

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.463 of 2017

(Arising out of order and communication letter dated 1-12-2015 of the learned Senior Accounts Officer, Office of the Accountant General, Raipur)

Order reserved on: 24-1-2018

Order delivered on: 15-2-2018

Angad Prasad Vishwakarma, aged about 76 years, S/o Shri Badula Ram Vishwakarma, retired Asstt. Teacher, Government Primary School – Budiya, Vikas Khand – Bhaiyathan, Tahsil – Surajpur, Distt. Surguja (now Distt. Surajpur) (C.G.) Presently resided at : Village and Post Chungari, Via Bhatgaon Colliery, Distt. Surguja (now Distt. Surajpur) (C.G.) (GPF A/c No.CMD/12325) M:- 097544-54378

---- Petitioner

Versus

1. The State of Chhattisgarh, through the Secretary, Department of Tribal Welfare (Now School Education), Mahanadi Bhawan, Mantralaya, New Raipur (C.G.)
2. Accountant General, State of Chhattisgarh, Raipur (C.G.)
3. The Joint Director (Treasury, Account and Pension), Distt. Surguja (C.G.)
4. The Sr. Accounts Officer, Office of the Accountant General, Raipur (C.G.)
5. District Education Officer, Distt. Surajpur (C.G.)
6. The Block Education Officer, Block Bhaiyathan, Tahsil and Distt. Surajpur (C.G.)

---- Respondents

For Petitioner: Mr. A.N. Bhakta, Advocate.

For Respondents No.1, 3, 5 and 6 / State: -

Mr. Shashank Thakur, Government Advocate.

For Respondents No.2 and 4: -

Mr. Raj Kumar Gupta, Central Government
Standing Counsel.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Vivian Bose, J, in a Constitution Bench judgment of the Supreme

Court in the matter of **Bidi Supply Co. v. Union of India and others**¹, in his separate but concurring judgment while interpreting Article 14 of the Constitution of India, posed the following question: -

“(23) After all, for whose benefit was the Constitution enacted? ...”

2. Thereafter, having posed the question, His Lordship answered the same in his inimitable words as under: -

“(23) ... I am clear that the Constitution is not for the exclusive benefit of Governments and States; it is not only for lawyers and politicians and officials and those highly placed. It also exists for the common man, for the poor and the humble, for those who have businesses at stake, for the "butcher, the baker and the candlestick maker". It lays down for this land "a rule of law" as understood in the free democracies of the world. It constitutes India into a Sovereign Democratic Republic and guarantees in every page rights and freedom to the individual side by side and consistent with the overriding power of the State to act for the common good of all.”

3. The aforesaid statement of law made by His Lordship not only aptly but squarely applies and is extremely relevant to the facts of the present case in which a retired Government servant was extended the privilege of his GPF only after 17 years from the date of his superannuation that too on the intervention made by this Court, which are as under: -

4. The petitioner joined the Department of Tribal Welfare as Assistant Teacher on 13-3-1964 and stood superannuated on 31-12-2001 having an unblemished service career. When he claimed the amount of GPF, immediately thereafter it was not paid to him leading to filing of W.P.(S)No.7686/2007 which was disposed of by this Court directing the Pension Redressal Committee, Raipur to consider the case of the petitioner and take corrective steps on which the said

1 1956 SC 479

Committee on 20-8-2009 directed the State authorities to reexamine the GPF account of the petitioner and his GPF dues be finalised immediately. But any how, the petitioner received the communication on 1-12-2015 stating minus balance of ₹ 4,789/- in his PF account and case of the petitioner has been closed leading to filing of this writ petition before this Court.

