

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 884 of 2016

Shrikant Thakur S/o Late I.B. Thakur, Aged About 66 Years, R/o House No. 2, Vaishali Nagar, Phase II, Near Rama Magnato Mall, P.S. Civil Lines, Bilaspur Chhattisgarh.

...Petitioner

Versus

1. Chhattisgarh Infrastructure Development Corporation (CIDC) Through Managing Director, Sihawa Bhawan, New Mantralaya, Raipur Chhattisgarh.
2. Divisional Manager, Chhattisgarh Infrastructure Development Corporation, Sihawa Bhawan, Near Mantralaya, Raipur Chhattisgarh.
3. Depot Manager, Chhattisgarh Infrastructure Development Corporation, Jagdalpur Depot, Jagdalpur, Distict Bastar Chhattisgarh.
4. Madhya Pradesh State Road Transport Corporation, Through Managing Director, Habibganj, Bhopal M.P.

... Respondents

For petitioner	:	Shri N.Naha Roy, Advocate.
For respondents No.1 to 3	:	Shri Animesh Verma, Advocate.
For respondent No.4	:	Shri Aman Kesharwani, Advocate.

Hon'ble Shri Justice P. Sam Koshy

CAV Order

Delivered on 20/07/2018

1. The petitioner through the present writ petition has sought for a relief of quashment of impugned order dated 05.03.2014 (Annexure-P/1) whereby the representation of the petitioner for grant of consequential benefit stood rejected by the respondent No.1 holding that he is not liable for any claim and that if at all if he is entitled for, the same has to be made from the respondent No.4. In addition, the petitioner has also sought for issuance of a writ in the nature of mandamus directing the respondents to release the

consequential benefits which accrued in his favour treating him to be in service with interest @ 12% per annum till the age of superannuation.

2. Brief facts of the case relevant for adjudication of the present petition is that, the petitioner was appointed as Ticket Examiner (Conductor) way back in the year 1969 under the respondent No.4 in the erstwhile State of Madhya Pradesh.

3. The services of the petitioner was again abruptly terminated without charge sheet and without any inquiry vide order dated 28/03/1978. The order of termination was questioned before the Labour Court under Section 31(3) of the Act, 1960 vide case No.22/MPIR/1979. After conclusion of trial, the Labour Court vide its order dated 08/12/1983 allowed the application to the extent of holding the order of termination to be illegal and as a consequence the relief of reinstatement with half back wages was awarded.

4. This order of Labour Court was again subjected to challenge before the Industrial Court both by the employee as well as by the Corporation. The Corporation challenged the order of reinstatement with half back wages vide case No.118/MPIR/1984 whereas, the employee vide case No.119/MPIR/1984 claimed full back wages instead of half as awarded by the Labour Court.

5. The Industrial Court after hearing both the parties vide order dated 28/01/1985 rejected the appeal of the corporation. So far as appeal of the employee was concerned, the Industrial Court allowed the same and ordered for grant of full back wages instead of half. In spite of there being an

order of reinstatement with full back wages, the petitioner was refused joining by the respondents and ultimately the petitioner had to initiate prosecution case against the erring officers who were not complying with the order and had also approached the High Court in this regard and finally the High Court in WP No.939 of 1996 disposed of the writ petition directing the Labour Court Jagdalpur to ensure that the prosecution case initiated by the petitioner be concluded at the earliest vide its order dated 30/04/1996. Later on the complaint case got dismissed on 17/02/1997 for want of prosecution. Subsequent application for restoration of the same also got rejected on 08/07/1997. Thereafter, an appeal against the said rejection of prosecution case for want of prosecution and rejection of restoration application was filed under Section 65 of the Act, 1960 which too got dismissed on 29/09/1999. The petitioner thereafter filed a writ petition before the High Court of Madhya Pradesh at Jabalpur which was registered as WP No.1285 of 2000 which subsequently stood transferred to the High Court of Chhattisgarh.

6. Thereafter, by virtue of creation of the State of Chhattisgarh under Madhya Pradesh Re-organization Act, 2000, the assets and liabilities of the respondent No.4-corporation falling within the territories of the Chhattisgarh came under the respondent No.1-CIDC vide notification dated 13/12/2002. The said petition i.e. WP No.1285 of 2000 filed by the petitioner came up for hearing before the High Court of Chhattisgarh on 27/02/2013 when at the behest of the respondent No.1, the writ petition got disposed of.

