been paid. This must have been paid in view of the illegal direction of the High Court. The payments thus made should be adjusted towards the subsistence allowance of the employee concerned. The impugned direction of the High Court requiring the appellant to pay salary is set aside. The appeal is allowed. We hope and trust that the inquiry proceeding should be completed as expeditiously as possible.