5. In the reply filed by the Office of the Accountant General on 21-2-2017, minus balance was shown to be of ₹ 1,09,395/-, whereas the reply filed by the Block Education Officer, who is the Drawing and Disbursing Officer of the petitioner, shows the plus balance of ₹ 90,502/-. Ultimately, the Court directed the responsible officer of the Office of the Accountant General to be remain present in the Court and further directed filing of affidavit which was not filed. The Court called explanation why the affidavit has not been filed, on 12-1-2018 and ultimately, on 23-1-2018, when the matter was taken up, it was informed that an amount of ₹ 17,321/- was found outstanding as on 31-12-2001 and adding interest, ₹ 40,368/- has been released in favour of the petitioner as pension payment.
6. Retiral benefits are the accumulated savings of a lifetime of service rendered by the employee, therefore, the said savings are the property of the said Government servant within the meaning of Article 300-A of the Constitution of India. Rather they are deferred portion of the earnings of the employee for which the State is only a trustee or a custodian under the relevant rules. Right to receive retiral benefit is a constitutional and valuable right of a Government servant and it is hardened benefit of an employee. (See **Deokinandan Prasad v. The**

State of Bihar and others², D.S. Nakara and others v. Union of India³, Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd. and others⁴, State of W.B. v. Haresh C. Banerjee and others⁵, Pepsu Road Transport Corporation, Patiala v. Mangal Singh and others⁶, State of Jharkhand and others v. Jitendra Kumar Srivastava and another⁷ and State of Himachal Pradesh and others v. Rajesh Chander Sood and others⁸.)

7. Payment of retiral dues on the date of retirement is a rule, non-payment on due date is an exception under unforeseen circumstances. Under the Chhattisgarh Civil Services (Pension) Rules, 1976, a complete mechanism has provided by the competent legislature to process the case of retirement of a particular Government servant much prior to the date of his retirement and to extend the benefit on the date of retirement. The Supreme Court has reiterated the same principle in umpteen number of cases holding that “... it is expected that all the payments of retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payment could not be made on the date of retirement”. (See for support **Vijay L. Mehrotra v. State of U.P. and others⁹**.) Not only this, the decision of the Supreme Court in **Vijay L. Mehrotra** (supra) has been followed by this Court in number of cases including **Shyam Dev v. State of Chhattisgarh and**

2 1971 (2) SCC 330

3 (1983) 1 SCC 305

4 (1984) 3 SCC 369

5 (2006) 7 SCC 651

6 (2011) 11 SCC 702

7 (2013) 12 SCC 210

8 (2016) 10 SCC 77

9 (2001) 9 SCC 687

others¹⁰.

8. It is unfortunate that despite the clear cut legislative provision to extend the privilege of pension on the date of retirement and the law declared by the Supreme Court, as stated above, clearly mandating payment of retiral dues on the date of retirement or soon thereafter in exceptional cases followed by this Court directing the State Government to comply the rules enacted competently, the executive has chosen not to comply either the legislative command or the judicial command and chosen to flout the command issued by the competent legislature and the judiciary as well which is really unfortunate and cannot be countenanced by this Court.

9. Duty of the State has been clearly indicated in Directive Principles of State Policy. Article 38(1) of the Constitution of India provides as under: -

“38. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.”

10. Though, Directive Principles of State Policy are directory in nature, yet, all organs of the State are bound to enforce those directives. In **Kesavananda Bharati** (supra), K.K. Mathew, J, clearly mandated as under: -

“1728. To sum up this part of the discussion, I think there are rights which inhere in human beings because they are human beings—whether you call them natural rights or by some other appellation is immaterial. As the preamble indicates, it was to secure the basic human rights like liberty and equality that the people gave unto themselves the Constitution and these basic rights are an

essential feature of the Constitution; the Constitution was also enacted by the people to secure justice, political, social and economic. Therefore, the moral rights embodied in Part IV of the Constitution are equally an essential feature of it, the only difference being that the moral rights embodied in Part IV are not specifically enforceable as against the State by a citizen in a Court of law in case the State fails to implement its duty but, nevertheless, they are fundamental in the governance of the country and all the organs of the State, including the judiciary, are bound to enforce those directives. ...”

