

(1985) 11 MP CK 0052

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 164 of 1980

Keshav Purushottam Newaskar

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 01-11-1985

Acts Referred:

Constitution of India, 1950 — Article 16, 21, 226, 23, 39A

Citation : (1986) MPLJ 609

Hon'ble Judges : T.N. Singh, J

Bench : Single Bench

Advocate : N.K. Shejwalkar, for the Appellant; N.C. Jain, Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Dr. T.N. Singh, J.

This matter is being disposed of by a short order as the facts are mostly admitted and a welcome change has taken place in the fact-situation since the filing of the petition, more than five years ago.

The petitioner was put under suspension in the year 1972 pending disciplinary enquiry but before the enquiry was completed the suspension order was revoked in the year 1977. He had several grievances then, which may be summed up under two heads. In the writ petition it was firstly contended that the subsistence allowance to which the petitioner was statutorily entitled had not been paid and a direction be issued from this Court to the respondents requiring them to discharge their statutory duties in that behalf. Secondly, the payment to be so made should be of such amount as may be truly relatable to the salary actually and legally due to the petitioner. His increments had been stopped as he was not allowed to cross the efficiency bar without any reasonable cause and this arbitrary action adversely affected the corpus of his salary. It was also petitioner's grievance that in computing the subsistence allowance his salary ought to be

refixed on the basis of the report of Pandey Pay Commission, which had been given effect from 1-1-1972. These grievances had substantial merit and hopefully and happily care is being taken by the respondents themselves to relieve the petitioner against the hardship to which he was put on their account.

It is submitted by Mr. Shejwalkar, counsel for the petitioner, that after lapse of nine years a part of the claim for subsistence allowance has been settled and to the remaining part respondents took 13 years to settle the claim but in doing so full payment, to which he was entitled on the basis of his grievances aforesaid, have not been made. In other words, the increments to which the petitioner was entitled on crossing the efficiency bar have not been reckoned and State had also not refixed petitioner's salary on the basis of Pandey Pay Commission Report. The subsistence allowance was paid on the basis of the salary payable to him in the year 1969 in the pay-scale of Rs. 275-700. A direction is, therefore, still warranted requiring the respondents to make payment of the balance amount to which the petitioner is legitimately entitled on the basis of Pandey Pay Commission Report and removal of efficiency bar. To this submission there is no challenge by Shri Jain, learned Government Advocate, who admits the factual position that orders have since been passed for removal of efficiency. Indeed, a photo-copy of the order is produced by petitioner's counsel during the course of hearing, which is placed on record. It is also admitted that steps have been taken for fixation of petitioner's salary on the basis of Pandey Pay Commission Report.

In view of the facts and circumstances the only directions to be made in this case are (1) expediting re-fixation of petitioner's salary as per Pay Commission's Report and (2) payment to him of the outstanding subsistence allowance on the basis of revised salary taking into consideration further the removal of efficiency bar. Shri Shejwalkar, however, also prays for an order for payment by the respondents of exemplary costs, by way of damages, to compensate the petitioner for illegal deprivation of his lawful dues. He has drawn my attention to the executive instructions of the State Government in this behalf contained in G.A.D. No. 2197/2355-1 (3) dated 30-9-1963 contemplating "disciplinary action" against the Enquiry Officer in a case in which the departmental enquiry is not completed within a period of one year. My attention is also drawn to the direction in the suspension order itself (Annexure I) that the petitioner shall be paid "subsistence allowance" as per rules in force, which direction, the counsel submits, remained unenforced for long periods aforesaid and in the return filed no reasonable cause has been shown for doing so.

I have given my anxious consideration to Shri Shejwalkar's submissions which have substantial force. I have taken the view in Vidya Bohare's case (M.P. No. 484/84, decided on 20-3-1985) that the right to subsistence allowance is not merely a statutory right; it is the constitutional obligation of the State to be discharged to relieve the employee concerned against destitution. In such cases a valid complaint of infringement of Article 21, as also of Articles 16 and 23, would lie in this Court. The violation of the constitutional mandate must,

according to me, visit the State with a penal liability ensuring from the consequence of the unconstitutional action by which any citizen is destituted otherwise the prime constitutional imperative ensuring the citizen a dignified existence shall carry no meaning and it would soon become a dead letter shaking public confidence in the constitutional order. If the State is allowed to violate with impunity constitutional injunction against exploitation and a citizen is forced to turn litigious and to resort to a long-drawn and expensive litigation in Civil Courts to enforce a valid claim for a "constitutional wrong", this Court's failure to discharge its constitutional duty under Article 226 would defeat the call for the "just" legal and constitutional order ordained by the Suprema lex. This court must harken to the call of Article 39A to ensure operation of a legal system which promotes justice on the basis of equal opportunity and effectively relieves an economically deprived, or a citizen suffering from any similar disability, against a grievous injury unconstitutionally inflicted on him by the State. The creative connotations of the expression "free legal aid" which I read in Article 39A enjoin a constitutional duty on this Court to short-circuit the litigative process suitably to synchronize with the fact-situation of the lis involving a constitutional issue. The Law of Tort has rather become, unfortunately, the exclusive preserve of few who can indulge in the luxury of protracted and expensive litigation but the procedural quagmire must not turn into a citizen's nightmare; it must make way for the constitutional mandate to prevail allowing the writ Court to relieve a citizen against a "constitutional wrong" instantly and efficaciously.

For a government servant drawing a paltry salary in the pay scale of Rs. 275/700, and a medico like the petitioner, who must devote more time to his profession, it would definitely be suicidal if he is allowed to tread on beaten tracks. He has to be relieved against the grievous injury he has suffered, due to the illegal and arbitrary act of the State depriving him of his lawful and constitutional dues for a long period, without any apparent justification for the constitutional wrong of a grievous nature. At the bar the learned Government Advocate, Shri Jain, has stated that the first instalment of subsistence allowance paid after 9 years was Rs. 11,000/- and the next payment made after 13 years was of Rs. 17,000/-. According to the petitioner's counsel, he has to get some more amount, to the tune of about Rs. 40 to 50 thousand, which claim, however has yet to be admitted by the State. Nevertheless, these facts are very revealing, compelling and crucial and I am moved to do what I constitutionally obligated to do in such cases. The petitioner's injury cannot only be measured in such a case in terms merely of loss of interest as his right to life and livelihood was affected by State's culpably callous acts and actions. I accept Shri Shejwalker's prayer and order that the respondents shall pay costs, which I assess at Rs. 5,000/- (Rupees five thousand), to relieve the petitioner instantly against the injury caused to him by belated payments of subsistence allowance and withholding the payment which is still due to him. It is necessary, however, to make it clear that his right to sue the respondents for adequate and appropriate compensation shall not be deemed to be extinguished by this direction. I also direct that within a

period of two months the respondents shall complete processing of refixation of petitioner's salary, computing also the increments earned, and make payment to him of the remaining dues of subsistence allowance, due payable on proper reckoning, together with the cost awarded.

In the result, the petition succeeds to the extent indicated above. No separate order of costs need be passed in view of the directions aforeasaid.

Certified copy of the order be delivered today on payment of usual charges. Refund of security amount to the petitioner shall also be made.