

(2024) 12 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : LPA No. No. 392 Of 2024

State Of Himachal Pradesh & Other

APPELLANT

Vs

Dr. Vinay Patyal & Another

RESPONDENT

Date of Decision : 09-12-2024

Acts Referred:

Citation : (2024) 12 SHI CK 0024

Hon'ble Judges : Vivek Singh Thakur, J;Rakesh Kainthla, J

Bench : Division Bench

Advocate : Anup Rattan, Ramakant Sharma, Shalabh Thakur, Ashish Verma, Tek Ram Sharma

Final Decision : Allowed

Judgement

Rakesh Kainthla, J

1. The present appeal is directed against the judgment passed in CWP No.2258 of 2022 titled Dr Vijay Patyal vs State of Himachal Pradesh & others decided on 29.08.2023, vide which the writ petition filed by respondent No.1 (original petitioner) was allowed and appellants (original respondents no. 1 to 3) were directed to pay interest to the petitioner at the rate of 6% per annum from the expiry of three months after the date of the petitioner's retirement till the date of disbursal of the amount and further on the amounts still due till the date of its actual realisation. Direction was also issued to respondents no. 1 to 3 to pay the balance amount alongwith interest within six months from the date of the judgment. It was ordered that the Principal Secretary (Health) to the Government of Himachal Pradesh would conduct an independent and impartial inquiry into the reasons for the delay in clearing the pension case of the petitioner and recover the payment of interest in terms of the judgment from the public officer(s)/official(s) found responsible if any for the lapse. (The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Single Judge for convenience).

2. Briefly stated, the facts giving rise to the present appeal are that the petitioner filed a writ petition seeking direction to the respondents to grant pension, GPF, gratuity, leave encashment, group insurance, and pension arrears alongwith interest at the rate of 9% per annum from 24.08.2021 till realisation. It was asserted that the petitioner was employed with respondent No.1 on a Class-I Gazetted post. He sought voluntary retirement due to his medical condition after serving the respondent no. 1 to 3 for 30 years. Respondents No.1 to 3 ultimately retired the petitioner vide notification dated 24.08.2021. The pension, gratuity and commutation of pension were revised vide office memorandum dated 25.02.2022. The petitioner is entitled to pension, gratuity and commutation as per the Pension Rules. He represented to the respondents on 26.08.2021 and 24.03.2022, but no action was taken. Hence, the writ petition was filed before the Court.

3. Respondents No. 1 to 3 filed a reply making preliminary submissions regarding the lack of cause of action and the petitioner having not brought the complete facts to the notice of the Court. It was asserted that the petitioner was under an order of posting from Regional Hospital Solan, H.P. to Dr Radha Krishan Government Medical College and Hospital Hamirpur. He was relieved from Solan, H.P. on 22.06.2021, and his service book was sent to Hamirpur by the Medical Superintendent of Regional Hospital Solan in July 2021. The petitioner submitted his leave case for the period from 23.06.2021 to 24.08.2021 to the Medical Superintendent, Solan, H.P., on 26.08.2021. Medical Superintendent Solan sought clarification, and ex post facto sanction was granted to the petitioner with a direction to the Medical Superintendent, Regional Hospital, Solan, to clear the retirement dues of the petitioner. The office of the Medical Superintendent, Regional Hospital Solan, H.P. found that the petitioner's service book was incomplete w.e.f. 01.07.1998 to 21.09.1998, 01.01.2005 to 31.07.2005 and 26.09.2016 to 01.01.2017, when the petitioner was posted in District Chamba, H.P. Hence, Medical Superintendent, Regional Hospital Solan sent the service book to the Chief Medical Officer Chamba and Principal, Pandit Jawahar Lal Nehru Govt Medical College Chamba, H.P. for completing the entries. The pension case was sent to the office of Accountant General vide letter dated 02.05.2022. The leave case of the petitioner for 91 days leave w.e.f. 26.09.2016 to 25.12.2016 due to self-illness was still pending under process. The service record of the petitioner revealed that he remained wilfully absent. Show cause notice(s) and charge-sheet were issued to the petitioner, and the period of his wilful absence was treated as dies non without a break in service. The pay of the petitioner has to be fixed in the revised pay scale, and the revised pensionary benefits have to be released to the petitioner. The petitioner's case was not delayed after the release of the pension payment order by the office of the Accountant General, Shimla, District Shimla, H.P. His case was delayed for the just and bona fide reason for non-completion of his service book verification and non-settlement of his various periods of his leave. An amount of ₹ 11,95,536/- was released to the petitioner on 14.12.2021. Therefore, it was prayed that the present petition be

dismissed.