11. Thus, on the anvil of clear enunciation of the Constitutional principles, the State authorities are obliged to deal with the cases of retired Government servants promptly and effectively, who in the heyday of their life ceaselessly toiled hard for the employer on an assurance and understanding that on leaving the office and particularly in their old age they would be given their dues and they would not be left in lurch. The payment of retiral dues is a means and measure of social security, as pension is the deferred portion of compensation for long and devoted services rendered by an employee with the employer. It is a social welfare measure as well. Article 21 of the Constitution of India guarantees everyone a fundamental right to livelihood, which includes entitlement to receive his deferred wages in accordance with rules, after retirement. Non-payment of retiral dues therefore, is a violation of one's fundamental right under Article 21, as at the risk of repetition it has already been held that the right to receive pension is also a right to property under Article 300-A of the Constitution of India which cannot be taken away except by Authority of Law. In this regard, Article 39 in Part IV of the Constitution of India – Directive Principles of State Policy, may be noticed herein profitably: -

“39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing

- (a) that the citizens, men and women equally, have the right to an adequate means to livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

12. A focused glance of the aforesaid Article would show that there is a constitutional obligation upon the State to secure to the citizens an adequate means of livelihood, it would be sheer inhuman on their part to exclude the right of livelihood from the contents of the right to life. In this regard, core human rights issue has been dealt in number of International Declarations, Conventions or International Instruments and International Laws. First one is the Universal Declaration of Human Rights (UDHR) which can be understood as under: -

The Universal Declaration of Human Rights (UDHR):

UDHR is a declaration adopted by the United Nations General Assembly on 10-12-1948 at Paris. The Declaration arose directly from the experience of the Second World War and represents the first global expression of rights to which all human beings are inherently entitled. Its Articles 3 and 25(1) read as under: -

Article 3: “Everyone has the right to life, liberty and security of person.”

Article 25(1): “Every one has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

13. Second one is International Covenant on Economic, Social and Cultural Rights (ICESCR) which can be understood in following words: -

International Covenant on Economic, Social and Cultural Rights (ICESCR):

Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16-12-1966 entry into force 3-1-1976, in accordance with article 27.

Its **Preamble** recognizes that the inherent dignity, the equal and inalienable rights of all members of the human family are considered the foundation of freedom, justice and peace in the world. Its Articles 9, 10, 11 and 12 read as under: -

Article 9: The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10: The States Parties to the present Covenant recognize that: they shall accord the widest possible protection and assistance to the family, the natural and fundamental group or unit of society, for the care and education of dependent children. Marriage must be entered into with the free consent of the intending

spouses [Art. 10(1)]; provide Special protection to mothers during a reasonable period before and after childbirth, paid leave or leave with adequate social security benefits [Art.-19(2)]; All children and young person's be protected without any discrimination for reasons of parentage or other conditions from from economic and social exploitation; their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development [Art.-10(3)].

Article 11: Provides for recognizing the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent [Art.11(1)]; Recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programs [Art.11(2)].

Article 12: Provides for the right of everyone to the enjoyment of the highest attainable standard of physical and mental health [Art.12(1)]; to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child; (b) The improvement of all aspects of environmental and industrial hygiene; (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases; (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness. [Art.11(2)].”

14. Thus, the right to get pension is also a human right. Denial of human

right as eminently described by Nelson Mandela, a South African Leader, is,

“To deny people their human right, is to challenge their very humanity.”

Nelson Mandela

15. Apart from this, the State Government in view of the Preamble of the Constitution of India, should act as a model employer which is consistent with their role in a welfare State. P.B. Gajendragadkar, J, in the matter of **State of Mysore v. The Workers of Gold Mines**¹¹ held that the concept of social and economic justice is a living concept of revolutionary import; it gives sustenance to the rule of law and meaning and significance to the ideal of a welfare state.

16. Apart from this, there are long line decisions of the Supreme Court which clearly mandates that the State, as a model employer, is expected to show fairness in action and as a model employer, the Government must conduct itself with high probity and candour with its employees. (See **Balram Gupta v. Union of India and another**¹², **Gurmail Singh and others v. State of Punjab and others**¹³, **Union of India and another v. Hemraj Singh Chauhan and others**¹⁴ and **State of Jharkhand and another v. Harihar Yadav and others**¹⁵.)

