

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment Reserved on: 19/01/2021****Judgment Delivered on : 12/02/2021****Writ Appeal No. 808 of 2018***{Arising out of Order dated 20.07.2018 passed in Writ Petition (S) No. 884 of 2016 by the learned Single Judge}*

1. Chhattisgarh Infrastructure Development Corporation, through Managing Director, Sihawa Bhawan, Naw Mantralaya, Raipur, Chhattisgarh
2. Divisional Manager, Chhattisgarh Infra Structure Development Corporation, Sihawa Bhawan, Naw Mantralaya, Raipur, Chhattisgarh.
3. Depot Manager, Chhattisgarh Infrastructure Development Corporation, Jagdalpur Depot, Jagdalpur, District Bastar, Chhattisgarh.

---- Appellants**Versus**

1. Shrikant Thakur S/o Late I.B.Thakur, aged about 68 years R/o House No. 2, Vaishali Nagar, Phase II, Near Rama Magneto Mall, P. S. Civil Lines, Bilaspur, Chhattisgarh.
2. Madhya Pradesh State Road Transport Corporation Through Managing Director Habib Ganj, Bhopal Madhya Pradesh

---- Respondents

For Appellant : Shri Anup Majumdar, Advocate.

For Respondent No. 1 : Shri N. Naha Roy, Advocate.

For Respondent No. 2 : Shri Manoj Paranjpe and Shri Varun Sharma, Advocates

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV JUDGMENT****Per P.R. Ramachandra Menon, Chief Justice**

1. The dispute between the two different employers, one in the State of Madhya Pradesh and the other in the State of Chhattisgarh, as to who shall satisfy the liability towards the employee whose service was wrongly put an end to by the erstwhile Madhya Pradesh State Road Transport Corporation (*for short, 'the MPSRTC'*) but who came to be allotted to the service of the Chhattisgarh Infrastructure Development Corporation (*for short 'the CIDC'*) pursuant to the reorganization of the State of Madhya Pradesh is the

subject matter involved. The employee got favourable orders of reinstatement with 100% backwages which has become final. This writ appeal has been filed by the CIDC, being aggrieved of the liability, as ordered by the learned Single Judge.

2. The sequence of events reveals that the 1st Respondent-Employee, while working as a Ticket Examiner (Conductor) was terminated from the service by the employer-MPSRTC without issuing any charge-sheet or conducting an enquiry. On approaching the Labour Court, the impugned proceedings were set aside, ordering reinstatement with 50% backwages which came to be enhanced to 100% on interference by the Industrial Court, who dismissed the appeal filed by the MPSRTC and allowed the appeal filed by the Employee. Since the amount due was not satisfied, prosecution proceedings were launched, which were directed to be finalised at the earliest, as per the judgment passed by the High Court of Madhya Pradesh in WP No. 939 of 1996. The petition for prosecution came to be dismissed for want of prosecution, followed by dismissal of the application for restoration and also the appeal filed therefrom. This made the Employee to approach the High Court of Madhya Pradesh at Jabalpur by filing WP No. 1285 of 2000, which subsequently came to be transferred to this Court after formation of the State of Chhattisgarh.
3. WP No. 1285 of 2000 was finally heard by a learned Judge of this Court on 27.02.2013, when it was submitted from the part of the present Appellant who was the 1st Respondent therein, that the issue would be considered on merits afresh, in accordance with law and accordingly, the writ petition was disposed of to have it finalised within three months. Since the undertaking/direction was not complied with, it led to Contempt of Court proceedings. Thereafter, the representation preferred by the 1st Respondent/employee was rejected which was put to challenge in

WP(S) No. 884 of 2016. The said matter was heard elaborately by the learned Single Judge with reference to the relevant provisions {Section 55, 58 and 62 of the Madhya Pradesh Reorganization Act, 2000 (*for short 'the Act, 2000'*)} and the submissions made from the part of the two different Corporations/Employers in the State of Madhya Pradesh and Chhattisgarh. Based on the materials brought on record, the learned Single Judge observed in paragraph 15 of the judgment that there was no dispute that the 1st Respondent (Appellant herein) has inherited the entire 'Assets and Liabilities' of the erstwhile MPSRTC (2nd Respondent herein), so far as the 'Assets and Liabilities' and the Employees who were working within the territories in the geographical area which came under the State of Chhattisgarh were concerned. After referring to the relevant judicial precedents, the learned Single Judge held in paragraph 25 of the judgment, that the contention of the 1st Respondent therein (who is the Appellant herein) that the Employee had never worked under them and that his order of termination and the order of reinstatement were passed prior to creation of the State of Chhattisgarh was not a ground to escape from the liability, simultaneously observing that the Court cannot sit as a mute spectator of the right of the Employee being crushed on account of the dispute inter-se between the respondents concerned. It was accordingly held in paragraph 27, that so far as the liability part is concerned, the equity was against the 1st Respondent (Appellant herein) which has succeeded the entire 'Assets and Liabilities' which was otherwise upon the erstwhile MPSRTC, thus, giving the direction that the writ petitioner/Employee should be treated as if he were on duty all along and was an Employee of the MPSRTC till 31.10.2000 and thereafter an Employee of the 1st Respondent (Appellant herein) who superannuated on attaining the age of retirement under the 1st Respondent/Appellant.

