
(2003) 09 PAT CK 0061
In the Patna High Court
Case No : M.A. No. 350 of 2003

Ashok Kumar Jha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-09-2003

Acts Referred:

Citation : (2004) 1 PLJR 732

Hon'ble Judges : Ravi S. Dhavan, C.J.; Shashank Kr. Singh, J

Bench : Division Bench

Advocate : Sadanand Jha and Chakrapani, for the Appellant; R.K. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Ravi S. Dhavan, C.J.—A Circle Officer, Makdumpur, Jehanabad, has faced contempt proceedings. He has been held guilty for committing contempt and faces conviction with simple imprisonment for three days. This order was passed in a proceeding which arose out of a writ petition filed by Md. Aslam Khan and along with him six others. They are his brothers, sisters and his mother, all heirs of one Md. Hasim.

2. Why the writ petition and who is Md. Hasim are relevant. Md. Hasim was appointed as a clerk at Gaya Collectorate in 1955. He died in 1988 as a Nazir at Makdumpur Circle Office, Jehanabad. He had yet two years of service left.

3. Between 1988 and as of this year, i.e., 2003 for 15 years, the arrears of his provident fund eluded his heirs. For 15 long years the legitimate dues of this retired employee and after his death retiral benefits which provident fund is, was not paid. The heirs should not have been brought to the brink of filing a writ petition, 15 years later to seek a relief that provident fund due to their father be paid to the widow and other heirs being sons and daughters.

4. The learned Judge was not pleased that for 15 years the provident fund regained unpaid and even after issue of notice an exercise was still being carried

on to quantify the provident fund, perhaps, to locate its deposit and the records which unless ail put together the likelihood of the. provident fund being paid seemed remote. The directions issued as ad interim orders to work on the exercise to process the payment of provident fund appeared to be receiving some resistance. Apathy to work on the exercise seriously was one factor.

5. The counter affidavit which was filed in reply makes no graceful acknowledgment that the provident fund has not been paid for 15 years but offers mundane excuses that a certain form 73 and memo No. 750 were not on record and that the record was shuttling between the authorities known as "A.G. B.T.; "D.P.F.O." and "E.D.C. and ultimately when year 2000 came between the state administration and the Accountant General Bihar, there is a reference to drawing and disbursing officers and a reference to records in other offices as if an exercise on "proper verification" was put into motion and then there is some defence taken that "In this regard, the direction issued by the Chief Secretary. Bihar vide letter No. 3692/F (2) dated 9.6.03 addressed to all Commissioner and Secretaries, all Head of Department, all Subdivision Commissioner, all District Magistrate and all District Provident Fund Officer with regard to the delay disposal in the matter of final withdrawal from provident fund". In paragraph 13 it is stated that "it is thus clear from the efforts made by this Respondent that no stone has been left unturned though the result is not very bright". This Respondent is an Executive Magistrate, Jehanabad Collectorate holding an additional charge of District Provident Fund Officer, Jehanabad. He emphasises that he was taken charge only 22 April, 2003.

6. This Respondent also says that "unless the final drawl from A.G.B.T. all deductions statement are received to the District Provident Fund Officer, this Respondent is helpless in issuing the authority slip as demanded. This is to further (sic) stated that should the above required papers be made available to this Respondent, the required authority slip shall be issued without any further delay". This counter affidavit also continues to state that "the delay and the inconvenience caused which is definitely unintentional is sincerely apologized unconditionally on the part of this Respondent".

7. The man who was to be paid his provident fund is dead. The heirs have waited for 15 years to receive their dues which were due to their father (or husband) and yet the counter affidavit takes the defence that it will yet take some more time to gather the papers to process the provident fund.

8. It is not surprising that the learned Judge drew up contempt proceedings. The conscience of the Judge was to protect the widow and children who have waited for 15 years after the death of the government servant for the provident fund to be processed. This certainly is not administrative insaf.

9. Now the argument on behalf of the person who was hauled up for contempt. He says that he is not the contemnor and that legal inquiry be made to locate who the contemnor is.

10. This delayed payment of retiral dues, pension, provident fund, and arrears of salary to lesser rank of public servants from an immune soul-less state administration has resulted in large number of pending cases which afflict the Patna High Court as an endemic disease. Special Courts have been assigned to take care of these large number of cases. This contemnor contends that he should be judged on a strict proof liability. It is the submission of this counsel that if strict proof liability were to be his defence then there are many others who are responsible with him and may be he is not alone. While argument was noted it was read out to learned Counsel that such an argument needs to be noted. The submission on behalf of this Appellant, who faces punishment of contempt, is "hamko bahas nahi karna hai. Contempt to nitrogen bomb aur hydrogen bomb ki tarah hai. Is tarah yadi contempt chalta raha to contempt ka dar hat jayega."

