IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No. 301 of 2013

Secretary, Regulated Market Committee, Sonepur	....	***Appellant***

M/s. B. Mohanty, Advocate & Associates

-versus-

Belal Mishra and another	....	***Respondents***

None

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

ORDER
06.09.2022

Order No.

10. 1. The Secretary, Regulated Market Committee has filed this appeal against an order dated 7th March 2013, passed by the learned Single Judge allowing W.P.(C) No.16075 of 2013 filed by the Respondent No.1, challenging the action of the Appellant in not disbursing his retiral benefits after retirement from his post of the Yard Man on 31st October, 2008.

2. The background facts are that the Respondent No.1 was working as Yard Man in the Regulated Market Committee (RMC), Dungripali in the district of Sonepur (the present Appellant). An audit was conducted in 1995-96 and an audit report was submitted on 19th December, 1997. It was mentioned in the report that on account of the non-submission of the documents and non-

cooperation of the Secretary of the RMC, the audit could not materialize.

3. On the basis of the said report, the present Appellant filed G.R. Case No.46 of 1996 under Section 409 IPC. The case was investigated. A final report was submitted by the Investigating Officer, finding no case against the Respondent No.1.

4. The J.M.F.C., Rampur suo motu issued notice to the informant to file a protest petition. That order of the J.M.F.C. was quashed by this Court by an order dated 19th March, 2008 in Criminal M.C. No.3243 of 2002.

5. While the criminal matter was pending, the present Appellant started taking steps for recovery of the alleged amount. Challenging that, W.P.(C) No.358 of 2003 was filed by one Gouranga Charan Das, which was disposed of on 11th February, 2003 with a direction that no recovery would be made from the salary of the said Petitioner till completion of the departmental proceeding.

6. A direction was issued in a separate writ petition being W.P.(C) No.6874 of 2004, seeking *inter alia* a prayer for special audit. Ultimately, the special audit was ordered only on 11th October, 2004.

7. By the time of filing of the writ petition by Respondent No.1 in this Court in 2013, the special audit has still not been conducted. The Respondent No.1 retired on 31st October, 2008 itself. Initially, he filed W.P.(C) No.3763 of 2009 seeking disbursement of his retiral benefits.

8. The said writ petition was disposed of by the learned Single Judge on 19th March, 2009 directing the present Appellant to release 50% of the gratuity amount payable to the Respondent No.1 since he was a Senior Citizen by then. As far as the remaining amount was concerned, it was directed to be considered for disbursal after the disposal of the W.P.(C) No.6874 of 2004. Meanwhile, the said writ petition became infructuous. As a result, Respondent No.1 filed W.P.(C) No.16075 of 2009, seeking the reliefs mentioned hereinbefore.

9. According to the present Appellant, a sum of Rs.3,14,893.70 had to be recovered from the Respondent No.1. A Committee, constituted by the Appellant, recommended the recovery of the aforementioned sum from the Respondent No.1. The learned Single Judge noted that the earlier audit report, submitted in 1997, had lost its sanctity since the Director, Agricultural Marketing, Bhubaneswar had any way directed for a special audit in 2004. The question of therefore, effecting a recovery against Respondent No.1 on the basis of the earlier audit report, did not arise. As far as the special audit was concerned, it had not been completed even for a period of over nine years till the filing of the writ petition. In these circumstances, the learned Single Judge came to the conclusion that the inordinate delay had made it unreasonable to deprive the Respondent No.1 from the retiral benefits. Accordingly, it was directed to be released to Respondent No.1 within three months.

10. It must be noted that in the present appeal, pursuant to an order dated 5th February 2014, the entire amount due to the Respondent

No.1 was directed to be paid except the amount which had been recommended to be recovered. The Appellant was directed to give an opportunity of hearing to Respondent No.1 and take the decision in the matter. Pursuant thereto an affidavit has been filed on 17th August, 2014 enclosing a copy of the order dated 6th May 2014, whereby the Appellant rejected the claim of the Respondent No.1. According to the Appellant, even after adjustment of the retiral dues, Respondent No.1 was further liable to pay of Rs.1,67,856.70 to the Regulated Market Committee. The balance amount of Rs.34,327/- by way of gratuity has already been paid to the Respondent No.1.

11. Having heard learned counsel for the Appellant, the Court is not persuaded that the learned Single Judge has committed any error in directing release of the retiral dues of the Respondent No.1 by the present Appellant.

12. The facts of the case narrated above clearly indicate that for a period of over nine years, no action whatsoever was taken by the Appellant to conduct a special audit. Meanwhile, the Respondent No.1 superannuated and he was made to suffer on account of denial of his retiral benefits because of the indecision of the Appellant. There was no justifiable explanation offered for the inordinate delay in the Appellant taking action in conducting a special audit. In the circumstances, the learned Single Judge was perfectly justified in holding that Respondent No.1 cannot be made to suffer for the lapses on the part of the Appellant in not to even conducting a

special audit prior to recovering the alleged due amount from the retiral benefits of the Respondent No.1.

13. Consequently, the Court is not persuaded to interfere with the impugned order of the learned Single Judge. The appeal is accordingly dismissed.

14. Whatever is the amount still due to the Respondent No.1 should be disbursed to him within a period of eight weeks.

(Dr. S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

S. Behera