

Court No. - 11

Case :- SERVICE SINGLE No. - 1150 of 2001

Petitioner :- Sant Prasad Seth

Respondent :- State Of U.P. and 3 Ors

Counsel for Petitioner :- Abdul Jabbar, Nitin Khanna, Preeti Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Sudhir Agarwal,J.

1. Heard Sri Nitin Khanna, learned counsel for petitioner and learned Standing Counsel for respondents.

2. The only grievance of petitioner is that Smt. Tara Dayalani wife of petitioner, was appointed as Mukhya Sevika, Bal Vikas Pariyojna Baldi Sarai, Sultanpur in 1984. She met an accident and died on 12.11.1995. However, her post-death dues, namely, Provident Fund, Gratuity and arrears of salary etc. were not paid, for which representations were made by petitioner, pursuant whereto Deputy Director, Bal Vikas Evam Pushtahar, U.P., Lucknow vide order dated 03.07.1998 (Annexure-8 to writ petition) directed District Programme Officer, Gonda to clear the outstanding dues of deceased, Tara Dayalani but even then the same has not been paid.

3. In the counter affidavit filed by respondents I do not find any adequate justification for not making payment. On the contrary, in para 14 of counter affidavit it is admitted that dues of Smt. Tara Dayalani could not be released. Para 14 of counter affidavit reads as under:

"14. That the contents of paragraph-13 of the writ petition are admitted only to the extent it has been stated that the dues of Smt. Tara Dayalani could not be released till date. So far as the amount is concerned, it is submitted that figure can be given only after calculating the amount."

4. Today also learned Standing Counsel appearing for respondents could not give any satisfactory explanation for non payment of dues.

5. It is thus evident that denial for payment of dues of deceased employee for the last more than 24 years is without any basis and patently arbitrary. It shows that adamant and illegal attitude on the part of respondents. Withholding of post death dues for years together is not only illegal and arbitrary but a sin if not an offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillar of our constitution.

6. 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 and their legal heirs 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.

7. In our system, the Constitution is supreme, but the real power vest in the people of India. The Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and in particular when the person subject to harassment is his own employee.

8. Regarding harassment of a common man, referring to observations of Lord Hailsham in *Cassell & Co. Ltd. Vs. Broome*, 1972 AC 1027 and Lord Devlin in *Rooks Vs. Barnard and others* 1964 AC 1129, the

Apex Court in **Lucknow Development Authority Vs. M.K. Gupta JT 1993 (6) SC 307** held as under:

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

9. The above observations as such have been reiterated in **Ghaziabad Development Authorities Vs. Balbir Singh JT 2004 (5) SC 17**.

10. 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 or 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.

11. In **Registered Society Vs. Union of India and Others (1996) 6 SCC 530** the Apex court said:

"No public servant can say "you may set aside an order on the ground of mala fide but you can not hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary".

12. In **Shivsagar Tiwari Vs. Union of India (1996) 6 SCC 558** the Apex Court has 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."

13. In **Delhi Development Authority Vs. Skipper Construction and Another AIR 1996 SC 715** has held as follows:

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

14. Now, coming to another aspect of the matter, if dues are paid with extra ordinary delay, the Court should award suitable interest which is compensatory in nature so as to cause some solace to the harassed employee. No Government official should have the liberty of harassing a hopeless employee or his heirs by withholding his/her lawful dues for a long time and thereafter to escape from any liability so as to boast that nobody can touch him even if he commits an ex facie illegal, unjust or arbitrary act. Every authority howsoever high must always keep in mind that nobody is above law. The hands of justice are meant not only to catch out such person but it is also the constitutional duty of Court of law to pass suitable orders in such matters so that such illegal acts may not be repeated, not only by him/her but others also. This should be a lesson to everyone committing such unjust act.

15. Interest on delayed payment of dues has been upheld time and against in a catena of decision. This Court in **Shamal Chand Tiwari Vs. State of U.P. & Ors. (Writ Petition No.34804 of 2004)** decided on 6.12.2005 held:

"Now the question comes about entitlement of the petitioner for interest on delayed payment of retiral benefits. Since the date of retirement is known to the respondents well in advance, there is no

reason for them not to make arrangement for payment of retiral benefits to the petitioner well in advance so that as soon as the employee retires, his retiral benefits are paid on the date of retirement or within reasonable time thereafter. Inaction and inordinate delay in payment of retiral benefits is nothing but culpable delay warranting liability of interest on such dues. In the case of State of Kerala and others Vs. M. Padmnanaban Nair, 1985 (1) SLR-750, the Hon'ble Supreme Court has held as follows:

"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."

In this view of the matter, this Court is of the view that the claim of the petitioner for interest on the delayed payment of retiral benefits has to be sustained."

16. It has been followed and reiterated in **O.P. Gupta Vs. Union of India and others (1987) 4 SCC 328**, **R. Kapur Vs. Director of Inspection (1994) 6 SCC 589**, **S.R. Bhanrate Vs. Union of India and others AIR 1997 SC 27**, **Dr. Uma Agarwal Vs. State of U.P. & another (1999) 3 SCC 438** and **S.K. Dua Vs. State of Haryana and another (2008) 3 SCC 44**.

17. A Division Bench of this Court has also considered the question of award of interest on delayed payment of dues recently in **Rajeshwar Swarup Gupta Vs. State of U.P. & others 2011 (2) ADJ 608** and, relying on the Apex Court decision in **M. Padmnanaban Nair (supra)** and its several follow up as also an earlier Division Bench judgement of

this Court in Smt. Kavita Kumar Vs. State of U.P. & others (2008) 119 FLR 787, has awarded 12% interest in the said case.

18. In view of the above, I have no hesitation in holding that non payment of dues to petitioner is wholly arbitrary and unreasonable. There was no justification at all for respondents to delay payment thereof.

19. In a case where the person who has invoked extraordinary equitable jurisdiction satisfying the Court that in the hands of authorities of state instrumentality, individual has suffered grievously, the Court, while deciding the matter, can also pass an order of exemplary cost compensatory in nature so that such authorities may not recur the similar negligence in future. In Gural Singh Vs. State of Punjab and another, AIR 2005 SC 2755 it was held that the Court must do justice by promotion of good faith and prevent law from crafty invasion.

20. In view thereof, writ petition is allowed. Respondents are directed to pay outstanding dues payable to legal heirs of deceased employee within a period of two months from the date of production of a certified copy of this order with 8% interest, which shall be computed from the date when Deputy Director issued letter dated 03.07.1998 (Annexure-8 to writ petition) till the date of payment.

21. Since petitioner has been compelled to file writ petition though it could have been avoided and has been harassed for the last more than 20 years, therefore, in my view petitioner is entitled for cost which I quantify to Rs. 20,000/-.

Order Date :- 21.1.2020

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1. This is an application application seeking condonation of delay in filing recall application.
2. Cause shown for delay in filing recall application is sufficient. It is hereby condoned. The application is accordingly allowed.

Order Date :- 21.1.2020

AK-(Appol. No. 56381 of 2015)

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1. This is an application seeking recall of this Court's order dated 13.11.2014 whereby the writ petition was dismissed.
2. Cause shown for non appearance is sufficient. Order dated 13.11.2014 is hereby recalled. The application is accordingly allowed.

Order Date :- 21.1.2020

AK-(Appol. No. 56383 of 2015)