

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CONT No. 55 of 2017

- Yogin Prasad Prakash S/o Sonau Ram, Aged About 64 Years, Retired Time Keeper, R/o Village Dumarपालि, P.O. Tundri, Tahsil Dabhra, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. G.S.Mishra Secretary, Department Of Water Resource, Mantralay, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. H.R.Kutare, Engineer-In-Chief, Water Resource Department, Sinhawa Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh
3. P.K.Shukla, Executive Engineer, Kelo Project Survey Division, Raigarh, District- Raigarh, Chhattisgarh

---- Respondents

And

CONT No. 54 Of 2017

- Ishwar Prasad Sahu S/o Late Munu Ram Sahu, Aged About 64 Years Retired Time Keeper, R/o Village And Post Pendarwa, P.S. Chandrapur, Tahsil- Dabhara, District Janjgir-Champa, Chhattisgarh

---- Petitioner

Vs

1. G.S.Mishra Secretary, Department Of Water Resource, Mantralay, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. H.R.Kutare, Engineer-In-Chief, Water Resource Department, Sinhawa Bhawan, Civil Lines, Raipur, District Raipur, Chhattisgarh
3. P.K.Shukla, Executive Engineer, Kelo Project Survey Division, Raigarh, District- Raigarh, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Prakash Tiwari, Advocate
For Respondent No. 3	:	Shri Rakesh Kumar Jha, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

20/04/2017

1. Both the contempt petitions have been filed alleging that respondents have willful disobeyed the order dated 24/06/2016 passed in WPS No. 2347 of 2016 and WPS No. 2324 of 2016.
2. Learned counsel for the petitioners submits that in aforesaid two petitions, petitioners 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 them 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 has been decided in the case of Naval Kishore Mishra in W.P.(S) No. 1045 of 2014.

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 petitioners 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 Naval Kishore Mishra, 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 petitioners, the New Pension Scheme 2004 would be applicable.

Therefore, the pension case of the petitioners were prepared and pension was worked out. The petitioners have 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 24/06/2016, the respondents were duty bound to apply the same Rule, however, I find that the intention of the respondents was not 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 petitioners by working pension amount under New Pension Rule 2004. Respondent shall now workout pension of the petitioners under Rule 1979 within a period of three months. In case, any further amount is payable to the petitioners, the same shall also be paid.
9. Rule is discharged. Both the petitions are disposed off .

Sd/-

(Manindra Mohan Shrivastava)
Judge