

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6852 of 2021

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Lilawati Mishra, Wife of Late Krishna Kumar Mishra, Resident of Village-Arsandey, P.S.- Kanke, District- Ranchi.

... .. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Road Construction Department, Old Secretariat, Patna.
2. Principal Secretary, Rural Development Department, Old Secretariat, Patna.
3. Secretary, Rural Works Department, 5th Floor, Vishveshwarya Bhawan, Bailey Road, Patna.
4. Secretary, Public Works Department, Shastri Nagar Road, Rajvanshi Nagar, Patna.
5. Secretary, Road Construction Department, Old Secretariat, Patna.
6. Deputy Secretary, Road Construction Department, Old Secretariat, Patna.
7. Special Secretary, Road Construction Department, Old Secretariat, Patna.
8. Chief Engineer, Road Construction Department, Old Secretariat, Patna.
9. Engineer in Chief cum Additional Secretary cum Special Secretary, Road Works Department, 5th Floor, Vishveshwarya Bhawan, Bailey Road, Patna.
10. The Chief Engineer, Public Works Department, Government of Bihar, Patna.
11. The Engineer-in-Chief cum Secretary, Rural Engineering Organization, Patna, Bihar, The State of Jharkhand through Principal Secretary, Rural Work Department, Ranchi, Jharkhand.
12. Principal Secretary, Road Construction Department, Ranchi, Jharkhand.
13. The Executive Engineer, Rural Works Department, Works Division, Ranchi.
14. Special Secretary, Road Construction Department, Jharkhand, Ranchi.
15. Deputy Secretary, Road Construction Department, Jharkhand, Ranchi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anurag Saurav, Advocate Mr. Abhinav Alok, Advocate Mr. Priyajeet Pandey, Advocate
For the Respondent/s	:	Mr. Manoj Kumar Ambastha, S.C. 26 Mr. Dev Kumar Pandey, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 11-05-2022



The following questions arise for consideration in the instant writ petition:-

1. Whether denial of earned remuneration and post retiral benefits constitute an infringement of the right to life under Article 21 of the Constitution of India?
2. Whether the acts of the State in delaying the disbursement of retiral benefits can be countenanced given the established notion of the State as a Model Employer?
3. Whether a case is made out for punitive damages/heavy cost in the instant set of facts in light of the inordinate lapses?
4. Whether the State is obligated to constitute an effective grievance redressal mechanism with respect to payment of legitimate dues of a salaried employee, including pension and other post retiral benefits, to ensure that earned dues are disbursed on time?

FACTS

2. The petitioner namely Lilawati Mishra (referred to as the petitioner) is the wife of late Shri Krishna Kumar Mishra (hereinafter referred to as the employee), whose salary in arrear and non-disbursement of retiral benefits are the subject of this petition.

3. The employee was appointed as a Temporary Estimator on 05.12.1961 and joined the office of Superintending Engineer Chhotanagpur Circle. After a series of internal and



interdepartmental postings in several districts such as the office of Executive Engineer, Ranchi Division, Rajendra Agriculture College, Pusa, etc., he was promoted to the post of Assistant Engineer in 1994 and was to join the office of Executive Engineer, Advance Planning Division, Munger Road Construction Department, but since his joining was not accepted, was ultimately allowed to retire on 31.12.1996, without getting such posting.

4. The first communication with respect to payment of arrears of salary, pension and post retiral benefits was to the Engineer-in-Chief-cum-Secretary, Rural Engineering Organization, Patna, Bihar, on 04.01.1997. Since then, letters to many of the respondents were written by the employee during his lifetime and by the petitioner (annexed with the petition). Such letter, Annexure-2 to the writ petition, contains details of salary arrears totalling ten years, nine months and 13 days.

5. It is to be noted that even before superannuation of the employee, a letter was written by the then Executive Engineer, Rural Engineering Organization, Works Division, Ranchi to Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary, Rural Engineering Organization, Bihar Patna (Annexure-3 to the writ petition) putting onto paper the various



periods for which the employee was not paid his earned remuneration. Further requesting the concerning authority to initiate said payment, keeping in view the approaching date of superannuation, i.e. 31.12.1996.

6. A number of inter-departmental communications were undertaken to verify the papers, service book etc., of the employee, which, according to the petitioner, stood already submitted, but to no avail. Such facts evident from Annexure 9 dated 18.01.2011, Page-45, remain uncontroverted by the State. The last pay certificate and other related documents were also sent to the Executive Engineer, Works Division, Ranchi, on 17.01.2011.

7. The further representation made on 07.04.2011 (Annexure-11, page-47) resulted in other interdepartmental communications. On 01.04.2013, another representation was made before respondent no.5 herein (Annexure-20, page-60), but despite all these communications, no resolution of their demands/needs were forthcoming.

8. Ultimately, the employee died in 2017, not receiving any of the amounts due to him.

9. This writ petition was filed on 06.03.2021 for a writ of mandamus to the respondents' authorities for payment of retiral



benefits and arrears in salary and interest.

10. The delay in filing the writ petition has not escaped this Court. However, in light of the attending facts, it cannot impede the petition's adjudication on merits.