4. With regard to the financial liability, it was held by the learned Single Judge in paragraph 30 that the monetary liability would stand fixed upon the 1st Respondent/Appellant herein only for the period from the date of creation of the State of Chhattisgarh and that the liability prior to 01.11.2000 will stand upon the MPSRTC (4th Respondent therein). However, considering the plight of the Employee, the learned Single Judge held in paragraph 31 that for convenience, the liability which falls upon the MPSRTC shall also be paid by the 1st Respondent-CIDC (Appellant herein) with liberty to recover the same by initiating appropriate proceedings against the MPSRTC. Paragraphs 30 and 31 which virtually form the main basis/root cause for filing the appeal are extracted below:

"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."

The amount due has been ordered to be satisfied with interest at the rate of 7.5% per annum. This in turn is put to challenge in this appeal by the Appellant-CIDC

5. When the matter came up for consideration before this Court on 09.05.2019, it was noted that the verdict passed by the learned Single Judge has not been subjected to challenge by the MPSRTC; upon whom the liability was mulcted till the date of formation of Chhattisgarh i.e. 31.10.2000 and hence, it had become final. As far as the Appellant is concerned, they submitted that their liability would arise only from 31.12.2002. As such, the disputed

period is between 01.11.2000 to 31.12.2002 and who is to satisfy the same, is the question. This Court observed that despite the limited extent of challenge raised by the Appellant, the "undisputed liability" was still not satisfied by the Appellant as well as by the MPSRTC, which made this Court to pass the following order on 09.05.2019:

"Heard learned counsel appearing for the parties at length.

The sum and substance involved in this case appears to be with regard to the course of action pursued based on the verdict passed in favour of the employee who was working as a Conductor under the second respondent in relation to the wrongful dismissal and as to the sharing of liability between the appellant and the second respondent.

The wrongful dismissal was challenged and the employee came to be successful in getting reinstatement with 50% back wages. On further challenge reinstatement was affirmed enhancing the back wages to 100%. As a matter of fact, the said proceedings have come to a finality.

After formation of the State of Chhattisgarh, the employees who were working under the second respondent came to be transferred and there is some understanding as to sharing of assets and liabilities as well. The matter was pursued further from the part of the employee, as the fruits flowing from the verdict passed in his favour did not come to his hands. The employee approached this Court by filing WP No.1285 of 2000, which was finalised as per verdict passed on 27.2.2013, based on the submission made by the appellant herein that they will have a re-look into the matter. Since nothing tangible was forthcoming, he moved this Court again by filing WPS No.884 of 2016. After referring to the sequence of events, a verdict has been passed on 20.7.2018 with the observation and declaration as contained in paragraph 30, in the following terms :

"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."

The learned Standing Counsel appearing for the second respondent concedes that the verdict passed by the learned Single Judge has not been subjected to challenge from their side.

Before proceeding into the actual extent of liability and mulcting the same upon the party concerned, insofar as there is no challenge for the second respondent as to the finding reached fixing the liability up to 1-11-2000 upon them, it becomes an undisputed or admitted fact and as such, the same has to be cleared forthwith. In the said circumstances, we feel it appropriate to direct the second respondent to discharge the liability in terms of paragraph 30 of the verdict passed by the learned Single Judge forthwith, at any rate within one month from today.

Coming to the liability of the appellants, learned counsel for the appellants submits, as also in support of the materials on record, that they do not dispute the liability from 31-12-2002 and, as such, it is for the appellants to satisfy the admitted extent of liability. Computation in this regard shall be effected after verifying the records and also collecting the necessary materials to the extent it is available with the writ petitioner and also after seeking particulars from the second respondent herein. This exercise shall be completed at the earliest, at any rate within six weeks from today. The plea as to the absence of record with the appellant cannot be a ground, to give any benefit to the appellant and it shall be the look out of the appellant to see that the undisputed liability is cleared forthwith.

List the matter for further consideration in the reopening week after the summer vacation.

We make it clear that the above order is only an interim arrangement, insofar as the admitted and undisputed liability is concerned. The issue with regard to fixation of actual liability will be decided in due course.

The necessary action and co-operation shall be rendered by all the parties concerned so as to give effect to this order."