4. Respondent no. 4 filed a separate reply asserting that the petitioner joined his service on 02.07.1991 and sought pre-mature retirement on 24.08.2021. His pension case was received in the office of respondent No.4 vide letter dated 02.05.2022. The pensionary benefits on pre-revised pay scales, gratuity and commutation were authorised by respondent No.4 on 20.05.2022. The final payment of GPF was authorised on 07.12.2021. The payment of leave encashment and group insurance is in the domain of the administrative department, and respondent No.4 has no authority over it. There was no delay on the part of respondent No.4. Therefore, it was prayed that the present petition be dismissed.

5. A rejoinder denying the contents of the reply filed by respondents No. 1 to 3 and affirming those of the petition was filed.

6. Some payments were made during the pendency of the writ petition.

7. Learned Single Judge held that retiral benefits were not disbursed to the petitioner for two years. A substantial amount remained payable. The Director of Health Services had directed the Medical Superintendent, Regional Hospital, Solan, to clear the dues vide letter 16.09.2021. The Medical Superintendent of Regional Hospital Solan forwarded the petitioner's case to the office of the Accountant General on 02.05.2022, and the Accountant General sanctioned the case on 20.05.2022. The Revised Pay Rules were notified on 03.01.2022. The pay was revised on 01.06.2022. The pension case on a revised scale was submitted on 20.6.2022, and payment was authorised on 06.07.2023. Respondents No. 1 to 3 had no justifiable reasons to delay the payment to the petitioner. Hence, the petitioner is entitled to interest at the rate of 6% per annum. The public money could not be allowed to be wasted. Therefore, a direction was issued to conduct an inquiry and recover the interest from the public officer (s)/official (s), if any, for the lapse.

8. Being aggrieved from the judgment, original respondents No.1 to 3 filed the present appeal asserting that the Medical Superintendent Regional Hospital, Solan, H.P. had sought clarification regarding the office that would disburse the petitioner's retirement dues. Ex post facto sanction was granted on 16.09.2021 with the direction to the Medical Superintendent, Regional Hospital, Solan, District Solan, H.P. to disburse the retirement dues. The service book was to be completed, and the leave was to be sanctioned, which led to the delay. The retiral benefits had already been granted to the petitioner. The revised arrears of pay, leave encashment and pension arrears were also paid to the petitioner, and a revised pension was authorised from July 2023. There is no provision for payment of interest on pension, commutation, or leave encashment under CCS(Pension) Rules, CCS (Commutation of Pension) Rules and CCS (Leave) Rules. The petitioner became entitled to the benefit of the revised pension/ gratuity/ family pension only after coming into force of the revised pay scales

with effect from 03.01.2022 and Office Memorandum dated 25.02.2022, which specifically provide that arrears with effect from 01.01.2016 to 31.12.2021 shall be paid in such a manner and at such time as may be approved by the Government. The State Government has limited financial resources and is not in a position to release the full arrears of pay, pension, commutation, gratuity, and leave encashment in lump-sum to all the retirees. Therefore, it was prayed that the present appeal be allowed and the judgment passed by the learned Single Judge be set aside.

9. We have heard Mr Anup Rattan, learned Advocate General, with Mr Ramakant Sharma, learned Additional Advocate General and Mr Shalabh Thakur, learned Assistant Advocate General, for the appellants/original respondents No.1 to 3, Ashish Verma, learned counsel for respondent No.1/original petitioner and Mr Tek Ram Sharma, learned counsel for respondent No.2 /original respondent No.4.

10. Mr. Anup Rattan, learned Advocate General for the appellants/original respondents No. 1 to 3, submitted that the learned Single Judge erred in granting the interest at the rate of 6% per annum to the petitioner. The petitioner had not filed an appropriate application for getting a leave sanctioned and had not got completed his service book, which led to the delay. Therefore, the petitioner is not entitled to the interest, and the learned Single Judge erred in granting the interest to the petitioner. He prayed that the present appeal be allowed and the judgment passed by the learned Single Judge be set aside.