11. Learned Counsel, who made submission, perhaps, is not incorrect because it fortifies the situation at the Patna High Court of case after case coming up before the judges in jurisdiction who engage their attention day in and day out, of pension not paid, provident fund not paid and other retiral benefits not paid. When officials are put on contempt proceedings for not arranging to deliver retiral benefits despite Court orders there are appeals which come to this Court in its appellate jurisdiction. Not honouring the judgments or the orders of the High Court, where once it has been certified that payment representing retireable benefits are due, is becoming rampant. The High Court is not the playing field to locate which babu or officer has been in slumber not to deliver pensions or retiral benefits. When the cause comes the person on the seat will be saddled with the responsibility. How many would be there in the last fifteen years is a game which the Court will not join. The State has virtually acknowledged that these payments are due without cause, putting the blame on unidentified babus is a babu red-tape.

12. In a writ petition when the State puts the blame on one or the other official, this is not a solution for the person who has not received the retiral dues. For him it is a matter of life and death. When a government employee dies, are the heirs not entitled to complain? If the retirement dues, pensions are not paid to those who are entitled to receive these dues are these citizens debarred from approaching the Court and identifying those who violate the law and order which only says pay the legitimate service dues. The high ranking officials can walk away with their salary paid in time and retiral benefits delivered timely. While those of lower ranks, like a peon, will not get retiral benefits except by chasing their dues which includes approaching the High Court. But, the High Court is only in Patna. What about a harassed retired government official who has not received his provident fund and lives in Sitamarhi, Darbhanga or Bhagalpur?

13. This is not a question which the High Court has to answer. The High Court has tried the Lok Adalat for putting up group of cases but no Lok Adalat works unless with equal measure willingness come from the side of the government to join in resolving causes.

14. Day in and day out letters come to the High Court from retired public servants that should their retiral dues be not paid by a certain date they will attempt suicide. All of these persons do not have a case pending at the High Court. Some live in hope that the High Court may do some thing about it. Some of these records have been brought to the notice of some State Counsel as and when the occasion has arisen.

15. While the Respondent, who has been held for contempt, takes a defence of strict proof liability, there are other officials, who claim sovereign immunity in not being answerable to the public first. These officers even declare, on record, that such matters of dues not paid or other service related issues cannot be inquired by the High Court and the Supreme Court as these matters are not justiciable. They claim that what they do is under sovereign power. What answer then the High Court is going to give to a class-IV employee, dead or alive, of the pension which he may not have received and his widow chases it to ward off a hand to mouth life. The nonpayment of pensions and retiral benefits has now taken a form of a virulent disease within administration in the State of Bihar. For lower ranks of public servants then it is a matter of life and death not to receive their retiral dues. The Respondent who files an appeal may be of no consequence but yet a part of the same bureaucracy which harasses his own kind in retirement. For what has been told as a defence only reiterate that an effort ought to have been made to pay the arrears but it is regretted that it could not be delivered as of now. Non-payment of retiral dues is admitted. This is a shameful defence.

16. The Court does not get an impression that any serious effort has been made by the State administration to tackle the gigantic issue which is now rampant all over Bihar. A large number of government servants of lesser ranks have not been paid their dues specially their retiral dues. After their death their widows chase the claims of their dead husbands.

17. If there are no takers to pay attention to this issue then the Court has been left with no option but to bring this endemic disease to the notice of the Chief Minister, Bihar. The Registrar General will carry this order and have it delivered to the Hon"ble Chief Minister, with a translation in Hindi.

18. In so far as the Appellant is concerned, no useful purpose will arrive in sending him alone behind the bars because according to him there are several others who are responsible. In fact, he had no remorse or regret. The learned Judge has recorded "this Court asked the Circle Officer as to whether he wants to defend himself by filing any further affidavit to which he answered in the negative." There are several cases" pending at the Patna High Court in such matters. This Court cannot certify that the order of the learned Judge was incorrect. But let this Respondent and all those who have been arrayed in the writ petition carry this case on their conscience and along with them every official who is obliged to deliver retiral dues to the lesser ranks and the High Court expects that the Chief Minister will join the High Court in resolving problem, which does exist. The Hon"ble Chief Minister needs to be made

conscious that not honouring pension and other retiral benefits to affected government employees is a disease within the administration, which exists as an epidemic. This is giving an impression that the State administration runs on the funds accumulated against pensions and retiral dues not paid and retained by the State government. The State of Bihar, and others, hold such funds in trust and will continue to hold them until paid. Not to pay as an immorality of the State government. It is unethical. Illegal of course it is.

19. Dismissed.