6. When the matter came up for further consideration on 24.06.2019, it was noted that the undisputed liability was still not cleared. The reason stated was that the Appellant-CIDC since was not having the service particulars of the Employee, particularly the date of birth, the date of his appointment etc; the same might be ordered to be made available. On passing appropriate orders in this regard and granting further time, it was brought to the notice of this Court by the Appellant-CIDC on 23.09.2019 that they had worked out the amounts payable to the writ petitioner/Employee towards the admitted liability i.e. 31.12.2002 onwards, fixing the same as **Rs. 7,32,700/-** and that the same was disbursed to the Employee by way of cheque, alongwith a

forwarding letter. But since nothing was brought out from the part of the 2nd Respondent-MPSRTC, we ordered personal presence of the Managing Director on the next date of hearing.

7. The Managing Director of the MPSRTC was present on 21.10.2019 who expressed regrets with regard to the absence on the last date of posting and tendered apologies for the circumstances under which the matter could not be finalised, at the same time, assuring that the amounts due forwards the admitted liability would be cleared immediately. To prove the bonafides, a sum of Rs. 50,000/- was paid on that date itself, by way of demand draft, as an interim arrangement and the balance was assured to be paid within no time, under which circumstance, the personal presence was dispensed with. On the next date of posting *i.e.* on 10.12.2019, it was submitted on behalf of the 2nd Respondent-MPSRTC, that in addition to the sum of Rs. 50,000/- already paid, the balance due was worked out and a demand draft for a sum of Rs. 6,93,000/- (total of **Rs. 7,43,000/-**) was given to the writ petitioner/Employee (copies of the relevant documents were also produced in this regard).
8. We heard the learned counsel for the parties. It is stated that the 'admitted liability' has already been satisfied by both the Appellant-CIDC and the 2nd Respondent-MPSRTC. The learned counsel for the 1st Respondent/Employee disputes the quantum of the amount to be paid to him. However, the fact remains that the amount for the period from 01.11.2000 to 31.10.2002 is still to be cleared.
9. As mentioned already, the main grievance of the Appellant-CIDC was with regard to the course of action ordered to be pursued by the learned Single Judge as contained in paragraphs 30 and 31 extracted already. After arriving at a finding that the liability of the Appellant-CIDC would arise only after formation of the State of Chhattisgarh *i.e.* 01.11.2000, the learned

Single Judge had directed the said Corporation i.e. CIDC to satisfy the amount payable by the MPSRTC as well (who was held liable till 31.10.2000), though with liberty to have it recovered later from them. By virtue of the interim order passed by this Court, the undisputed liability i.e. the liability of the MPSRTC (2nd Respondent herein) till 31.10.2000 stands cleared and almost similar extent from 31.10.2000 is stated as cleared by the Appellant Corporation as well. In other words, the liability to satisfy the amount due by the MPSRTC till 31.10.2002, which was initially fixed as a burden on the shoulders of the Appellant, with liberty to recover, has been satisfied by the MPSRTC itself, and as such, this burden has been shifted to the shoulders of the Appellant. There is however a case for the Appellant-CIDC that they are only to satisfy the amount after formation of the Corporation i.e. from 31.10.2002; which contention however has been repelled by the learned Single Judge by virtue of the specific provisions of the Act, 2000 dealing with the 'Assets and Liabilities' and the Employees who were working within the territories in the geographical area which came under the State of Chhattisgarh. We do not find any tenable ground to interdict the verdict passed by the learned Single Judge in this regard. However, we make it clear that, if the Appellant is aggrieved of having effected any excess payment (despite the actual extent of liability to be satisfied by the erstwhile employer i.e. MPSRTC) and that they are entitled to get the same recovered from the MPSRTC by virtue of the relevant provisions of Act, 2000 or such other orders issued by the Government/ authorities concerned (in exercise of the powers under the above Act or the agreements in connection therewith), it is open for the Appellant-CIDC to move the authorities concerned for getting the said share cleared.

10. In the said circumstance, it is for the Appellant-CIDC to effect the payment of the amount due to the 1st Respondent-Employee for the period from 01.11.2000 to 31.12.2002 as well, which shall be done within a period of

three months from the date of receipt of a copy of this judgment. It is open for the Appellant to get involvement of the Government of both the State of Madhya Pradesh and the State of Chhattisgarh (who are not parties to the proceedings) for getting the dispute between the two Employers resolved, as the resultant situation of taking over of the 'Assets and Liabilities' is by way of statutory consequence, pursuant to the Act, 2000. Similarly, if the 1st Respondent-Employee is not satisfied with the quantum of calculation of the amount due, it will be open for him to move the appropriate forum, by way of appropriate proceedings in accordance with law, to have the proper computation effected.

11. The appeal stands disposed of as above.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE