

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

+ **W.P.(C) No.7415 /2008**

Date of Decision: 15th February, 2010

RAM NIWAS Petitioner
Through: Mr. Sanjay Sharawat, Advocate

versus

UOI & ORS Respondents
Through: Ms. Divya Jha and Mr. Darpan
Wadhwa, Advocates

CORAM:
HON'BLE MS. JUSTICE GITA MITTAL
HON'BLE MR. JUSTICE VIPIN SANGHI

1. Whether the Reporters of local papers may
be allowed to see the judgment? : Yes
2. To be referred to Reporter or not? : Yes
3. Whether the judgment should be reported
in the Digest? : Yes

% **JUDGMENT (Oral)**

GITA MITTAL, J.

1. By this writ petition, the petitioner has assailed the order dated 21st September, 2006, whereby the Competent Authority of the Air Force has found the petitioner guilty of the charge for having absented himself from duty without prior permission and has imposed the penalty of "compulsory retirement" upon him.

2. The facts giving rise to the present petition are in a narrow compass and to the extent necessary, are briefly noted hereafter:

- (i) The petitioner was appointed on 17th July, 1987 at the age of 23 years as a Mess Waiter, which was a Group “D” civilian post in the Indian Air Force. Leave was sanctioned to him from 12th April, 2003 to 16th April, 2003 to appear in his class 10 examination from Haryana Open Learning School.
- (ii) It is not disputed that on expiry of the above period, the petitioner did not resume duties but remained on leave from 25th April, 2003 to 09th June, 2003. There is some dispute with regard to whether such leave was authorized or not. However, in view of the facts noticed in para (vii) below, it is not necessary for us to go into the legality of this action of the petitioner.
- (iii) It is an undisputed position that the petitioner resumed duty on 10th June, 2003. The petitioner has contended in the writ petition that instead of his service being utilized as Mess Waiter, he was shifted and assigned the duty of Mechanical Transport Driver. Admittedly, the petitioner was not paid his salary for the months of May, June and July 2003. The reason for the same, as per the respondents, was his failure to attend to his duties. On the other hand, the petitioner has disputed the respondents claim that he had not attended to his duties. It is submitted that he had requested the respondents to start maintaining a daily attendance register. This was done, and the

petitioner used to mark his attendance in such register.

- (iv) It is the petitioner's case that he was in dire need of finance, inasmuch as, his five children were all young and school going. His family included aged parents, wife and five children apart from himself. The petitioner states that he was unable to bear even the expenses of commutation to and from his place of work. The petitioner was the sole bread earner for his family. The deprivation of the salary reduced the family to financial penury to the extent that the petitioner was unable to bear the expense required for the commutation between home and office. In this background, the petitioner was unable to attend his office with effect from 04th August, 2003.
- (v) The respondents issued a communication dated 05th September, 2003 to the petitioner, informing him that his absence from duty was unauthorized and would entail penal consequences. The respondents required the petitioner to report to the authorized medical attendant/government hospital in case of sickness and to obtain appropriate certification for joining duties. The respondent also required the petitioner to inform the reasons for his absence within 10 days of the receipt of the letter.
- (vi) Vide a communication dated 18th September, 2003, the petitioner clearly informed the respondents that he had not

been paid any salary from May 2003 till date and was unable to report to his posting without the requisite finances. Detailed submissions with regard to his dire straits, and that of his family members on account of denial of salary to him were set out. The petitioner made a prayer for release of payment to him so that he could resume his duties.

- (vii) The respondents informed the petitioner by a communication dated 29th September, 2003 that the leave period from 25th April, 2003 to 09th June, 2003 has been regularized as per his entitlements and advised him to report for duty without any further delay.
- (viii) It is an admitted position before us that the respondents paid the consolidated salary of five months for the period May 2003 to September 2003 to the petitioner only thereafter. This regularization of the petitioners' absence from 25th April, 2003 to 09th June, 2003 as well as the payment of salary for May to September, 2003 was made unconditionally and without any kind of reservation with regard thereto. Immediately on receipt of the payment, the petitioner resumed duties with effect from 11th October, 2003.
- (ix) Despite performance of his duties, the petitioner's salary for the months of November and December 2003 was withheld by the respondents. No notice at all was given to

the petitioner nor any reasons for this action were assigned before the action was actually taken.