11. A counter affidavit has been filed, noticeably after considerable delay by respondent no.6, namely Deputy Secretary, Road Construction Department, Government of Bihar, Patna, on behalf of the State on 25.04.2022. In such counter affidavit, it is stated that all possible efforts are being taken for the redressal of grievance of retiral dues of the deceased employee. Prior to the filing of this writ petition, the last communication was 01.11.2013 by the Secretary, Road Construction Department, Government of Bihar to the Principal Secretary, Rural Works Department, Jharkhand, Ranchi, requesting to make available the complete pension papers along with no dues certificate of the employee (Annexure-A to the counter affidavit).

12. Further explaining the delay, subsequently, a series of departmental memos were issued and one such being dated 27.10.2021 to the Accountant General, Bihar, Patna, seeking a report regarding the issuance of an authorization letter of pension/gratuity of the deceased employee. Also to the in charge



officer, Finance (D.C.F.C.), Department, Patna, regarding issuance of sanction letter of utilized earned leave of the deceased employee; and to the Executive Engineer, Rural Works Department, Works Division, Ranchi to supply duly filled pension papers, service history, last pay record, departmental no dues certificate, housing no dues certificate and duly filled up form for withdrawal of G.P.F. along with relevant information of Group Insurance Amount. A similar memo for documents was sent to the Executive Engineer, Region Survey Advance Division, Road Construction Department, Munger.

13. Attempting, with the above issued memos, to show the efforts being taken, it is prayed for on behalf of “the State” to “dismiss the present writ petition”.

14. The petitioner filed a response to the counter-affidavit on 27.04.2022, annexing the service book, stating that the same to have been submitted to the relevant authority way back in the year 2011 itself.

15. It is also noted therein that the respondents have not made any effort to deny the bonafide employment of the petitioner's late husband or his having served the State, thus entitling him to the dues in issue.

16. Significantly, it is not the respondents' case that the



employee in question was facing any inquiry/disciplinary proceedings; not diligent, or there being any other justifiable reasons for withholding the dues. Also, there is no dispute about the amount and the period to which the employee is entitled to salary; pension; gratuity; and all other admissible dues still payable.

LAW

17. The law with regard to pension, retiral dues has been laid down in a number of cases by Hon'ble the Supreme Court.

Right to a sum of money as salary and consequential dues is property under the Constitution of India

18. A Five Judges Bench of the Apex Court in **State of Madhya Pradesh v. Ranjojirao Shinde & another, AIR 1968 SCC 1053**, has observed:

“It is obvious that a right to a sum of money is property”

19. A Seven Judges Bench of the Apex Court in **Madan Mohan Pathak and another v. Union of India and others, (1978) 2 SCC 50** observed:

“... The right to pension was also regarded as property for the purpose of Article 19(1)(f) by the decisions of this Court in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330 : 1971 Supp SCR 634] and *State of Punjab v. K.R. Erry & Sobhag Rai Mehta* [(1973) 1 SCC 120 : (1973) 2 SCR 405] . This Court adopted the same line of reasoning when it said in *State of Gujarat v. Shri Ambica Mills Ltd., Ahmedabad* [(1974) 4 SCC 656 : (1974) 3 SCR 760] (SCC, p. 664, para 19) that



“unpaid accumulations represent the obligation of the employers to the employees and they are the property of the employees. Mathew, J., speaking on behalf of the Court, observed that the obligation to the employees owed by the employers was ‘property from the standpoint of the employees’.”

It would, therefore, be seen that property within the meaning of Article 19(1)(f) and clause (2) of Article 31 comprises every form of property, tangible or intangible, including debts and choses-in-action, such as unpaid accumulation of wages, pension, cash grant and constitutionally protected Privy Purse. The debts due and owing from the Life Insurance Corporation in respect of annual cash bonus were, therefore, clearly property of Class III and Class IV employees within the meaning of Article 31, clause (2). And so also was their right to receive annual cash bonus for the period from the date of commencement of the impugned Act up to March 31, 1977, for that was a legal right enforceable through a Court of law by issue of a writ of mandamus. (Vide the observations of Hegde, J., at p. 194 in the *Privy Purse case*.)”

20. Prior to the 44th Amendment of the Constitution, which led to the repeal of Article 31, by virtue of the Constitution (44th Amendment) Act, 1978, a Constitution Bench (Five Judges) of the Apex Court in **Bombay Dyeing & Manufacturing Co. Ltd. v. The State of Bombay and others, AIR 1958 SC 328**, held – unpaid wages of an employee, so earned by him, would become a debt due to him from the employer and as such was a property which could be assigned under the law. The observation was made in the context where, under the provisions of the Bombay Labour Welfare Fund Act, unclaimed accumulated wages of employees working with several private entities, stood transferred to a body constituted



under the said Act. The context being different but the principle of the unpaid wage of an employee, so earned by him, is a property continued to be reiterated, even subsequently, by another Constitution Bench (Five Judges) of the Apex Court in **Maharana Shri Jayvantsinghji Ranmalsinghji v. The State of Gujarat and others, AIR 1962 SC 821.**

21. With repeal of Article 31, right to property continued to remain as Constitutional Right, by virtue of insertion of Article 300A.