11. Mr. Ashish Verma, learned counsel for respondent No.1 /original petitioner, supported the judgment passed by the learned Single Judge and submitted that no interference is required with it.

12. Mr Tek Ram Sharma, learned counsel for respondent No.2/original respondent no. 4, submitted that there was no delay on the part of respondent No.4, and the payment was authorised immediately after a letter was received in the office of respondent No.4. He prayed that the appeal be dismissed.

13. We have considered the submissions made at the bar and have gone through the records carefully.

14. Learned Single Judge had directed the payment of interest at the rate of 6% per annum and recovery of the amount from the erring officer(s)/official(s); therefore, respondents No.1 to 3 have to pay the interest and recover it from the erring officer(s)/official(s). Respondents No.1 to 3 are not to pay any interest and are not adversely affected by the judgment passed by the learned Single Judge. Therefore, they cannot be called to be aggrieved persons. It was laid down by the Allahabad High Court in State of U.P. v. Ram Sri, 1975 SCC OnLine All 191 that only an aggrieved person can prefer an appeal. It was observed:

“7. Section 96 of the Code of Civil Procedure deals with appeal from original decrees. It does not enumerate the persons who can file an appeal under the aforesaid section. It only lays down that an appeal shall lie from every decree

passed by any court exercising original jurisdiction to the court authorised to hear the appeals. It is, however, fundamental that in order to be entitled to file an appeal, the person must be aggrieved against the judgment against which he is filing the appeal. In other words, the right to file an appeal against a judgment or decree exists only in the person who is aggrieved or prejudiced thereby. A party, therefore, who would benefit from the change in the judgment has an appealable interest. This interest, of course, should not be contingent, speculative or futuristic. It must be substantial, immediate and pecuniary. Such an interest must have invaded the legal rights of the person filing an appeal. It is, therefore, clear that an aggrieved party is one who is injuriously affected by the judgment or whose rights are directly affected by the operation of the same. The question relating to the controversy as to when a person can be said to be aggrieved has been a subjectmatter of decision in various cases. The well-known judgment which laid down the definition of the phrase "Aggrieved person" is by James, L.J., in *re Side-Botham Ex. P. Sidebotham* ((1880) 14 Ch. D. 458). It was observed that the words 'person aggrieved' in Section 71 of the Bankruptcy Act of 1869 meant: "not really a person who is disappointed of a benefit which he might have received if some order had been made. A 'person aggrieved' must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title of something."

8. The important thing which may be noted in this definition is that the person filing an appeal must have a "legal grievance" against the decision which "wrongfully deprives him of something" or "affects his title to something." This definition was, however, subsequently treated as not exhaustive. *Corpus Juri Secundum*, Volume IV, page 356, I Edition, deals with the same observed as follows:

"Broadly speaking, a party or person is aggrieved by a decision when, only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights."

9. From these citations, it is clear that the mere fact that a judgment is wrong does not entitle a person to file an appeal against the same. It is necessary that such a person must be deprived of the results of the litigation, which he was expecting in his favour in case the judgment went against him. This will give rise to a grievance which may be taken up in appeal by such a person. Dealing with this in *re I Riviere's Trade Mark* ((1884) 26 Ch. D. 48), Lord Selborne observed:

"...it must be a legal grievance, it must not be a *stet pro ratione voluntas*; the applicant must not come merely saying 'I do not like this thing to be done', it must be shown that it tends to his injury, or his damage, in the legal sense of the word".

10. In *Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay* ((1970) 2 SCC 484: AIR 1971 SC 385), the Supreme Court was also