17. At this stage, two land mark decisions of the Supreme Court may be noticed herein regarding harassment of a common man referring to the English decisions. First one is **Lucknow Development Authority v M.K. Gupta**¹⁶ in which it has been held as under: -

11 AIR 1958 SC 923

12 1987 (Supp) SCC 228

13 (1991) 1 SCC 189

14 (2010) 4 SCC 290

15 (2014) 2 SCC 114

16 JT 1993 (6) SC 307

“An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. ... A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. ... Harassment of a common man by public authorities is socially abhorring and legally impermissible. It may harm him personally but the injury to society is far more grievous.” (para 10)

18. The aforesaid observations have been reiterated in the matter of **Ghaziabad Development Authorities v. Balbir Singh**¹⁷.

19. Thus, from the aforesaid legal discussion, it is quite vivid that the respondents being “State” under Article 12 of the Constitution of India and its authorities being the public functionaries, are obliged to be public oriented and they are further obliged to follow the legislative provisions regarding pension and gratuity and judicial precedents laid down in this regard by the Supreme Court as well as by the High Courts. Public authorities acting in violation of the legislative provisions and the judicial decisions are accountable for their behaviour. In a democratic system governed by rule of law, the Government does not mean a lax Government. The public servants hold their offices in trust and are expected to discharge their duties with utmost sincerity and due respect to the public at large. In this regard, the Supreme Court in the matter of **Delhi Development Authority v. Skipper Construction and another**¹⁸ has held as under: -

“A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not meant to enable the guilty to delay and defeat the just retribution. The wheel of justice may

17 JT 2004 (5) SC 17

18 AIR 1996 SC 715

appear to grind slowly but it is duty of all of us to ensure that they do grind steadily and grind well and truly. The justice system cannot be allowed to become soft, supine and spineless.”

20. In view of the aforesaid discussion, it is quite imperative that under the provisions of the Constitution, the Acts and rules made thereunder, it is not only the duty of the State authorities but also their constitutional obligation to extend the retiral dues of the retired Government servants right in time and in the manner indicated under the legislative rules to achieve the goal set up under the Directive Principles of State Policy in Part IV of the Constitution of India, as the right of the Government servant to get retiral dues is the right to property that cannot be taken away only except in accordance with law and it is violation of human rights and violation of human rights is an act against the humanity. Non-payment of retiral dues / GPF amount for last 17 years is not only purely unconstitutional but also plainly arbitrary and deserves to be condemned in strongest words. The act of the public functionary in such a way amounts to harassment of the petitioner / retired Government servant and is totally unacceptable.

21. Therefore, it is directed that the petitioner will be entitled for interest @ 8% per annum on the said amount of GPF from the date of entitlement till the date of actual payment within four weeks from the date of production of a certified copy of this order. The petitioner will also be entitled to a cost of ₹ 50,000/-. The amount shall be paid to the petitioner by the respondents and the State Government is at liberty to recover the said amount from the officer concerned who is responsible for such delay in paying the retiral dues, after making due

enquiry in accordance with law.

22. The writ petition is allowed to the extent sketched herein-above.

23. Before parting with the record, I fervently hope that public functionaries those in-charge of processing and making payment of retiral dues to retired Government servants will now, at least wakeup from long and deep sleep and put the things in order making the petition like this as a rarity, as in the instant case it took 17 years to pay retiral dues to the petitioner herein. A copy of this order be sent to the Chief Secretary, Government of Chhattisgarh and the Accountant General, Chhattisgarh, for needful action.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.463 of 2017

Angad Prasad Vishwakarma

Versus

The State of Chhattisgarh and others

Head Note

Non-payment of retiral dues for 17 years by the State authorities is unconstitutional and harassment of retired Government servant.

राज्य प्राधिकारियों के द्वारा 17 वर्षों तक सेवानिवृत्ति उपरान्त देय का भुगतान न किया जाना असंवैधानिक है तथा सेवानिवृत्त सरकारी सेवक का उत्पीड़न है।