Article 21 – Right to life- Receipt of wages/salary/dues is one such facet.

22. A Constitution Bench (Five Judges) of the Hon'ble Supreme Court of India in **Olga Tellis and others v. Bombay Municipal Corporation and others, (1985) 3 SCC 545**, has held that right to livelihood, which is comprehended in the right guaranteed by Article 21 of the Constitution, cannot be deprived, except according to the procedure established by law.

23. The principles laid down by the Apex Court in **Olga Tellis (supra)**, stand reiterated by a Constitution Bench (Nine Judges) in **Justice K.S. Puttaswamy (Retd.) & another v. Union of India and others, AIR 2017 SC 4161**, in the following terms:



“114. In *Olga Tellis v Bombay Municipal Corporation*¹⁹⁵, Chandrachud C J, while explaining the ambit of Article 21 found a rationale for protecting the right to livelihood as an incident of the right to life. For, as the Court held, deprivation of livelihood would result in the abrogation of the right to life: “148. The sweep of the right to life conferred by Article 21 is wide and far reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the 195 (1985) 3 SCC 545 PART I 111 life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life...”
(Emphasis supplied)

24. In *M/s Shantistar Builders v. Narayan Khimalal*

Totame & others, (1990) 1 SCC 520, the Hon'ble Apex Court held:

“9. Basic needs of man have traditionally been accepted to be three - food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller



development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation.”

(Emphasis supplied)

25. That ‘right to life’ includes ‘right to livelihood’ stood settled way back in by a Constitution Bench of the Apex Court in the year 1991. In **Delhi Transport Corporation v. D.T.C. Mazdoor Congress & others, 1991 Supp(1) SCC 600**, while dealing with the constitutional validity of Regulation 9(b) of the Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, enabling the employer to terminate services of the employee by issuance of one month notice or payment in lieu thereof, the Court held that:

“262. The right to life includes right to livelihood. The right to livelihood therefore cannot hang on to the fancies of individuals in authority. The employment is not a bounty from them nor can its survival be at their mercy. Income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental. Fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications. That will be a mockery of them.”

“316. ...It would, further, be held that right to public employment which includes right to continued public employment till the employee is superannuated as per rules or compulsorily retired or duly terminated in accordance with the procedure established by law is an integral part of right to livelihood which in turn is an integral facet of right to life assured by Art. 21 of the Constitution. Any procedure prescribed to deprive such a



right to livelihood or continued employment must be just, fair and reasonable procedure. In other words an employee in a public employment also must not be arbitrarily unjustly and unreasonably be deprived of his/her livelihood which is ensured in continued employment till it is terminated in accordance with just, fair and reasonable procedure...”

(Emphasis supplied)

26. It was further held that income is the foundation of many fundamental rights and when work is the sole source of income, the right to work becomes as much fundamental and fundamental rights can ill-afford to be consigned to the limbo of undefined premises and uncertain applications.

27. That right to life, enshrined in Article 21, would include right to livelihood, stood reiterated by the Apex Court in **D.K. Yadav v. J.M.A. Industries Ltd., (1993) 3 SCC 259**, in the following terms:

“12. ...Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious content of dignity of person would be reduced to animal existence...”

28. In **Chameli Singh & others v. State of U.P. & another, (1996) 2 SCC 549** (Three Judges), the Apex Court observed:

“8. ...Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education medical care and shelter. These are basic human rights known to any civilised society...”



29. A salaried person by and large depends upon income from salary for his sustenance and sustenance of his family and if he is not paid salary despite working for a long period, will it not affect his life and liberty? This amounts to denial of basic human rights of a citizen and would also amount to deprivation of his life and liberty guaranteed to every citizen under Article 21 of the Constitution. (**Professor Devendra Mishra v. University of Delhi, 167 (2010) DLT 259**).

30. Income of a person is the cornerstone of many of his fundamental rights. This can be interpreted to mean that receiving of income is a foundational feature of the Right to Livelihood. Thereby, it becomes obvious that a deprivation of income on part of the State directly violates the Right to Life under Article 21.

31. The State through its inaction has thwarted self-development of the employees and his family who were deprived of their hard earned money. After all, a man may use his income for purposes other than the three basic needs which have been mentioned in **Shantistar** (supra). Thereby the state prevented the welfare of its own citizens which goes against the core objectives of a welfare state like India.



32. There is multiplicity of legislations whereby the state has imposed a duty on varied Departments to ensure that their employees enjoy a decent standard of living. Procedure for timely disbursement is prescribed and the employee un-refutingly complied with the same. Therefore, when the State did not disburse the salaries to its employees despite having the money in its coffers, money which was ready to be disbursed, it was clearly engaging in practicing double standards.