- (x) It was only by a communication dated 16th December, 2003 that the respondents chose to inform the petitioner that for the reason he had remained absent from duty with effect from 04th August, 2003 to 10th October, 2003 without prior permission, and had also not submitted application for leave for this period, his salary and allowances for the subsequent period had been withheld by them. The respondents had also suggested that the petitioner move an application for leave for this period for further proceeding. A reminder in this behalf was also addressed to the petitioner on 21st January, 2004.
- (xi) The petitioner contends that as his salary was not paid, he was unable to meet his expenses, and for the same reasons noticed herein above, he was again rendered unable from committing to the office with effect from 16th January, 2004.
- (xii) So far as the absence of the petitioner with effect from 16th January, 2004 was concerned, the respondents issued a communication dated 11th February, 2004 requiring the petitioner to explain the reasons for his absence, failing which disciplinary action against him was threatened.
- (xiii) The petitioner responded by his communication dated 17th

February, 2004 reiterating the above deprived status of his family again citing dire financial straits as the reasons for his absence. In addition, the petitioner stated that he was a poor person from the rural background without any other source of income; that his savings also stood exhausted in bearing the expenses of family; and that he could not even pay the education fees of his children. The petitioner had also drawn the attention of the respondents to the satisfactory service rendered by him since his appointment. He also reminded the respondents that earlier also in similar circumstances, he had been unable to report for duty for the period between 04th August, 2003 to 10th October, 2003 and had resumed his duties with the respondent in the past as soon as he was given the consolidated salary for the period from May to September 2003. A prayer was also made to regularize his absence for the period from 16th January, 2004 till date on the ground that the same was in the afore detailed circumstances totally beyond his control and that there was no fault which could be attributed to him.

- (xiv) The respondents issued a memorandum dated 23rd February, 2004 informing the petitioner that an enquiry was proposed to be conducted against him under Rule 16 of the Central Civil Services (CC&A) Rules, 1965 and charges for remaining absent continuously/occasionally

from duty without permission were enclosed. The respondents called upon the petitioner to file a reply to the said memorandum.

- (xv) Perusal of the articles of charge would show that the first charge related to the petitioner's absence with effect from 04th August, 2003 to 10th October, 2003, and from 16th January, 2004 onwards. The second charge was with regard to the petitioner's 'habitual absenteeism'.
- (xvi) The petitioner tendered his reply dated 26th February, 2008, which was similar to his earlier responses and detailed the same reasons for his absence.
- (xvii) In the meantime, the respondents issued yet another communication dated 11th March, 2004 requiring the petitioner to report on duty and to submit a leave application for the aforesaid period, failing which it was threatened that disciplinary action would be taken against him under the applicable rules. The petitioner again responded by his letter dated 16th March, 2004, repeating the same stand as already noted above.
- (xviii) The petitioner submits that he was constrained to file a writ petition being W.P. (C) No.5692/2004 before this court, inter alia, seeking the quashing of the charge memo dated 23rd February, 2004; a direction to the respondents to take the petitioner on the job and to mark his attendance; a

direction to the respondents to regularize his absence for the aforementioned period during which he had remained absent; a direction for release of salary, or at least subsistence allowance so that he could join his duty; and an order quashing the order dated 16th December, 2003.

(xix) The respondents contested this writ petition for a period of four years. It is the petitioners' case before us that despite the specific prayer in the petition for a direction to the respondent to take the petitioner on the job, the respondents did not make a statement to the effect that the petitioner may report for duty at any point of time. The counter affidavit filed in those proceedings has been placed before us which also does not contain such statement. It is also submitted that his salary for the period from November 2003 was also never tendered to him and that the respondents did not take into consideration any of the facts and circumstances especially financial penury submitted by him as the reasons for his absence from duty.

(xx) The writ petition, which had been instituted on or about 15th April, 2004, remained pending till 28th July, 2008. In the meantime, the respondents passed the impugned order dated 21st September, 2006, compulsorily retiring the petitioner. On 28th July, 2008, when the said petition was taken up, the petitioner withdrew this writ petition with

liberty to assail the order of compulsory retirement dated 21st September, 2006 passed against him.

- (xxi) Our attention has also been drawn to three orders, whereby the respondents cancelled the memorandums of charge sheet issued to the petitioner without prejudice to right of the Disciplinary Authority to initiate disciplinary proceedings under the CCS (CC&A) Rules, 1965. It is explained by the learned counsel for the respondent that these cancellations and fresh charge sheets were necessitated in view of the continuous absence without leave of the respondent. It is submitted that the fresh charge sheets were issued each time to include, in their ambit, charges relating to the additional period for which the petitioner had been absent.