required to consider the scope and ambit of the words "person aggrieved" used in Section 37 of the Advocates Act, 1961. In that case, one Adi Pherooshah Gandhi, who was an Advocate, was called upon by the Bar Council of the State of Maharashtra to show cause as to why he should not be held guilty of misconduct. The Advocate offered his explanation, asserting that he was innocent and was the victim of misunderstanding. The Disciplinary Committee were satisfied that he was not guilty of professional misconduct. The Committee, therefore, ordered that the proceedings be dropped. Aggrieved by the said order of the Disciplinary Committee, the Advocate General of the State of Maharashtra filed an appeal before the Bar Council of India. The appeal was contested by Adi Pherooshah Gandhi. One of the grounds taken by him was that the Advocate General had no locus standi to file the appeal. The objection was overruled by the Bar Council, and the appeal was allowed. Consequently, the Advocate filed an appeal under Section 38 of the Bar Council Act to the Supreme Court. The Advocate contended that the order passed by the Bar Council of India was without jurisdiction as the appeal filed by the Advocate General before the said body was not maintainable. Dealing with the expression "any person aggrieved" used in Section 37 of the Advocates Act, 1961, the Supreme Court considered a number of English authorities on the above controversy and observed in paragraph 12 as under:—

"From these cases, it is apparent that any person who feels disappointed with the result of the case is not a 'person aggrieved'. He must be disappointed of a benefit which he would have received if the order has gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters, but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits someone who he thinks out to be convicted does not by itself give rise to a legal grievance. These principles are gathered from the cases cited and do not, as I shall show later, do violence to the context in which the phrase occurs in the Advocates Act."

11. The Supreme Court, therefore, made it clear that in order to be entitled to file an appeal, a person must have a legal grievance which might have deprived him of the benefit in case the judgment had gone the other way." (Emphasis supplied)

15. A Similar view was taken by the Hon'ble Supreme Court in V.N. Krishna Murthy v. Ravikumar (2020) 9 SCC 501: 2020 SCC OnLine SC 664, wherein it was observed at page 507

"17. In Baldev Singh v. Surinder Mohan Sharma [Baldev Singh v. Surinder Mohan Sharma, (2003) 1 SCC 34], this Court held that an appeal under Section 96 of the Civil Procedure Code, 1908 would be maintainable only at the instance of a person aggrieved by and dissatisfied with the judgment and decree. While dealing with the concept of a person aggrieved, it was observed in para 15 as under (SCC pp. 39-40)

"15. ... A person aggrieved to file an appeal must be one whose right is affected by reason of the judgment and decree sought to be impugned."

18. In *A. Subash Babu v. State of A.P.* [*A. Subash Babu v. State of A.P.*, (2011) 7 SCC 616: (2011) 3 SCC (Civ) 851 : (2011) 3 SCC (Cri) 267] this Court held as under: (SCC pp. 628-29, para 25)

"25. ... The expression "aggrieved person" denotes an elastic and elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depend on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and the extent of the complainant's interest and the nature and the extent of the prejudice or injury suffered by the complainant."

19. The expression "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised (vide *Shanti Kumar R. Canji v. Home Insurance Co. of New York* [*Shanti Kumar R. Canji v. Home Insurance Co. of New York*, (1974) 2 SCC 387] and *State of Rajasthan v. Union of India* [*State of Rajasthan v. Union of India*, (1977) 3 SCC 592])."

16. In the present case, respondents no. 1 to 3 have not suffered any loss from the direction to pay the interest because they have to recover it from the erring officer(s)/officials, and only the person, who is liable to pay interest can feel aggrieved from the judgment of the learned Single Judge, and the appeal filed by the appellants/original respondents No.1 to 3 regarding the direction to pay the interest is not maintainable.

17. Mr. Anup Rattan, learned Advocate General, submitted that the petitioner is not entitled to the payment of interest, and the very direction to grant the interest is not justified. He submitted that the petitioner was to get his leave regularised and the service book completed, and he failed to do so; therefore, the petitioner is not entitled to the payment of the interest. This submission is only stated to be rejected. The service book was not to be maintained by the petitioner but by the officers/officials of respondents No.1 to 3. Hence, respondents No.1 to 3 cannot say that the petitioner was at fault because his service book was not completed.

18. A perusal of the reply to the writ petition filed by respondents No.1 to 3 shows that entries of different spells of petitioner's service with effect from 01.07.1998 till 21.09.1998, 01.01.2005 till 31.07.2005 and 26.09.2016 till 06.01.2017 were incomplete. This plea clearly shows that the person responsible for maintaining the service book had prima facie failed to discharge his duty. The officer who received the incomplete service book failed to ensure that the service book was complete. Thus, respondents No.1 to 3 cannot take shelter behind the plea that the petitioner's service book was incomplete and he was responsible for

it.