33. The State through its administrative inaction has clearly desecrated the dignity which is inherent in its employees. Thereby, the State has also acted contrary to the provisions of Chapter IV and Chapter IV A of the Constitution of India. In **Sudhir Chandra Sarkar v. Tata Iron and Steel Co. Ltd., (1984) 3 SCC 369I**, Hon'ble the Apex Court observed-

“16. Article 37 provides that “the provisions contained in Part IV — Directive Principles of State Policy, shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws”. Article 41 provides that “the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”. Article 43 obligates the State “to secure, by suitable legislation to all workers, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure...Pension and gratuity are both retiral benefits



ensuring that the workman who has spent his useful span of life in rendering service and who never got a living wage, which would have enabled him to save for a rainy day, should not be reduced to destitution and penury in his old age. As a return of long service he should be assured social security to some extent in the form of either pension, gratuity or provident fund whichever retiral benefit is operative in the industrial establishment. It must not be forgotten that it is not a gratuitous payment, it has to be earned by long and continuous service.”

34. It can clearly be seen that none of the three basic needs of man mentioned in **Shantistar** (Supra) can be acquired without monetary power. Thereby, through its inaction the state has clearly exhibited a lethargic and callous, attitude towards disbursement of its mandated duties. Therefore, the inaction of the state clearly enables a violation of the Right to Life as mandated under the Constitution of India.

35. Coming to the facts of the present case, an employee, i.e., a salaried person primarily depends upon his income from salary for the purpose of subsistence of his family. In our considered view, if such a salaried person is not paid his due and admissible salary despite having zealously worked and served the State, the same will obviously affect his life and liberty. This definitely would amount to denial of basic human rights of a citizen and would violate fundamental right of life and liberty



guaranteed to a citizen under Article 21 of the Constitution of India.

36. Therefore, by arbitrarily denying wages to the employee right to livelihood was denied by the State without following the procedure established by law, which in our considered view, is a blatant violation of Article 21 of the Constitution of India.

Statutory Right Of Receiving Pension

37. The Apex Court in **State of W.B. v. Haresh C.Banerjee & others, (2006) 7 SCC 651**, has held that pension is not a bounty payable on the sweet will and the pleasure of the Government and to receive pension is a valuable right of a government servant, is a well-settled legal proposition.

38. Pension, as is well established, is the deferred portion of the compensation for rendering long years of service. It is a hard-earned benefit, accruing to an employee in the nature of property. [**State of Jharkhand v. Jitendra Kumar Srivastava, (2013) 12 SCC 210; Veena Pandey versus Union of India & Others, 2021 SCC Online SC 1078**]

39. Emphasizingly, the Hon'ble Supreme has held that



pensionary provisions must be given liberal construction more so as a social welfare measure. It is not a bounty to be dispersed contrary to the rules, but very basis for grant of such pension is to facilitate a retired government employee, live with dignity, in the winter of his life. This fundamental principle must be kept in mind while taking action, depriving benefits which ought not to be done, unreasonably, more so, on technicalities. [*V. Sukumaran v. State of Kerala*, (2020) 8 SCC 106; *State of W.B. v. Haresh C. Banerjee and others*, (2006) 7 SCC 651]

40. We may only extract, for benefit, both of the employer and the employee, as to how another Constitution Bench of the Hon'ble Supreme Court elucidated the principles behind the policy for grant of pension in *D.S. Nakara v. Union of India*, (1983) 1 SCC 305.

“19. What is a pension? What are the goals of pension? What public interest or purpose, if any, it seeks to serve? If it does seek to serve some public purpose, is it thwarted by such artificial division of retirement pre and post a certain date? We need seek answer to these and incidental questions so as to render just justice between parties to this petition.

20. The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in *Deokinandan Prasad v. State of Bihar* [(1971) 2 SCC 330 : AIR 1971 SC 1409 : 1971 Supp SCR 634 : (1971) 1 LLJ 557] wherein this Court



authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in *State of Punjab v. Iqbal Singh*. [(1976) 2 SCC 1 : 1976 SCC (L&S) 172 : AIR 1976 SC 667 : (1976) 3 SCR 360]

21. There are various kinds of pensions and there are equally various methods of funding pension programmes. The present enquiry is limited to non-contributory superannuation or retirement pension paid by Government to its erstwhile employee and the purpose and object underlying it. Initially this class of pension appears to have been introduced as a reward for loyal service. Probably the alien rulers who recruited employees in lower echelons of service from the colony and exported higher level employees from the seat of Empire, wanted to ensure in the case of former continued loyalty till death to the alien rulers and in the case of latter, an assured decent living standard in old age ensuring economic security at the cost of the colony.

22. In the course of transformation of society from feudal to welfare and as socialistic thinking acquired respectability. State obligation to provide security in old age, an escape from undeserved want was recognised and as a first step pension was treated not only as a reward for past service but with a view to helping the employee to avoid destitution in old age. The quid pro quo was that when the employee was physically and mentally alert, he rendered unto master the best, expecting him to look after him in the fall of life. A retirement system therefore exists solely for the purpose of providing benefits. In most of the plans of retirement benefits, everyone who qualifies for normal retirement receives the same amount (see *Retirement Systems for Public Employees* by Bleakney, p. 33)."

(Emphasis supplied)

Right To Receive Gratuity



41. Gratuity has also been held to be a statutory right which cannot be taken away. (**Allahabad Bank Retirees Assn v. All India Allahabad Bank Retired Employees Association (2010) 2 SCC 44**); **Secretary, ONGC Limited and another v. V.U. Warriar, (2005) 5 SCC 245**).