7. It would be relevant at this juncture to refer the relevant part of the order passed by the High Court while disposing of the writ petition which reads as under :

“At the very outset, learned counsel for the respondents submits that this is an old issue wherein the petitioner was terminated from service in the year, 1978 by the then Madhya Pradesh State Road Transport Corporation (for short, the MPSRTC). On dissolution of the MPSRTC, the employees have been allocated to the Chhattisgarh Infrastructure Development Corporation (for short, the CIDC). Thus, the CIDC may be permitted to reconsider the entire issue and pass a fresh order in accordance with law, on its own merits, if a representation is made by the petitioner. Shri Tiwari further submits that if a representation is made, the same shall be considered and decided in accordance with law de hors the observation and orders passed by the Labour Court as well as the Industrial Court, on its own merits, as expeditiously as possible, preferably within a period of three months from the date of receipt of the representation.”

8. Pursuant to disposal of the writ petition, a representation was preferred by the petitioner on 29/10/2013 upon which the respondent did not take any action. Finally a Contempt Case had to be filed and it is thereafter that the impugned order had been passed on 05/03/2014 (Annexure-P/1).

9. Having heard the contentions put forth by the counsel appearing on either side and on perusal of record, this Court is of the opinion that the two basic issues involved in the present petition is;

(i) whether the respondents were justified in rejecting the representation of the petitioner contrary to the stand taken by the respondent No.1 while getting WP No.1285 of 2000 disposed of on 27.02.2013, and

(ii) whether, the respondent No.1 could claim immunity, exemption or escape from the liability so far as the petitioner and the orders passed in favour of the petitioner from the different courts which locates within the territories of the State of Chhattisgarh.

10. In the given factual matrix we are reminded of two of the basic legal maxims which a student of law is taught, first while he undertakes his legal studies which are:-

(i) Justice delayed is justice denied; and

(ii) Justice should not only be done, but it should also appear to have been done.

11. If we keep these two legal maxims in our mind and look into the factual matrix of the present case as has been narrated in the preceding paragraphs, there can be no doubt that so far as the petitioner is concerned, he falls within the 4 corners of both the phrases referred to above.

12. What cannot be lost sight of is the fact that the petitioner was working within the territories of that portion of the erstwhile State of Madhya Pradesh, which fell within the territories of the State of Chhattisgarh. What also cannot be ignored is the fact that the original Court under the provisions of the Chhattisgarh Industrial Relations Act, 1960 was also a Labour Court which was located in an area which fell within the territories of State of

Chhattisgarh. Further more the prosecution case filed by the petitioner also was before the Labour Court which fell within the territories of the State of Chhattisgarh.

13. At this juncture, it would be relevant to refer to the judgment of this Court dated 27/02/2013 passed in WP No.1285/2000. The relevant portion of which is already reproduced in the earlier paragraph of this judgment and which would show that the said writ petition which was filed challenging the dismissal of the complaint case under Section 91(2) of the C.G.I.R. Act by the Labour Court for want of prosecution was disposed of in terms of the submissions made by the counsel for the respondent No.1. The counsel appearing for the respondent No.1 made a submission before the High Court on 27/02/2013 that on the dissolution of the M.P.S.R.T.C. the employees in the State of Chhattisgarh stood allocated to the respondent No.1- corporation, which would also include the entire assets as well as liabilities, which arose from the territories of the State of Chhattisgarh.

14. The respondent No.1 had while getting the writ petition disposed of in the year 2013 had mentioned that the respondent No.1-corporation shall be considering the claim of the petitioner in accordance with law without being influenced in any manner by the orders passed by the Labour Court as well as the Industrial Court. Yet when the order was passed on 05/03/2014 i.e. the impugned order in this writ petition, they refused to honour the judicial pronouncement which were there in favour of the petitioner, so also have not properly appreciated the claim of the petitioner. What can also not be brushed aside is the fact that inspite of the repeatedly knocking of the doors

of the Courts, the petitioner till date has not been able to reap the fruits of the different orders, which are there in his favour from the different judicial forums and the petitioner finally is now remedy less.

15. It is hear that the two legal maxims referred to in the earlier paragraph stand established in its true and literal perspectives. There is no dispute as regards the fact that the respondent No.1-corporation has inherited the entire assets as also the liabilities of the erstwhile M.P.S.R.T.C so far as the assets and the liabilities and the employees who were working within the territories in the Geographical area which came under the State of Chhattisgarh.

16. It would be relevant at this juncture to refer certain provisions of the M.P. Reorganization Act, 2000. Sections 55, 58 & 62 of the said Act of 2000 which for ready reference are reproduced herein under:

“55. Apportionment of assets or liabilities by agreement.-

Where the successor States of Madhya Pradesh and Chhattisgarh agree that the asset, liability or benefit or burden of any particular asset or liability should be apportioned between them in a manner other than that provided for in the foregoing provisions of this Part, then, notwithstanding anything contained therein, the assets, liability or benefit or burden of that asset or liability shall be apportioned in the manner agreed upon.