19. It was submitted that the petitioner remained absent from his duty and did not file an application for sanctioning leave; therefore, he was at fault. This is not acceptable. Unauthorised absence from duty amounts to misconduct, and respondents No.1 to 3 were within their right to take any action for unauthorised absence, if any. The instructions issued by the Government regarding the regularisation of unauthorised absence clearly provide that when a person remains on unauthorised absence, prompt action should be taken against him, and a charge-sheet should be issued against him without any delay. Such unauthorised absence shall have to be treated as dies non for all intents and purposes and constitute an interruption in service. The unauthorised absence can only be regularised where the disciplinary authority is satisfied that the grounds adduced for unauthorised absence are justified. Therefore, respondents No.1 to 3 were under an obligation to take appropriate action for the unauthorised absence of the petitioner. The fact that they regularised the leave shows that they were satisfied regarding the sufficient reason for the petitioner's absence. This shows that the action, if any, was to be taken by the competent authority. The service book was also to be maintained by the competent authority and leave was to be sanctioned by the competent authority. The petitioner has no role in maintaining the service book or sanctioning the leave. Therefore, the submission made by learned Advocate General for respondents No.1 to 3 that the petitioner was responsible for the delay is not acceptable.

20. It was submitted that the petitioner is not entitled to interest @ 6% per annum. This is not acceptable. The petitioner was entitled to the payment of his dues immediately after retirement, and in case of delay, the respondents have to pay the interest. Learned Single Judge had relied upon the judgment passed by this Court in CWP No. 3050 of 2014, titled *Nek Ram vs State of Himachal Pradesh & Others*, decided on 17.07.2014. This judgment was modified by this Court in *Amar Chand vs. HRTC* 2023:HHC:6759-DB and it was held that in case of delay in the payment of the retiral benefits, the petitioner is entitled to interest @6% per annum. It was held in *S.K. Dua v. State of Haryana*(2008) 3 SCC 44 that where the employee was denied his retiral benefits, he is entitled to interest. It was observed:

"14. In the circumstances, prima facie, we are of the view that the grievance voiced by the appellant appears to be well founded that he would be entitled to interest on such benefits. If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim the benefit of interest on that basis. But even in the absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant that retiral benefits are not in the nature of "bounty" is, in our opinion, well-founded

and needs no authority in support thereof. In that view of the matter, in our considered opinion, the High Court was not right in dismissing the petition in limine even without issuing notice to the respondents.” (Emphasis supplied)

21. A similar view was taken in *D.D. Tewari v. Uttar Haryana Bijli Vitran Nigam Ltd.*, (2014) 8 SCC 894: (2014) 3 SCC (L&S) 128: 2014 SCC OnLine SC 592 wherein it was observed at page 896:-

“7. It is needless to mention that the respondents have erroneously withheld payment of the gratuity amount for which the appellants herein are entitled in law for payment of penal amount on the delayed payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. Having regard to the facts and circumstances of the case, we do not propose to do that in the case at hand.

8. For the reasons stated above, we award interest at the rate of 9% on the delayed payment of pension and gratuity amount from the date of entitlement till the date of the actual payment. If this amount is not paid within six weeks from the date of receipt of a copy of this order, the same shall carry interest at the rate of 18% per annum from the date the amount falls due to the deceased employee. With the above directions, this appeal is allowed.”

22. Thus, there is no infirmity in the judgment directing the payment of interest to the petitioner on delayed payment.

23. Learned Single Judge directed the State to conduct an inquiry and recover the amount of interest from the erring officer(s)/official(s). It was laid down by the Hon’ble Supreme Court in *Lucknow Development Authority v. M.K. Gupta*, (1994) 1 SCC 243 that in case of loss of public exchequer due to the default of the public official, the State is free to recover the money from defaulting official. It was observed at page 261:-

“10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation, as explained, includes both the just equivalent for the loss of goods or services and also for the sufferance of injustice. For instance, in Civil Appeal No. ... of 1993 arising out of SLP (Civil) No. 659 of 1991, the Commission directed the Bangalore Development Authority to pay ₹ 2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by allotting an alternative site to the respondent. It was compensation for the exact loss suffered by the respondent. It arose due to the discharge of duties. For such acts or omissions, the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts, etc., of a public servant, then the nature of liability changes. The Commission, under the Act, could determine such an amount if, in its opinion, the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in