In this background, by a communication dated 31st January, 2004, the respondents cancelled the charge sheet issued on 23rd February, 2004 and, at the same time, issued a fresh memorandum and charge sheet dated 31st January, 2005 against the petitioner. It is noteworthy that the earlier memorandum and charge sheet had been issued under Rule 16 of the Central Civil Service (Classification, Control & Appeal Rules, 1965) (referred to as the 'CCS (CC&A) Rules, 1965' hereafter) for imposition of minor penalties. However, by the memorandum dated 31st January, 2005, the respondents proposed to hold an

enquiry for imposition of major penalty under Rule 14 of the CCS (CC& A) Rules, 1964. This charge sheet was issued for the absence of the petitioner from 04th August, 2003 to 11th October, 2003 and from 16th January, 2004 to till date.

- (xxii) This charge sheet dated 31st January, 2005 was cancelled by a communication dated 30th June, 2005 and substituted by another memorandum and charge sheet of the same day. It is noteworthy that by the charge sheet dated 30th June, 2005, the respondents proposed to conduct an enquiry against the petitioner for his absence for the period commencing from 16th January, 2004 onwards only. Thus the absence for the period 04th August, 2003 to 10th October, 2003 stood deleted from the scope of inquiry.
- (xxiii) The charge sheet dated 30th June, 2005 was also cancelled by memorandum dated 16th February, 2006. The respondents now proposed to hold an enquiry against the petitioner by this memorandum dated 16th February, 2006 on the charge of unauthorized absence from duty for the period 16th January, 2004 onwards by incorporating the absence for the later period as well.
- (xxiv) The petitioner's response to the memorandum dated 16th February, 2006 has been placed before us. In addition to the aforementioned contentions which were repeated in this reply, the petitioner has categorically stated his objection

to the stopping of his salary without any reason or without issuance of any show cause notice. A categorical stand was also taken by the petitioner that he had done his best to join duties and requested the authority repeatedly for permission to do so as well as for release of his salary to enable him to join duty, but was not permitted to join duties on one pretext or the other. It is noteworthy that the petitioner strongly objected to the respondents' requirement of submission of an application by him with a medical certificate for the period from 04th August, 2003 to 10th October, 2003, and drew attention to his preceding application setting out the afore noted facts as the only explanation of his absence. The petitioner had again made a prayer for release of wages to enable joining of duty and regularization of his absence from 16th January, 2004.

(xxv) The respondents found the explanation of the petitioner unsatisfactory and initiated a departmental enquiry under Rule 14 of CCS (CC&A) Rules. In these proceedings, statements of two witnesses were recorded in support of the charges against the petitioner. The petitioner also examined two witnesses in his defence.

(xxvi) A provisional conclusion was drawn that the petitioner was not fit to be retained in service and the penalty of compulsory retirement was proposed to be imposed on him. The disciplinary authority issued notice to show cause

dated 07th July, 2006 informing the petitioner of such proposed action and opportunity was given to the petitioner to make a representation against the proposed penalty. The petitioner's reply dated 29th July, 2006 was considered by the Disciplinary Authority who made the following observations in the order dated 21st September, 2006 passed by him:

- “ (a) While his absence from duties as mentioned in Article-I has been established, Shri Ram Niwas has not submitted any evidence whatsoever to substantiate that he was sick or that any of his family members were sick as stated by him or any other reason/justification as to why he absented himself for such long period without any information.
- (b) Despite affording him all opportunities in writing to join the duty and to apply for regularization of his period of absence on medical grounds, or any other legal grounds, by substantiating the same, he failed to do so.
- (c) His claim that his entire period of absence be regularized and salary be paid is inappropriate and does not merit consideration.
- (d) His contention that he was not allowed to join the duties is entirely false and baseless.”

On these observations, the disciplinary authority found the petitioner guilty of the charge of wilful absenteeism from his duty without prior permission/intimation to the authorities, and imposed the penalty of compulsory retirement upon him.

(xxvii) As noted above, in view of this order, the petitioner withdrew the Writ Petition (C) no.5692/2004 on 28th July, 2008 with liberty to assail the order dated 24th September, 2006, by appropriate proceedings.

(xxviii) The present writ petition has been filed in the above factual background on the ground that the order dated 21st September, 2006 is violative of the petitioner's rights enshrined under Articles 21 and 23 of the Constitution of India; that it does not take into consideration the case of the petitioner and is not sustainable in law. It is further submitted that it was the petitioner's contention throughout that he was not suffering from illness which required him to be absent and his ground for absence was due to deprivation of salary and his financial straits which have not even been considered, let alone dealt with by the competent authority. Article 23 of the Constitution of India, recognizes the fundamental right of the citizens of this country not be compelled to work without wages. Mr. Sanjay Sharawat, learned counsel for the petitioner has

also placed reliance on the pronouncements reported at ***Ram Lakhan Prasad v. State of Bihar, 1995 (7) SLR 70; Suraj Narain v. State of Madhya Pradesh, AIR 1960 MP 303; Ruiweinao Kahasoan Tangkhul v. Ruiweinao Simirei, AIR 1961 Manipur 1; Peoples Union for Democratic Rights v. UOI, (1982) 3 SCC 235; Olga Tellis v. Bombay Municipal Corp, AIR 1986 SC 180; State of Gujarat v. Hon'ble High Court of Gujarat, (1998) 7 SCC 392; Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1; Food Craft Inst v. Rameshwar Sharma, 134 (2006) DLT 49*** in support of his contentions :-

