

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No.77 of 2017

- Santosh Singh S/o Late Chandrabhan Singh, Aged About 63 Years R/o Village And Post Kapan, Thana Naila, Janjgir, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

- G. S. Mishra Secretary, Water Resources Department, Naya Raipur, Mantralaya, Raipur, Chhattisgarh(Contemnor)

---- Respondent

For Petitioner	:	Shri CJK Rao, Advocate
For Respondent	:	Shri Rakesh Jha, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/05/2017

This contempt petition has been filed alleging that respondents have willfully disobeyed the order dated 09-09-2016 passed by this Court in WPS No.4658 of 2016.

2. Learned counsel for the petitioner submits that the petitioner had earlier claimed benefit of pension on the ground that similar cases have already been disposed off in favour of similarly situated persons, holding entitled to pension under the Chhattisgarh (Work Charged Contingency Paid Employees) Pension Rules, 1979 (for short, 'Rules, 1979'), therefore, the petitioner should have also been extended the same benefit by giving him pension as is admissible under the Rules, 1979. This Court had disposed off the petition with a direction to consider the case of petitioner keeping in view the legal issue as decided in the light of order dated 26-02-2015 passed in W.A.No.281/2013 (***Lakhanram Sahu and Ors. vs. State of Chhattisgarh and Ors.***) and batch of petitions.

3. Later on, in compliance of the order passed by this Court, the respondents have though held the service of the petitioner as pensionable, the pensionary benefit has been extended to the petitioner under New Pension Scheme notified w.e.f. 01/11/2004.

4. Learned counsel for the petitioner argued that once this Court had directed consideration of petitioners' case for grant of pension on the same grounds as directed in the case of **Lakhanram Sahu** (supra), it was not open for the respondents to apply any other Rule for grant of pension. Therefore, despite clear direction, fixation of pension under any other Rule is contemptuous and it is an act of willful disobedience and therefore contemptuous.

5. On the other hand, learned counsel for the respondents submits that the respondent-authority had no intention to flout the order of the Court. He submits that taking into consideration the dates of appointment the authority formed bonafide view that in the case of petitioner, the New Pension Scheme 2004 would be applicable. Therefore, the pension case of the petitioner was prepared and pension was worked out. The petitioner has been paid pension.

6. The order of this Court which was required to be complied with by the respondents. It is clearly stated that in the matter of fixation of pension of the petitioners, Rules, 1979 will have to be applied. The observation made that the respondents shall consider to extend the benefits subject to verification only entitled the respondents to examine the fact and not to tinker with the legal position. This Court having already directed the respondents to consider the case of the petitioners under Rules 1979, it was not open for the respondents to apply any other Pension Rules.

7. It is not within the competence of the respondents to apply new Pension Rule 2004, because in the absence to there being any other clarification of the order dated 26-02-2015, the respondents were duty bound to apply the same Rule, however, I find that the intention of the respondents was not to flout the order of the Court, but the decision was taken by the authority on his own understanding which can not be said to be contemptuous though appears to be illegal.

8. It is stated before the Court that some payments have already been paid to the petitioner by working pension amount under New Pension Rule 2004. Respondent shall now workout pension of the petitioner under Rule 1979 within a period of three months. In case, any further amount is payable to the petitioner, the same shall also be paid.

9. Accordingly, the petition is finally disposed off. Rule is discharged.

SD/-
(**Manindra Mohan Shrivastava**)
Judge