Lack of funds cannot a ground for non-disbursement of salary/emoluments

42. In **Kapila Hingorani v. State of Bihar, (2003) 6 SCC 1**, the Apex Court has observed as under:

“30. The Government companies/public sector undertakings being 'states' would be constitutionally liable to respect life and liberty of all persons in terms of Article 21 of the constitution of India. They, therefore, must do so in cases of their own employees. The government of the State of Bihar for all intent and purport is the sole shareholder. Although in law, its liability towards the debtors of the company may be confined to the shares held by it but having regard to the deep and pervasive control it exercises over the Government companies; in the matter of enforcement of human rights and/or rights of the citizen of life and liberty, the State has also an additional duty to see that the rights of employees of such corporations are not infringed.

31. The right to exercise deep and pervasive control would in its turn make the Government of Bihar liable to see that the life and liberty clause in respect of the employees is fully safeguarded. The Government of the State of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the government-owned companies/corporations who are the citizens of India. It had an additional liability having regard to its right of extensive supervision over the affairs of the company.”

“71. The States of India are welfare States. They having regard to the constitutional provisions adumbrated



in the Constitution of India and in particular Part IV thereof laying down the Directive Principles of the State Policy and part IVA laying down the Fundamental Duties are bound to preserve the practice to maintain the human dignity.”

(Emphasis supplied)

43. Further, the Apex Court in **Kapila Hingorani v. State of Bihar, (2005) 2 SCC 262**, has held that the employees have a human right as also a fundamental right under Article 21 which the States are bound to protect. Even where the public sector undertakings were unable to pay the salaries of its employees, the Apex Court directed the State to disburse the same on the basis of the aforesaid principle. We see it fit to quote as under:-

“37. We make it clear that we have not issued the aforementioned directions to the States of Bihar and Jharkhand on the premise that they are bound to pay the salaries of the employees of the public sector undertakings but on the ground that the employees have a human right as also a fundamental right under Article 21 which the States are bound to protect. The directions, which have been issued by this Court on 9-5-2003 [(2003) 6 SCC 1 : 2004 SCC (L&S) 586] as also which are being issued herein, are in furtherance of the human and fundamental rights of the employees concerned and not by way of an enforcement of their legal right to arrears of salaries...”

(Emphasis supplied)

44. We notice that the Court was dealing with a case, where salaries of several employees of instrumentalities owned by the State were not disbursed and on the basis of news paper



report a public spirited citizen, a Supreme Court lawyer, had invited attention of the Court to the apathy on the part of the State.

45. Financial difficulties of employer cannot be a ground for non-payment or delayed payment of wages to workmen. Obviously, the State has not pleaded financial bankruptcy. Also it has not sought exercise of power declaring financial emergency envisaged under Article 360 of the Constitution of India.

State - a Model Employer

46. The Apex Court in **State of Jharkhand and another v. Harihar Yadav and others, (2014) 2 SCC 114**, observed:

“52. Having regard to the position that has emerged, we are compelled to dwell upon the role of the State as a model employer. In *Som Prakash Rekhi v. Union of India*, (1981) 1 SCC 449, Krishna Iyer, J., has stated thus: -

"Social justice is the conscience of our Constitution, the State is the promoter of economic justice, the founding faith which sustains the Constitution and the country is Indian humanity. The public sector is a model employer with a social conscience not an artificial person without soul to be damned or body to be burnt."

53 In *Gurmail Singh and others v. State of Punjab and others*, (1991) 1 SCC 189 it has been held that the State as a model employer is expected to show fairness in action.

54. In *Balram Gupta v. Union of India and Another*,



1987 Supp1 SCC 228 the Court observed that as a model employer the Government must conduct itself with high probity and candour with its employees.

55. In State of Haryana v. Piara Singh, (1992) 4 SCC 118 the Court has ruled that the main concern of the court in such matters is to ensure the rule of law and to see that the Executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16.

56. In Bhupendra Nath Hazarika and another v. State of Assam and others, (2013) 2 SCC 516 while laying emphasis on the role of the State as a model employer, though in a different context, the Court observed:

"65.....It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized."

"57. If the present factual matrix is tested on the anvil of the aforesaid principles, there can be no trace of doubt that both the States and the Corporations have conveniently ostracized the concept of "model employer". It would not be wrong to say that they have done so with Pacific calmness, sans vision, shorn of responsibility and oblivious of their role in such a situation. Their action reflects the attitude of emotionlessness, proclivity of impassivity and deviancy with cruel impassibility. Neither of the States nor the Corporations have even thought for a moment about the livelihood of the employees. They have remained totally alien to the situation to which the employees have been driven to. In a State of good governance the Government cannot act like an alien. It has an active role to play. It has to have a constructive and progressive vision....."



47. The Corporate and Industrial Houses are expected by the Indian State to take measures which provide a decent standard of living to members of the society generally and more specifically, to their employees. Therefore, the State has the duty to set an example of being a model employer to its employees. If State does itself does not give salary to its employees for their hard work then how can it be expected that the private entrepreneur will take care of their employees.