3. The core question which requires to be answered in the instant case is as to whether the respondents could legally withhold the payment of the wages for the period for which the petitioner had actually discharged duties from 11th October, 2003 to 16th January, 2004. The further question which requires to be answered as to whether in the given circumstance the petitioner was legally justified in not reporting for duty thereafter.
4. From the above narration, it is necessary to firstly examine the nature of the right of a person to claim entitlement to employment.
5. So far as the nature of the right to livelihood and payment of wages is concerned, reference can usefully be made to the pronouncement of the Supreme Court in ***AIR 1986 SC 180, Olga***

Tellis v. Bombay Municipal Corporation. In paragraph 32 of the judgment, the Supreme Court was called upon to answer the question as to whether the right to life guaranteed under Article 21 of the Constitution of India includes the right to livelihood. In this behalf, in paragraph 32 of the judgment, the Supreme Court held as follows:

“We see only one answer to that question, namely, that it does. The sweep of the right to life conferred by Article [21](#) is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life livable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life. Indeed, that explains the massive migration of the rural population to big cities. They migrate because they have no means of livelihood in the villages. The motive force which propels their desertion of their hearths and homes in the villages

that struggle for survival, that is, the struggle for life. So unimpeachable is the evidence of the nexus between life and the means of livelihood. They have to eat to live : Only a handful can afford the luxury of living to eat. That they can do, namely, eat, only if they have the means of livelihood. That is the context in which it was said by Douglas J. in Baksey, (1954) 347 M.D. 442 that the right to work is the most precious liberty that man possesses. It is the most precious liberty because, it sustains and enables a man to live and the right to life is a precious freedom. "Life", as observed by Field, J. in Munn v. Illinois (1877) 94 U.S. 113, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. This observation was quoted with approval by this Court in Kharak Singh v. The State of U.P. (1964) 1 SCR 332 : (AIR 1963 SC 1295)".

Right to livelihood is, therefore an essential and integral part of right to life, constitutionally guaranteed under Article 21 and breach whereof cannot be tolerated under any circumstance.

6. In order to answer the issues noticed above it becomes necessary to examine the constitutional scheme and the rights of employees as well as prohibitions thereunder. Article 23 enacts a very important fundamental right, which is in the following terms:

“23. Prohibition of traffic in human beings and forced labour

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purpose, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

7. It needs no elaboration that the fundamental right conferred by Article 23 is also enforceable against not only the State, but also against the whole world. This article is designed to protect the individual against any form of forced labour practiced by any person and has its genesis in the socio-economic conditions of the people at the time the constitution came to be enacted, with a view to ensure socio and economic justice to the large masses of people living in abject poverty, destitution and slavery. The economic deprivation itself places them at the bottom of the hierarchy of those marginalized reducing them to the position of those having no kind of bargaining power or choice. The rights recognized and conferred under Article 23 are aimed at preventing exploitation of such marginalized persons with a view to imbibing charitarian values into society and ensuring human dignity and basic human rights of the people.

8. In the pronouncement of the apex court reported at **1982 (3) SCC 235, People's Union for Democratic Rights v. Union of India**, the apex court had occasion to consider the rights of construction workers, who had been engaged by private contractors for executing development works initiated by the Delhi Development Authority. A writ petition was filed under Article 32 of the Constitution of India on behalf of such poor, illiterate and ignorant classes for

protection of their fundamental rights. It was complained that several statutory provisions including the Minimum Wages Act, 1948; Equal Remuneration Act, 1976; Employment of Children Act, 1938, amongst others had been infringed by the private contractors and the state had failed to fulfil its obligation/responsibility in protection of the fundamental rights. During the course of the discussion in this landmark judgment, the court construed the expression *"traffic in human beings and begar and other similar forms of forced labour"* in Article 23, in the following terms:

