AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3601 of 2018

Judgment Reserved on 22.11.2019

Judgment Delivered on 11.12.2019

Noharlal Koshewada, S/o Late Buddhu Prasad, Aged About 75 Years, R/o House No. 5/17 Prerna Bhavan, Ispat Nagar, Risali, Bhilai, District Durg Chhattisgarh Pin 490006.

---- Petitioner

Versus

1. The Accountant General, (Lekha And Hakrasi) A.G. Office Zero Point, Baloda Bazar Road, Raipur Chhattisgarh Pin 492005.
2. The District Education Officer, Durg, District Durg Chhattisgarh. Pin 492001.
3. The Block Education Officer, Tahsil Patan, District Durg Chhattisgarh.
4. The Collector, Durg District Durg Chhattisgarh. Pin 492001
5. State Of Chhattisgarh, Through The Secretary, Department Of Education, Mahanadi Bhavan, Mantralaya, Naya Raipur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Tribhuwan Das, Advocate
For Respondent No. 1	:	Shri R.K. Gupta
For State/ Respondents No. 2 to 4	:	Shri Avinash Singh, Panel Lawyer

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Hon'ble Shri Justice Goutam Bhaduri

CAV Judgment

11/12/2019

Heard.

1. The facts are that the petitioner served the Education department as Assistant Teacher from 23.12.1963 to 31.10.1973. He tendered his resignation on 31.10.1973 which was accepted on 01.11.1973 (Annexure P-2) and in respect of the retiral dues, an amount of Rs. 2,222/- was paid to

him on 11.09.1975 (Annexure P-4). It is case of the petitioner that during his service period, general provident fund deduction were made from his salary, however, at the time of retirement though he was entitled for return of entire GPF amount certain part were not paid. Therefore, the petitioner started making correspondence with the department. Eventually, by letter dated 24.07.1980 (Annexure P-5) after a period of 7 years, it surfaced that the contribution for the month of November 1967, January 1968, April 1969, November 1969, January 1970 and August 1970 though deducted but were not deposited in the GPF account of the petitioner, which was maintained by the then Accountant General Office. Consequently, the necessary documents were called for, thereafter, several reminder letters were sent and correspondence were made by the petitioner but eventually of no use. At last, in the year 2017, the mercy prevailed at the behest of one of the Officer and the particulars of the deduction in reference to the letter dated 24.07.1980 was replied which is filed as Annexure P-7. Thereby, for the first time, the intimation was sent regarding the particulars of the deduction made for an account of provident fund on 01.02.2017 and along with the particulars, the deduction chart was also made available which purports that deduction was made from the salary for GPF.

2. The return of Senior Accountant General Officer would show that after receipt of the particulars of the correction of the missing contribution, an amount of Rs. 126/- was arrived at as account for calculation and as per GPF rules, compound interest up to the month of acceptance of resignation was allowed which amounted to Rs. 844/- and pursuant thereto amount of Rs. 844/- was paid.

3. Learned counsel for the petitioner would submit the delay was attributed for the non-cooperative behavior of the respondents Officers of the Education Department as the petitioner though resigned in 1973 eventual payment was made ultimately on 28.09.2018. He would further submit that the

petitioner cannot be made to suffer for the dormant and non working attitude of the officers. He placed his reliance on A.S. Randhawa Vs. State of Punjab & Others 1997 (3) SCT 468 and in the judgment rendered by the Allahabad High Court in the case No. WRIT - A No. 29542 of 1997 {Sant Lal (since deceased and substituted by legal heir) Vs. The Chief Audit Officer & Other} He further submits that it is a fit case wherein adequate compensation requires to be awarded along with the necessary enquiry should be conducted against erring officers.

4. Per contra, learned counsel for respondent No. 1, Accountant General, would submit that as soon as the particulars of the deduction were made available to the respondents, they paid the amount to the petitioner along with the compound interest. It is stated that the amount which was deducted and not accounted was of Rs. 126/- and after addition of interest the account came to Rs. 844/- which was paid thereby no fault can be attributed to respondent No.1.

5. The counsel for State/ Respondent No. 2 to 5 would submit that as soon as the State came to know about the fault, it was corrected and the particulars of the due amount were informed to the Respondent No.1, Accountant General Office. Since at the earlier occasion this could not be found out no particular intimation could be sent, therefore, no deliberate delay has been caused.

6. Perused the documents. This is not in dispute that lately an amount of Rs. 844/- was paid with simple interest on 24.10.2018. The question arises for as to whether it was adequate, whether the delay caused by the respondent/ State can be justified to be legal? The answer certainly would be in negative. The Courts, time and again, has made authoritative pronouncement that non payment of retiral benefits of employee for years together is not only illegal or arbitrary but would be like a sin. The Officers who are instrumental in payment of money, who are in the role of the State

shall also be transformed to such retiremental status on some day. The issue of the like nature how it rolled from day to day is a classic example of the fact that not taking a decision or not discharging a job would also be covered as deliberate act. The petitioner in this case resigned in the year 1973 and eventual payment which was due to him was made in the year 2018 and delay of 45 years has caused. As appears from the contention of the respondent State, it appears the petitioner was fortunate enough to be alive to receive the remaining retiral dues of Rs. 844/- in year 2018 with simple interest.