Litigation Policy Of State

48. We notice that State has formulated a Litigation Policy with the avowed object of not only reducing litigation, saving avoidable cost on unproductive litigation; but also reducing avoidable load on judiciary with respect to Government induced litigation. This is in tune with the mandate of Article 39-A of the Constitution of India, obligating the State to promote equal justice. Now, if the employees are not paid their salaries within time, obviously, they are left with no remedy but to rush to the Courts.

49. Of late, litigation pertaining to employees of the State has increased and it is not that State is the petitioner. The action assailed is of mis-governance or avoidable



omissions on the part of the Government. Why should the State force an employee to litigate in a case where emoluments/salaries, which are undisputed, are not disbursed in time.

50. In the light of the recommendation of 13th Finance Commission, the State of Bihar has formulated the State Litigation Policy, 2011, notified on 31st March 2011. The Policy is comprehensive, self speaking and self serving, though, perhaps, with the passage of time, may require a review. Be that as it may, as of date, the said policy is binding, more so, on the employer. The object of the policy is to “transform the State Government into an efficient and responsible litigant” and also to deal with the genuine grievances of the employee with reasonable dispatch. In the Policy, the State terms itself to be a ‘responsible litigant’ and for that term to mean – “(a) That litigation will not be resorted to for the sake of litigating. (b) That false pleas and hyper-technical points will not be taken and shall be discouraged. (c) Ensuring that the correct facts and all relevant documents are placed before the Court. (d) That nothing shall be suppressed from the court and there will be no attempt to mislead any court or Tribunal.”

51. As per clause 1.2, the Policy is based on the



recognition “that it is the responsibility of the Government to protect the rights of the citizens, to respect fundamental rights and that those in charge of the conduct of the Government litigation should never forget these basic principles.”

52. In terms of clause 1.3 underlying objective of the Policy is also to reduce pressure on “the overloaded judiciary and expedite dispensation of justice.”

53. Clause 2 of the Policy provides for establishment of a mechanism, though not termed, but in the nature of pre-litigation consideration/resolution of the dispute. At various levels, the Empowered Committee is mandated to be constituted, enabling the employees to vent out their grievances prior to initiation of litigation.

54. Part IV of the said Policy deals with prevention of avoidable litigation. The relevant portion thereof is extracted as under:-

“IV. PREVENTION/CONTROL OF AVOIDABLE LITIGATION

A

4. A Setting up Grievance Redressal System

4. A(1). Very often the major causes of litigation involving the State Government are from arbitrariness in decision making or non application of mind or non-response/ improper response to representations made by employees, including retired employees/ parties. It is seen that in most cases in respect of service matters the cause of action arises out of relief not being given as per the Rules, Government instructions or policy decisions as are in force. It is also seen that in most cases before the matter reaches the Court the affected



party undeservedly spends a lot of his time and effort over redressal of his grievance through normal administrative channels. In this situation all Departments of the State Government shall set up effective Grievance Redressal Committees in order to pre-empt a large number of avoidable litigation.

4. A (2). It shall be mandatory for employees, including those retired, to seek redressal, at the first instance, through this system before approaching the Courts.

4. A(3). A time limit of eight weeks or so may be fixed for deciding such representations.

4. A(4). Such Grievance Redressal Committees shall be set up in each Department at the State Level, District Level and Sub-Divisional Level and each of them shall have a Grievance Cell. All cases and issues at the request of the aggrieved party shall be reviewed to redress genuine grievances.

4. A(5) The Department Level Grievance Committee shall be headed by the Principal Secretary/ Secretary of the Department concerned and shall meet once a month to review the efficiency of the Grievance Redressal System in the Department. Similarly at the District and Sub-Divisional Level, the Committee shall be headed by the District Magistrate or Sub Divisional Officer, as the case may be. The District Sub Divisional Level Grievance Redressal Committees shall meet once every month on the first Tuesday of each month; if this is a holiday, the Committee will meet on the next working day excluding "Janata ka Darbar" days, i.e., Mondays and Thursdays. Where it is found that certain Government instructions require to be reviewed, it shall refer the same to the State Level Empowered Committee. As seniority matters are a major source of litigation these shall be resolved expeditiously by the Department and seniority lists should be updated, printed and published regularly.

B

4. B. Quick Action on Representations/ Legal Notices

4.B(1). A legal notice is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Nowadays such notices have become a formality. When such a legal notice is served upon any Department asking for the relief the same should be decided expeditiously in accordance with the prevalent Rules/ Instructions and by a detailed speaking order.



Timely response would avoid waste of public money and promote expeditious work in Court in cases which deserve to be attended to.

4. B(2). While passing orders in original jurisdiction or in appeals in respect of disciplinary proceedings a detailed speaking order should be passed. It is the bounden duty of the enquiry officer to follow all the prescribed procedures for conducting the enquiry so that no lapse occurs in the procedural parts and orders are not set aside on that ground and the matter is remanded back for fresh decision. Officers should be trained periodically in these aspects.

4.B(3). While deciding cases relating to seniority of employees, the decision should be taken promptly and strictly in accordance with the Rules so that the interest of the employees is not jeopardized due to a delayed decision. ...”