"13. The word 'begar' in this Article is not a word of common use in English language. It is a word of Indian origin which like many other words has found its way in the English vocabulary. It is very difficult to formulate a precise definition of the word 'begar', but there can be no doubt that it is a form of forced labour under which a person is compelled to work without receiving any remuneration. Molesworth describes 'begar' as "labour or service exacted by a government or person in power without giving remuneration for it". Wilson's glossary of Judicial and Revenue Terms gives the following meaning of the word 'begar': "a forced labourer, one pressed to carry burdens for individuals or the public. Under the old system, when pressed for public service, no pay was given. The Begari, though still liable to be pressed for public objects, now receives pay : Forced labour for private service is prohibited". 'Begar' may therefore be loosely described as labour or service which a person is forced to give without receiving any remuneration for it. That was the meaning of the word 'begar' accepted by a Division Bench of the Bombay High Court in *S. Vasudevan*

v. [S.D. Mital](#). 'Begar' is thus clearly a form of forced labour. Now it is not merely 'begar' which is unconstitutionally prohibited by Article [23](#) but also all other similar forms of forced labour. This Article strikes at forced labour in whatever form it may manifest itself, because it is violative of human dignity and is contrary to basic human values".

9. The court rejected the arguments on behalf of the respondents that the interdict of Article 23 is limited only to those forms of forced labour where labour or service is exacted from a person without paying any remuneration at all, and if some remuneration is paid, though it be inadequate, it would not fall within the "other similar forms of forced labour". In this behalf, the court observed as follows:

"If this were the true interpretation, Article [23](#) would be reduced to a mere rope of sand, for it would then be the easiest thing in an exploitative society for a person belonging to a socially or economically dominant class to exact labour or service from a person belonging to the deprived and vulnerable section of the community by paying a negligible amount of remuneration and thus escape the rigour of Article [23](#). We do not think it would be right to place on the language of Article [23](#) an interpretation which would emasculate its beneficent provisions and defeat the very purpose of enacting them. We are clearly of the view that Article [23](#) is intended to abolish every form of forced labour. The words "other similar forms of forced labour" are used in Article [23](#) not with a view to importing the particular characteristic of 'begar' that labour or service should be exacted without payment of any remuneration but with a view to bringing

within the scope and ambit of that Article all other forms of forced labour and since 'begar' is one form of forced labour, the Constitution makers used the words "other similar forms of forced labour." If the requirement that labour or work should be exacted without any remuneration were imported in other forms of forced labour, they would straightaway come within the meaning of the word 'begar' and in that event there would be no need to have the additional words "other similar forms of forced labour." These words would be rendered futile and meaningless and it is a well recognised rule of interpretation that the court should avoid a construction which has the effect of rendering any words used by the legislature superfluous or redundant. The object of adding these words was clearly to expand the reach and content of Article [23](#) by including, in addition to 'begar', other forms of forced labour within the prohibition of that Article. Every form of forced labour 'begar' or otherwise, is within the inhibition of Article [23](#) and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid, labour supplied by a person would be hit by this Article if it is forced labour, that is, labour supplied not willingly but as a result of force or compulsion".

10. As noticed herein above, the petitioner had not been paid salary for the period May to September 2003 even though during this period he performed duties between 10th June, 2003 to 03rd August. 2003. The petitioner had objected to the non-payment of his legitimate dues and had informed the respondent that he was unable to report for duty for the reason that he did not even have the bare

finances to pay for even the costs of commutation. Pertinently, without payment of salary, the petitioner had worked for the period 10th June, 2003 to 03rd August, 2003 and he stopped working only on 04th August, 2003 in these circumstances.

11. The reason according to the respondents for not paying the petitioners salary from May to September 2003 was his unauthorized absence from duty from 25th April, 2003 to 09th June, 2003. However, by the aforementioned communication dated 29th September, 2003 this period of absence stood regularized as per his entitlements. As a result of this regularization, the petitioner was paid consolidated salary of five months, i.e. May to September, 2003, without imposition of any kind of conditions or stipulations requiring the petitioner to comply with any other formalities.

12. The petitioner was not required to make any kind of application. Even if it were to be held that the petitioner was required to submit an application for leave for the period of his prior absence, we find that no notice was given to the petitioner informing him of the proposed action for withholding the salary before taking of the action. The respondents permitted the petitioner to discharge duties from 10th October, 2003 till 16th January, 2004. He was paid salary for October, 2003 also without any objection. It was only after stopping the payment of salary from the month of November 2003, that the respondents for the first time addressed communication on 16th December, 2004 and sent another communication on 21st January, 2004.

13. We find that the respondents had paid him consolidated salary for the period from May to September 2003 and permitted the petitioner to join duty on 11th October, 2003. These facts substantiate the petitioner's assertion of financial inability to attend to his duties without the money to pay for the costs of transportation.