7. The document filed along with the petition would show that continuous correspondence was being made by the petitioner but all of it were shelved or brushed under the carpet, eventually resulted into disappointment. As has been said by the Courts that an ordinary man or a common man is hardly equipped to match the might of the State or it is instrumentalities. The delay of 45 years can be presumed that the public functionaries who were required to discharge their job deliberately did not do so and the exercise of power of not doing a particular job not only resulted into harassment and agony but also an precipitated like an abuse. It is a example that a common man how is harassed by the system, which caused a great injury to the society.

8. Allahabad High Court in the judgment of ***Sant Lal Vs. The Chief Audit Officer & Others*** has quoted as under:-

> 13. The respondents being "State" under Article 12 of the Constitution of India, its officers are public functionaries. As observed above, under our Constitution, sovereignty vest in the people. Every limb of constitutional machinery therefore is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their ex-employees like the

petitioner. The respondents have the support of entire machinery and various powers of statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to occasion otherwise the confidence of the common man would shake. It is the responsibility of Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal exercise of power on the part of the public functionaries.

14. 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 perform with due diligence particularly so that their action on inaction may not cause any undue hardship and harassment to a common man. Whenever it comes to the notice of this Court that the Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has never been a silent spectator but always reacted to bring the authorities to law.

16. In Shivsagar Tiwari Vs. Union of India (1996) 6 SCC 558 the Apex court had held:

"An arbitrary system indeed must always be a corrupt one. There never was a man who thought he had no law but his own will who did not soon find that he had no end but his own profit."

> 17. In Delhi Development Authority Vs. Skipper Construction and Another AIR 1996 SC 715 has held as follows:
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> "A democratic Government does not mean a lax Government. The rules of procedure and/or principles of natural justice are not mean to enable the guilty to delay and defeat the just retribution. The wheel of justice may 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."

9. The question is not about the quantum of amount, the question is about the legal right. The government servant who retires is not expected to be at the mercy of few of the persons, who do not discharge their jobs. The various correspondence would show that though the petitioner has resigned and the resignation was accepted on 01.11.1973, and despite certain parts of provident fund were deducted but were not sent and after the fault was recovered, the intimation was sent in the year 2017. Thereafter, an amount was paid in the year 2018. The delay of 45 years was caused which shocks the system, it is an injury to the feeling to the recipient of his legal dues. The loss attributable was due to unlawful act of an employer and injury to feeling was a type of loss and award for damage would be necessary to be compensatory in nature. It was because of the employer's default, the lawful claim was refused. There is no plausible reason on record, why the employer failed to comply to send the required intimation on time. The period of time spent in payment cannot be confined to be framed as just and equitable, therefore, when one look back and review the working of the respondents no plausible explanation comes up, except the concept of spoiled time.

10. The petitioner though has been paid an amount after the fault came to fore the amount of Rs. 2,222/- has been paid with compound interest calculated up-till the date of resignation i.e. 01.11.1973 which the petitioner was otherwise entitled. The compound interest has been awarded up-till month

of acceptance of resignation and after the date of resignation the simple interest has been allowed. The Supreme Court in the case of ***State of Kerala and others Vs. M. Padmnanaban Nair, 1985 (1) SLR-750***, has held as under:-

> "Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following months. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasized and it would not be unreasonable to direct that the liability to pay panel interest on these dues at the current market rate should commence at the expiry of two months from the date of retirement."
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> In this view of the matter, this court is of the view that the claim of the petitioner for interest on the delayed payment or retiral benefits has to be sustained.

11. The fact would show that the pursuit of justice can be long and arduous battle. The series of act when are examined the apathy of few of the employee/ worker looms into view. It was a collective rituals of few of the employees as they sunk deep into meditative trance for 45 years. The case like nature is an turbulence alert for State and it's instrumentalities. Serving certain problem requires multi prolonged approach and they will persist if view through narrow lens unless idea of reform exists. The delay to pay legal dues of retired employee for 45 years is certainly contrary to general expectation.

12. Therefore, in view of the above discussion the petitioner is entitled for the compensation for the fault and the monetary loss caused to him for the reason the amount i.e. his legal claim having not been paid on time. Consequently, it is directed the amount may not be quantified but considering the period lapsed amount of Rs. 1 Lakhs would be paid to the

petitioner by way of compensation for injury to person and feeling for last 45 years and further the petitioner shall be entitled for the compound interest till the date of payment in the year 2018, in respect of the GPF amount. The compound interest would be paid at the rate of 12% per annum from the date of retirement till the actual payment is made. The payment shall be made within in 45 days from the date of order.

13. With such observation, the petition stands allowed.

Sd/-

Goutam Bhaduri
Judge

Jyoti