58. Provisions as to Madhya Pradesh Electricity Board, State Road Transport Corporation and State Warehousing Corporation etc.-

(1) The following bodies corporate constituted for the existing State of Madhya Pradesh, namely:--

(a) the State Electricity Board constituted under the Electricity Supply Act, 1948;

(b) the State Road Transport Corporation established under the Road Transport Corporations Act, 1950; and

(c) the State Warehousing Corporation established under the Warehousing Corporations Act, 1962, shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section and arrangements for the functioning of such body corporates as may be mutually agreed upon between the successor States failing which to such directions as may, from time to time, be issued by the Central Government.

(2) XXXXXXXX

(3) XXXXXXXX

(4) Nothing in the preceding provisions of this section shall be construed as preventing the Government of the State of Madhya Pradesh or, as the case may be, the Government of the State of Chhattisgarh from constituting, at any time on or after the appointed day, a State Electricity Board or a State Road Transport Corporation or a State Warehousing Corporation for the State under the provisions of the Act relating to such Board or Corporation; and if such a Board or Corporation is so constituted in either of the

States before the dissolution of the Board or the Corporation referred to in sub-section (1),--

(a) provision may be made by order of the Central Government enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertakings, assets, rights and liabilities in that State, and

(b) upon the dissolution of existing Board or Corporation,--

(i) any assets, rights and liabilities which would otherwise have passed to that State by or under the provisions of sub-section (3) shall pass to the new Board or the new Corporation instead of to that State;

(ii) any employee who would otherwise have been transferred to or re-employed by that State under sub-section (3), read with clause (i) of sub-section (5), shall be transferred to or re-employed by the new Board or the new Corporation instead of to or by that State,

62. General provisions as to statutory corporations.-

(1) Save as otherwise expressly provided by the foregoing provisions of this Part, where any body corporate constituted under a Central Act, State Act or Provincial Act for the existing State of Madhya Pradesh or any part thereof has, by virtue of the provisions of Part II of this Act, become an inter-State body corporate, then, the body corporate shall, on and from the appointed day, continue to function and operate in those areas in respect of which it was

functioning and operating immediately before that day, subject to such directions as may from time to time be issued by the Central Government, after consultation with the Governments of the successor States, until other provision is made by law in respect of the said body corporate.

(2) Any directions issued by the Central Government under sub-section (1) in respect of any such body corporate shall include a direction that any law by which the said body corporate is governed shall, in its application to that body corporate, have effect subject to such exceptions and modifications as may be specified in the direction.”

17. While filing of the present Writ Petition, the age of the petitioner was 66 years i.e. he had attained the age of superannuation somewhere in the year 2012.

18. If the order passed by the Labour Court and which was confirmed by the Industrial Court would had been implemented, then the petitioner would had been under the employment in the territories of the State of Chhattisgarh and he would have been an employee working under the respondent No.1 – Corporation.

19. Under such circumstances, in view of the provision of the reorganization Act reproduced in the preceding paragraphs, the respondent No.1 cannot escape its liability.

20. As per the Law Lexicon, the word liability has been defined as “the condition of one which is subject to duty which may be judicially enforced.”

The term liability is the responsibility of one who is bound in law and justice who had something which may be enforced by action. The law may arise from contracts or agreements either express or implied.

21. The word 'liability' in its widest import means an obligation or duty to do something or to refrain from doing something. Parliament intended to include in the word 'liability' not only the financial obligation but also obligations of every other kind, including one of reinstating a government servant wrongly dismissed.

22. In AIR 1959 Bombay 363, the Nagpur Bench of Bombay High Court in somewhat similar circumstances while determining the aspect of liability which arose out of the reorganization of the State in the year 1956 in paragraph 10 has held as under:-

“10. Part VII of the Act, relates to Apportionment of assets and liabilities; Ss. 87 and 88 fall under this part. The word 'liability' in its widest import means an allegation or duty to do something or to refrain from doing something. We see no reason why any restricted meaning should be given to the word 'liability' used in this Act. In our opinion, Parliament intended to include in the word 'liability' not only a financial obligation but also obligations of every other kind, including one of reinstating a government servant wrongly dismissed.”