14. The Supreme Court has had occasion to examine the impact of denial of wages to employees and responsibility of the state on such incidence.

Non-payment of arrears of wages and wages to employees of state corporations, public sector undertakings and statutory bodies in the State of Bihar resulted in a large number of such employees dying due to starvation. Several such employees committed suicide owing to acute financial crisis resulting in non-payment of remuneration for a long time. A newspaper report was noticed by a senior advocate, resulting in her filing of a writ petition under Article 32 before the Supreme Court. The pronouncement of the court in this writ petition reported at **(2003) 6 SCC 1, Kapila Hingorani v. State of Bihar** sheds valuable light on the very issues which have been raised before this court. It was observed that the Government Companies/Public Sector Undertakings, being State, would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 and therefore, must do so in the cases of their own employees.

The court placed reliance on earlier pronouncements and reiterated that the right to shelter; right to livelihood and other facets

thereof, constituted integral parts of the right to life under Article 21 of the Constitution of India which was required to be protected. In paragraph 58 of the pronouncement, the court placed reliance on the principles laid down in ***People's Union for Democratic Rights*** (supra) as well as ***State of Gujarat*** (supra) on the rights of the workman and observed that constitutional provisions must be so interpreted so as to advance its socio-economic objectives. The Supreme Court reiterated the principles laid down in the earlier judgments to the effect that exaction of labour and services against payment of less than the minimum wages amounts to forced labour within the meaning of Article 23 of Constitution of India and that the state could not abjure or avoid its responsibility. The court concluded that the state was the sole shareholder of the public sector companies, it had a deep and pervasive control over their affairs; that the companies and corporation were "state" within the meaning of Article 12 and that neither they nor the State of Bihar could escape their liability to enforce the rights of the citizens under Articles 21 and 23.

15. In the light of the constitutional mandate and the principles aforenoticed, an employer, especially the State, as the respondents before us, are bound to ensure payment of salary to its employees for work done by them.

16. Mr. Sharawat, learned counsel for the petitioner has placed reliance on the pronouncement reported at ***AIR 1961 Manipur 1, Ruiweinao Kahaosan Tangkhul v. Rueiweinao Simirei***, wherein the court held that the custom requiring one day's free labour to be

given to the village headman contained elements of compulsion which are prohibited under Article 23 of the Constitution of India.

17. In **1995 (7) SLR 70, Ram Laxhan Prasad v. State of Bihar**, the court held that the appellant had not been removed from service and was continuing to function as a teacher. In this background, it was not open to the State to avail his service and at the same time, decline to pay him.

18. We now turn to the impugned order passed by the Disciplinary Authority, which pertains to the charge of the petitioner's absence from 16th January, 2004 onwards. We find that the Disciplinary Authority has completely ignored the case which was put up by the petitioner in his defence to the charges laid against him. On the contrary, the Disciplinary Authority has found the petitioner guilty of the charge for the reason that he has not submitted any evidence to substantiate that he was sick, or that some of his family members were sick. As noted herein above, the petitioner was vehemently opposing the respondents' request for submission of a medical certificate by him to justify his absence on the ground that he was sick. The representation placed before us manifests that the petitioner had clearly stated that he was opposed to setting up a false plea of illness as an explanation for his absence and also the submission of any false medical certificate. The Disciplinary Authority noticed that the petitioner had failed to tender any other reason or justification for his absence since 16th January, 2004. As noticed herein above, the petitioner had placed the same grounds as the explanation of his

absence on account of similar action by the respondent in the past. This explanation had been considered as sufficient and adequate to justify regularization of the petitioner's absence from duty on previous occasion i.e. from April to June, 2003. Unfortunately these grounds have not even been considered, let alone dealt with by the Disciplinary Authority.

19. It has not been the respondents contention that the petitioner had any other source of income or that the grounds stated for his inability to report for duty are false. Despite this reality, the respondents again stopped the payment of wages from November 2003 onwards to the petitioner on the ground that the petitioner had unauthorisedly remained absent between 04th August, 2003 and 10th October, 2003. No such plea was taken while releasing the consolidated salary for five months of May to September 2003, or even while releasing the salary for October 2003. It was taken after the petitioner had served for about forty five days between 01st November, 2003 and 15th December, 2003 and was informed to the petitioner only vide communication dated 16th December, 2003. The petitioner repeatedly protested against this action in his communication of 17th February, 2004 and response dated 26th February, 2004 in vain.

