

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 34 of 2017

Udho Prasad Sharma S/o. Shri S. P. Sharma Aged About 64 Years R/o. M D 35, C. G. Housing Board Colony, P. S. Saraswati Nagar, Kota, Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Chhattisgarh State Civil Supplies Corporation Limited Through Its Chairman, Hitwad Bhawan, Avanti Vihar, Telibandha, Raipur (Chhattisgarh)
2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Hitwad Bhawan, Avanti Vihar, Telibandha, Raipur (Chhattisgarh)

---- Respondents

And

WPS No.298 of 2017

N. L. Barber S/o Late Shri B. L. Barber, Aged About 65 Years R/o. Vivekanand Nagar Colony, Seepat Road, Mopka, P. S. Sarkanda, Bilaspur (Chhattisgarh)

---- Petitioner

Versus

1. Chhattisgarh State Civil Supplies Corporation Limited Through Its Chairman, Hitwad Bhawan, Avanti Vihar, Telibandha, Raipur (Chhattisgarh)
2. The Managing Director, Chhattisgarh State Civil Supplies Corporation Limited, Hitwad Bhawan, Avanti Vihar, Telibandha, Raipur (Chhattisgarh)

---- Respondents

Shri Sunil Pillai, counsel for the petitioner/s.
Shri Shiv Sahu, counsel for the respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

22/08/2017

The issue arises for consideration in these petitions is as to whether in a case where enquiry has lapsed and no penalty order passed and the employee

retired, the balance of emoluments payable after deduction of suspension allowance is liable to be paid or not.

2. Learned counsel for the petitioners submits that this issue has already been decided by the Supreme Court in the case of **Bhagirathi Jena v. Board of Directors, O.S.F.C. and ors., (1999) 3 SCC 666**. In that case, it was held thus -

“8. Learned senior counsel for the respondent placed reliance on the judgment of this Court in *T.S. Mankad v. State of Gujarat* reported in, [1989] Suppl. 2 SCC 110. It is true that that was a case of imposing a reduction in the pension and gratuity on account of unsatisfactory service of the employee as determined in an enquiry which was extended beyond the date of superannuation. But the above decision cannot help the respondent inasmuch as in that case there was a specific rule namely Rule 241-A of the Junagadh State Pension and Parwashi Allowance Rules, 1932 which enabled the imposition of a reduction in the pension or gratuity of a person after retirement. Further, there were rules in that case which enabled the continuance of departmental enquiry even after superannuation for the purpose of finding out whether any misconduct was established which could be taken into account for the purpose of Rule 241-A. In the absence of a similar provision with the Regulations of the respondent-Corporation, the above judgment of Mankad's case cannot help the respondent.

9. The question has also been raised in the appeal in regard to the payment of arrears of salary and other allowances payable to the appellant during the period he was kept under suspension and upto the date of superannuation. Inasmuch as the enquiry had lapsed, it is, in our opinion, obvious that the appellant would have to get the balance of the emoluments payable to him after deducting the suspension allowance that was paid to him during the abovesaid period.

10. The appeal is therefore allowed directing the respondent to pay arrears of salary and allowances payable to him during the period of suspension up to the date of superannuation after

deducting the suspension allowance paid to him for the said period and also to pay the appellant, all the retiral benefits otherwise payable to him in accordance with the rules and regulations applicable, as if there had been no disciplinary enquiry or order passed therein."

3. Therefore, as far as legal position is concerned, it is clear that once enquiry lapses after retirement as there was no provision contained in governing rules to allow the enquiry to continue after retirement, the entire salary for the period during which a person remained under suspension and was paid only suspension allowance, will have to be paid, relying upon the decision of this Court in the case of *C.G. Civil Supplies Corporation Limited and ors. v. Udho Prasad Sharma* (W.A.No.67/2016) decided on 26/02/2016 and order passed in WPS No.739/2013.

4. In WPS No.739/2013, in which order was passed today, it has been held that service rules applicable in the case of the petitioners did not authorise the employer to continue departmental proceedings after retirement.

5. The conclusion, therefore, is that the petitioners have to be paid dues for the period during which they remained suspended. The petition is accordingly allowed. All the pensionary benefits should be released to the petitioner at the earliest.

Sd/-

(Manindra Mohan Shrivastava)

Judge