(Emphasis supplied)

55. It seems that the Policy was never put to practice, for, had it been so, all adjudicatory forums, including this Court would not have been flooded with litigation. The information obtained from the Registry reveals that 39,000 (approx.) [36,596 (Group 13, 14 and 15) original + 2191 (LPA)] cases pertaining to the employees’ dispute with the State Government/ its instrumentalities are pending consideration before this Court. Methods of alternative dispute resolution must be implemented so as to reduce this number so far as possible.

56. The Hon’ble Supreme Court speaking through Hon’ble Mr. Justice M.M. Shantanagoudar in **High Court of Judicature at Madras Rep. by its Registrar General v. M. C. Subramaniam & Ors., (2021) 3 SCC 560**, held that:-

“13. The provisions of Section 89 CPC must be



understood in the backdrop of the longstanding proliferation of litigation in the civil courts, which has placed undue burden on the judicial system, forcing speedy justice to become a casualty. As the Law Commission has observed in its 238th Report on Amendment of Section 89 of the Code of Civil Procedure, 1908 and Allied Provisions, Section 89 has now made it incumbent on civil courts to strive towards diverting civil disputes towards alternative dispute resolution processes, and encourage their settlement outside of court (Para 2.3). These observations make the object and purpose of Section 89 crystal clear — to facilitate private settlements, and enable lightening of the overcrowded docket of the Indian judiciary. This purpose, being sacrosanct and imperative for the effecting of timely justice in Indian courts,...”

(Emphasis supplied)

57. The importance and fundamental nature of salary and other emoluments to be paid to an employee place an obligation upon the machinery of the State to ensure that such cases where the claims are bonafide and genuine, do not get delayed as a result of the judicial process and pendency and that they should be resolved at the pre-litigation stage itself.

58. An employee has a constitutional right to receive wages/ salary/emoluments/retiral benefits within time, so also State is under a constitutional obligation and duty to disburse the same.

59. In the instant case, the law, as discussed above, renders the path clear. The Husband of the petitioner, employee herein, rendered services for a period of thirty-four years from 12.05.1961 to 31. 12. 1996. It is an admitted



position, as evidenced by Annexure-3, page-34, dated 22.11.1996, that dues of the various period were to be paid to the employee, which was never done. Post-retirement, the employee and later the petitioner made several representations to various authorities over the year for disbursal of arrears in salary and retirement benefits which unfortunately fell on deaf ears. It is saddening that the employee was denied the enjoyment of the fruits of his labour only on account of procedural wrangles and back and forth of bureaucratic channels and for no fault of his.

60. The counter affidavit filed by the State admits that despite the passage of twenty-five years, pension papers and other no dues certificates have yet not been prepared. It is only six months after the filing of the present writ petition that the State now wishes to ascertain the facts vide communications dated 27.10.2021, Annexure-B to E, from different authorities. It is further noted, as on the date of filing of the said counter affidavit, i.e. 25.04.2022, no responses to such departmental memos are reflected from the record. Such a callous and lax attitude on the part of the State which has been held by Hon'ble the Supreme Court to be a model employer does not fit the description.



61. With the passage of several years, from the employee's superannuation to the payment of post retiral benefits resulting from this order, it would no longer serve the cause of justice if the State is let off by doing just that.

62. Hon'ble the Supreme Court in **Nalabati Behera v. State of Orissa, (1993) 2 SCC 746**, while discussing the public law remedy of compensatory or exemplary damages held as under:-

“34. The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting “compensation” in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making ‘monetary amends’ under the public law for the wrong done due to breach of public duty, of not protecting the fundamental rights of the citizen. The compensation is in the nature of ‘exemplary damages’ awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation



under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law.”

(Emphasis supplied)

63. It has also been recognized by Hon’ble a bench of Hon’ble Allahabad High Court headed by Hon’ble Chief Justice Dr. D. Y. Chandrachud [as His Lordship then was] in **Rekha Devi v. State of Uttar Pradesh, Civil Writ No.24947 of 2014 decided on May 2, 2014**, that a High Court is not powerless to issue exemplary damages under Article 226 of the Constitution of India.

64. Plenary power of this Court under the Constitution is wide enough.

65. Therefore, in the considered opinion of this Court, the petitioner is not only entitled to arrears in salary (para 4), post-retirement benefits along with interest as per law thereupon, but also punitive damages/costs on the ground of inordinate delay and for having had to run from pillar to post to get the earned dues.

66. Questions of law answered hereinunder:

1. Whether denial of earned remuneration and post retiral benefits constitute an infringement of the right to life under Article 21 of the Constitution of India?



67. Hon'ble, the Supreme Court has, as discussed above, held in several judgments that salary and equally post retiral benefits, which have been duly earned, are rights vesting in such employee. Denial of wages and post retiral benefits in the instant case is a classical case of infringement of Article 21, owing almost entirely to the indifferent attitude of the State towards its employees and former employees. In **M/s Shantistar Builders (supra)**, the three primary actions of human existence have been listed, and in **D. K. Yadav (supra)**, livelihood is recognized as a facet of Article 21.