20. No statutory provision, rule or regulation has been placed before us which enabled the respondents to proceed in the manner in which they have proceeded. To take action of any kind prejudicial to the petitioner on the plea of his unauthorized absence, it was imperative for the respondents to have put the petitioner to notice of

the same; to call for his reply/ representation; to issue a memorandum of charge(s) and to hold an enquiry in accordance with the principles of natural justice and the relevant rules; and if found 'guilty', to pass a reasoned order imposing penalty, in terms of the applicable provisions of law.

21. For the period of absence from 04th August, 2003 to 10th October, 2003, though the respondents did issue a charge sheet at an earlier stage, but withdrew the same later. In the last two charge sheets issued on 30th June, 2005 and 11th June, 2006 issued by the respondents, no charges relating to absence from 04th August, 2003 to 10th October, 2003 were levelled against the petitioner.

22. The petitioner has made lengthy submissions before the respondents regarding his financial condition. Before us also it has been contended that the petitioner was the sole bread earner of his family consisting of nine persons, which included aged parents, wife, five minor school going children apart from himself. The petitioner has clearly stated that other than the salary which he was receiving from the respondents, he had no source of income at all.

The financial state of his family was so pathetic that the petitioner was compelled to withdraw his children from school. Given the bare and priority needs of shelter, food etc., we see no reason to disbelieve the petitioner that the family was depending only on his salary for income and that, as a result of stoppage of his salary, he was not having requisite finances to even bear the expenses for

commutation from Nangloi, where he was residing, to the Western Air Command, to report for discharge of his duties. To a person who has nothing else, salary from employment is a lifeline. When deprived of the same, base survival of the family would be the priority.

23. Our attention has been drawn to the pronouncement of the Madhya Pradesh High Court reported at **AIR 1960 MP 303, Suraj Narain v. State of Madhya Pradesh**. In this case, an order had been passed against the teacher withholding the pay temporarily for unsatisfactory work. The Division Bench held that to ask a man to work and then not to pay him any salary or wages savours of begar which is prohibited in Article 23 of the Constitution; that it was a fundamental right of every citizen of India not to be compelled to work without wages. In this view of the matter, stopping of the pay and making the petitioner teacher to work was not only against the rules which govern his employment but offends the spirit of Article 23 of the Constitution of India. Shiv Dayal, J, in his concurring judgment has additionally stated that a government servant, so long as he continues to be in service, must be paid his salary. That is his legal right and it is the duty of the State Government to pay it. It was not open to the respondents to withhold the salary of the petitioner for any reason at all. Certainly, no statutory provision or rule, which permitted or enabled the respondents to do so, has been pointed out to us.

24. It also becomes necessary to examine the position of the petitioner pitted against the might of the respondents. This is best

found in the observations of the Supreme Court in **Peoples Union For Democratic Rights** (supra) wherein the court pertinently stated that :

“13. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, may have been faced with Hobson's choice, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustice from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer. Article [23](#) therefore says that no one shall be forced to provide labour or service against his will, even though it be under a contract of service”.

25. An issue was raised in **(1998) 7 SCC 392, State of Gujarat & Anr. v. High Court of Gujarat** as to whether exaction of hard labour from convicted prisoners serving punishment of rigorous imprisonment imposed by court under authority of law amounted to forced labour or begar within the meaning of the expression under Article 23 of the Constitution of India. Even though no such question arises in the present case, however, the observations of the apex court with regard to the nature of the right and entitlement to minimum wages for work

done by the prisoners throw valuable light on the question which arises in the present case. In paragraph 34 of the pronouncement, the court observed that:

"It is not only the legal right of a workman to have wages for the work, it is a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar."

26. While considering the quantum of wages to be paid to the prisoners, the court observed that paying pittance to them is virtually paying nothing. Adverting to the provisions of Minimum Wages Act, the court placed reliance on the observations of the apex court in its earlier judgment reported at **AIR 1958 SC 578 : 1959 SCR 12, Express Newspaper Pvt. Ltd. v. Union of India**, and stated as follows:

"Minimum wages law has now come to stay. This Court has held that minimum wage which is sufficient to meet the bare physical needs of a workman and his family irrespective of the paying capacity of the industry must be something more than subsistence wage which may be sufficient to cover the bare physical needs of the worker and his family including education, medical needs, amenities, adequate for preservation of his efficiency".

27. There is therefore no manner of doubt that an employer has no option so far as payment of wages to an employee for work done. The respondents denied the same to the petitioner.

28. The observations of the apex court on the plight of somebody without resources being without a choice in paragraph 14 of the pronouncement in **People's Union for Democratic Rights (Supra)**, apply in all fours to the plight of the petitioner in the instant case. On the choices available to a poor person, the apex court has observed as follows:

"Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'. There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and every one shall have the right to work, to education and to adequate means of livelihood".