23. It would be relevant at this juncture to refer to the contents of the notification dated 13/12/2002 which for ready reference is reproduced herein under:-

“क्रमांक एफ ६-८/दो/आठ-परि./०२.-राज्य शासन, “मध्यप्रदेश राज्य सड़क परिवहन निगम” के विभाजन के फलस्वरूप प्राप्त होने वाली आस्तियां, दायित्व, अधिकार एवं कर्मचारियों को, अभिप्राप्त करने हेतु छत्तीसगढ़ अधोसंरचना विकास निगम को अधिकृत करता है, उक्त विभाजन से प्राप्त होने वाले कर्मचारियों की सेवा शर्तें पूर्वानुसार छत्तीसगढ़ अधोसंरचना विकास निगम, में प्रभावी रहेंगी, आस्तियों एवं दायित्वों के प्रबंधन तथा कर्मचारियों के पुनर्वास की कार्यवाही राज्य शासन द्वारा समय-समय पर जारी निर्देशों एवं नीतियों के अनुरूप की जावेगी।”.

24. In furtherance of the aforementioned notification, it is also relevant to quote the judgment of this Court in the case of Virendra Singh Naikadi v. C.G. Infrastructure Development Corporation Ltd. & Anr. [2008 1 CGLJ 121] wherein in paragraphs 11 & 12, it has been held as under:-

“11. Learned counsel appearing for the respondent No.1 would submit that it is true that the facts of the present case are identical to the facts of the case of Ramesh Kumar Sahu [2006 2 CGLJ 197]. However, that case has not considered the objection of the respondent No.1 with regard to the non-impleadment of the Madhya Pradesh State Road Transport Corporation (MPSRTC) as a necessary party. It is further submitted that the said issue was not raised in that petition. He stated that the liability of the employees who had retired from the places, which fall today within the territorial jurisdiction of the State of Chhattisgarh, has been transferred to the respondent No.1 by Notification dated 13.12.2002.

12. From the reading of the said notification it is clear that the liability with regard to the service condition of the petitioner,

which may accrue, has been transferred to the respondent No.1 on 27.12.2002. Thus the contention of the respondent No.1 with regard to the non-impleadment of the M.P.S.R.T.C. is rejected.”

25. In view of the aforesaid legal position, the contention of the respondents that the petitioner had never worked under the respondent No.1 and that his termination and his order of reinstatement also having been passed before the creation of the State of Chhattisgarh is not a ground which can be sustainable for the purpose escaping the liability.

26. Considering the entire factual scenario and the legal position as it stands in the light of the discussion made in the preceding paragraphs, this Court cannot be a mute spectator of the right of the petitioner being crushed on account of the dispute inter-se between the respondents.

27. So far as the liability part is concerned, the equity in this regard is against the respondent No.1 which has succeeded the entire assets and liabilities which was otherwise there upon the erst while MPSRTC.

28. For all the aforesaid reasons, this Court is forced to and is inclined to allow the Writ Petition granting the petitioner the relief as prayed for to the extent holding that, the petitioner should be treated as if he was on duty all along and was an employee of the erstwhile MPSRTC till 31/10/2000 and thereafter an employee of the respondent No.1 and who superannuated on attaining the age of retirement under the respondent No.1.

29. Since the petitioner has an order in his favour both from the Labour Court as well from the Industrial Court, he shall also be entitled for all the monetary benefits from the date of order of reinstatement passed by the

Labour Court in 1983 onwards including the backwages also. He shall also be entitled for all consequential benefits including the entire retiral dues and pension if any treating him to be in service all along.

30. However, as far as the financial liability is concerned, the respondent No.1-CIDC shall be liable for monetary liability only for the period from the date of creation of the State of Chhattisgarh and so far as the monetary liability prior to 01/11/2000 is concerned, it shall be liability of the MPSRTC – the respondent No.4.

31. However, considering the fact that the petitioner is a senior citizen and has been made to run from pillar and post for decades together for reaping the fruits of the order which he has in his favour since 1983, this Court in the course of doing substantial justice orders that the financial liability which falls upon the MPSRTC shall also be paid by the respondent No.1-CIDC with a liberty of recovering the same by initiating appropriate proceedings from the MPSRTC.

32. Since the petitioner has been out of employment and he is surviving without any salary for the last 35 years with an intention of compensating the petitioner for all the hardship that he must have faced during the intervening period, this Court is of the opinion that imposition of interest @ 7.5% per annum on the amount which the petitioner would otherwise receive would meet the ends of justice.

33. To some up, this Court orders that the Writ Petition deserves to be and is accordingly allowed. The petitioner shall be entitled for all the

consequential benefits of full backwages from the date of termination i.e. 28/03/1978 till the date he has attained the age of superannuation as applicable under the respondent No.1-CIDC and the petitioner thereafter shall also be entitled for the entire retiral dues including gratuity, pension, provident fund, etc. and the entire dues which the petitioner would be received shall also carry interest @ 7.5% per annum. The respondent No.1 shall honour the order of this Court within a period of 4 months from today in terms of the observations made in the preceding paragraphs.

34. The Writ Petition accordingly stands allowed.

Sumit

Sd/-
(P. Sam Koshy)
JUDGE