2. Whether the acts of the State in delaying the disbursement of retiral benefits can be countenanced given the established notion of the State as a Model Employer?

68. The State, in its myriad of functions, is not only an employer but is also a lawmaker. The lawmaker has stipulated various methods to regulate employment, balancing the interest of both the employer and the employee, conceiving redressal mechanisms to ensure timely resolution of disputes, and evolving ways to protect the vulnerable party in a particular transaction. In the instant case and many other such cases, the State itself has laid waste to its own rules and regulations-



calling into question the very basis of such laws and regulations.

69. As the stipulated model employer, it is incumbent upon the State to ensure the proper application of such regulations to set an example for other entities. This responsibility has clearly been abdicated.

3. Whether a case is made out for punitive damages/heavy cost in the instant set of facts in light of the inordinate lapses?

70. Hon'ble the Supreme Court held that exemplary damages are awarded in cases where the right to life under Article 21 has been grossly infringed. In the instant case, the petitioner's husband retired in 1996, which is 25 years ago. However, till today, documents disbursement of salary, including gratuity and pension etc., are being sought from various departments. Hence the answer has to be in the affirmative.

71. This Court further takes strong exception to the State's stand taken before this Court to dismiss the present petition in light of the light of recent efforts being made, evidenced by the numerous memoranda issued on 27.10.2021.

72. In the considered view of this Court, this case is fit for an award of exemplary damages/costs over and above the dues



of the petitioner's husband, to the tune of Rs.5,00,000/- (Rupees Five Lacs).

4. Whether the State is obligated to constitute an effective grievance redressal mechanism with respect to payment of legitimate dues of a salaried employee, including pension and other post retiral benefits, to ensure that earned dues are disbursed on time?

73. As already discussed, India is a welfare State and has been termed a model employer. The directive principles of State policy which are fundamental to the governance of the State, impose an obligation upon the State to ensure a living way and decent standard of living. Further, it has been observed that a salaried person is almost entirely dependent upon the same, and delay or denial would impede such obligation infringing the very core of Article 21 guaranteeing a dignified existence.

74. Considering the large number of such cases filed before this Court, it would be appropriate in our view to ask the Chief Secretary to conceive an accessible and easy mechanism for timely redressal of salary and pension-related grievances. Such a mechanism developed with a holistic view will go a long way in extinguishing the need for an aggrieved



person to knock on the doors of justice.

75. In the light of the discussion above, we dispose of the writ petition in the following manner:-

- (a) The respondents-authorities shall positively pay the entire amount constituting unpaid salary, gratuity, pension etc., to the writ petitioner, namely **Lilawati Mishra**, within two months from today. The Department's principal Secretary shall file an affidavit of compliance within two months from today. For compliance the matter be listed on 12.07.2022.
- (b) Petitioner shall be entitled to interest on such amounts @ 18% per annum or the prevalent statutory interest, whichever is lower.
- (c) Also, She shall be entitled to an exemplary cost quantified at Rs.5,00,000/- (Rupees five lacs). It shall be open for the State to recover the same from the erring officials.
- (d) The Chief Secretary to the Government shall ensure that the mechanism in terms of the Bihar State Litigation Policy, 2011 is not only put in place, but also made effectively functional. He shall also



endeavour to provide further mechanism, enabling the employees to vent out their grievances, be it of whatever nature. One such tool is setting up a 'Web Portal' at the level of the Principal Secretary/ Secretary of the concerned Department(s), where the employees can lodge their grievances/complaints. Such grievances/complaints shall be processed and adequately responded to within a reasonable period. This would facilitate speedy redressal of genuine grievances and prevent unnecessary litigation, clogging the wheels of the administration of justice. Such endeavour shall only be in the spirit of Litigation Policy, framed by the State Government. We see a significant advantage in the use of information and technology. It would result in effective and efficient redressal of grievances, if any, and improve efficiency in the affairs of governance of the State, further instilling confidence and trust amongst the employees.

- (e) It is to be noted that this Court passed similar directions on an earlier occasion to set up a web



portal. However, no progress in this regard has been reported to the Court.

- (f) All Grievances Redressal Committees stipulated under the Litigation Policy shall be made immediately functional and operational.
- (g) In the light and spirit of clause (c) of sub-section (1) of Section 89 of the Code of Civil Procedure, an endeavour shall be made of having the matters of the employees resolved through the process of judicial settlement, including settlement through Lok Adalat. The Patna High Court Legal Services Authority is requested to have the needful done.
- (h) We direct the State to immediately undertake such a measure at the earliest.
- (i) We also request the learned Advocate General, State of Bihar, who plays a pivotal role in the implementation of the Litigation Policy to undertake such a drive at the earliest. This he can do by engaging all the stakeholders, more specifically the Principal Secretaries of the concerned Departments.

76. The writ petition stands disposed of with the



aforesaid directions/observations.

77. Interlocutory Application, if any, shall stand disposed of.

(Sanjay Karol, CJ)

S. Kumar, J. I agree.

(S. Kumar, J)

Sunil/P.K.P

AFR/NAFR	AFR
CAV DATE	09.05.2022
Uploading Date	11.05.2022
Transmission Date	