29. It is evident from the factual narration noted above, that the petitioner was compelled to go on serving the respondents despite not receiving wages for the work which he had already done for the

previous months. It was only when he reached such a stage of penury and object deprivation, that he was unable to bear the expenses of commutation to his place of work, that the petitioner unable to report for duty. In these facts, there is substance in the submission of the petitioner that he was not absent unauthorisedly from his place of work, but was prevented by the conduct of the respondent in accessing his place of work.

30. As observed in ***State of Gujarat v. High Court of Gujarat*** (supra), minimum wages would essentially include the amenities adequate for preservation of the efficiency of the workmen. The wages must be sufficient to cover the bare physical needs of work and his family, which would include the needs of shelter, food, education, medical needs apart from enabling preservation of the employee's efficiency. Denial or deprivation of sufficient wages would impact the entitlement of the workman and his family to all these rights, which are all essential and integral part of right to life guaranteed under Article 21 of the Constitution of India.

31. We may note that, in fact, the respondents accepted this condition of the petitioner on the previous occasion when they had paid him the consolidated salary in October 2003 for the period of five months w.e.f. May 2003 to September 2003 despite having withheld the same earlier. There is nothing placed before us which could suggest that there was a change in the financial condition of the petitioner which would justify disbelieving his claim and financial status for the subsequent period as well.

32. However, the defence of the petitioner has not at all been considered or discussed by the disciplinary authority. In view of the above, it is evident that the impugned order has been passed without application of mind to the relevant material available on record.

33. As we have already noted above, the courts have deprecated the action of the employer in compelling the employees to perform their duties despite having stopped making payment of wages or salary to them. It has been repeatedly held by the Courts that the action of the State in continuing to avail services of an employee while declining to pay him for the same is violative of the rights of the employees and offensive to the spirit of Article 21 and 23 of the Constitution of India.

34. The Indian Air Force is the respondent before this court. It cannot absolve itself from the compliance with the constitutional mandate. Its action of denial of the wages to the workman without any notice, for work which the workman had actually performed amounted to violation of the fundamental rights of the workman and his family guaranteed under Article 21 of the Constitution of India. At the same time, the action of the respondents was violative of the rights of the petitioner under Article 23 of Constitution of India and cannot be sustained.

In **(1981) 1 SCC 608 : AIR 1981 SC 746 Francis Coralie Mullin vs. Administrator, U.T. of Delhi**, it was held that the right to live guaranteed by Article 21 is not confined merely to physical existence or to the use of any faculty or limb through which life is

enjoyed or the soul communicates with outside world but it also includes within its scope and ambit the right to live with basic human dignity and the state cannot deprive anyone of this precious and invaluable right because no procedure by which such deprivation may be effected can ever be regarded as reasonable, fair and just.

The action of the respondents in compelling him to perform duties and refusing him to pay for the same, has to be held to be unconstitutional. The absence of the petitioner from service from 16th January, 2004 onwards in the circumstance noticed above was clearly not actionable. The impugned order is therefore unsustainable in law.

35. Mr. Sharawat, learned counsel for the petitioner, on instructions from the petitioner, who is present in court, submits that in case this court reinstates the petitioner into service, the petitioner would not insist for award of back wages. Even otherwise, as the petitioner has not rendered service from 16th January, 2004 onwards.

The petitioner is therefore not entitled to back wages for the period from 16th January, 2004 till today, on application of the principles of 'no work, no pay', and in view of the statement made today. The respondent shall, however, be liable to make payment of salary and allowance to the petitioner for the period from 1st November 2003 upto January 15, 2004.

36. In view of the above discussion, the order dated 21st September, 2006 is hereby set aside and quashed. As a consequence, the respondents are directed to forthwith reinstate the petitioner with

continuity of service for the purposes of seniority, pension and pay fixation.

37. The respondents are directed to take back the petitioner in service forthwith who shall report at his place of last posting at the earliest. He shall be paid his wages and allowance for the period after his joining in accordance with law without any deductions for the past period.

38. The respondents are directed to make payment of the salary and allowances for the period of 1st November 2003 upto 15th January 2004 to the petitioner within a period of four weeks from today.

39. The petitioner would also be entitled to costs quantified at Rs.10,000/-, which shall be paid to the petitioner within six weeks from today.

40. The writ petition is allowed in the aforesaid terms.

Dasti to parties.

GITA MITTAL, J.

VIPIN SANGHI, J.

FEBRUARY 15, 2010

sr