England, where the award of exemplary or aggravated damages for insult, etc., to a person, has now been held to be punitive, an exception has been carved out if the injury is due to 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:

"Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrongdoing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury." (p. 777)

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in *Cassell & Co. Ltd. v. Broome* [1972 AC 1027 : (1972) 1 All ER 801] on the principle that, 'an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. 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. It acts as a check on the arbitrary and capricious exercise of power. In *Rookes v. Barnard* [1964 AC 1129 : (1964) 1 All ER 367, 410] it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. 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. Compensation or damage, as explained earlier, may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour, then it loses its individual character and assumes social significance. 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. Crime and corruption thrive and prosper in society due to a lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen, instead of complaining and fighting, succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore, the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally, but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade, in his book *Administrative Law*, has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices, which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be the development of law which, apart from other factors, succeeded in keeping a salutary check on the functioning of the government or semi-government offices

by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them. Various decisions rendered from time to time have been referred to by Wade on Misfeasance by Public Authorities. We shall refer to some of them to demonstrate how necessary it is for our society. In *Ashby v. White* [(1703) 2 Ld Raym 938], the House of Lords invoked the principle of *ubi jus ibi remedium* in favour of an elector who was wrongfully prevented from voting and decreed the claim of damages. The ratio of this decision has been applied and extended by English Courts in various situations. In *Roncarelli v. Duplessis* [(1959) 16 DLR 2d 689], the Supreme Court of Canada awarded damages against the Prime Minister of Quebec personally for directing the cancellation of a restaurant owner's liquor licence solely because the licensee provided bail on many occasions for fellow members of the sect of Jehovah's Witnesses, which was then unpopular with the authorities. It was observed that 'what could be more malicious than to punish this licensee for having done what he had an absolute right to do in a matter utterly irrelevant to the Alcoholic Liquor Act? Malice in the proper sense is simply acting for a reason and purpose knowingly foreign to the administration, to which was added here the element of intentional punishment by what was virtually vocation outlawry.' In *Smith v. East Elloe Rural District Council* [1956 AC 736 : (1956) 1 All ER 855], the House of Lords held that an action for damages might proceed against the clerk of a local authority personally on the ground that he had procured the compulsory purchase of the plaintiff's property wrongfully and in bad faith. In *Farrington v. Thomson* [1959 UR 286], the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed:

"Now I take it to be perfectly clear that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer."

In *Wood v. Blair* [The Times, July 3, 4, 5, 1957 (Hallet J and Court of Appeal)], a dairy farmer's manageress contracted typhoid fever, and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were void, and the farmer was awarded damages on the grounds that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives.

11. Today, the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with the passage of time and change in socio-economic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve the general welfare and common good. In

discharging this duty honestly and bona fide, a loss may accrue to any person, and he may claim compensation, which may, in some circumstances, be payable. But where the duty is performed capriciously, or the exercise of power results in harassment and agony, then the responsibility to pay the loss determined should be whose? In a modern society, no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on, and the man in the street is made to run from one end to the other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters, a common man who has neither the political backing nor the financial strength to match the inaction in public-oriented departments gets frustrated, and it erodes the credibility of the system. Public administration, no doubt, involves a vast amount of administrative discretion, which shields the action of administrative authority. But where it is found that the exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment, then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved, then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by a grant of statutory powers. The test of the permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State, the ultimate sufferer is the common man. It is the taxpayers' money which is paid for the inaction of those who are entrusted under the Act to discharge their duties in accordance with the law. It is, therefore, necessary that the Commission, when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding, of course, should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries.

24. Thus, the learned Single Judge had rightly directed the respondents no. 1 to 3 to recover the interest from the defaulting/erring officer(s)/official(s).

25. No other point was urged.

26. In view of the above, there is no infirmity in the judgment passed by the learned Single Judge; hence, the present appeal fails, and the same is dismissed with costs quantified as ₹ 25,000/-. The cost be deposited with the H.P. State Legal Service Authority, Kasumpti, Shimla, H.P.

27. Appeal is disposed of in aforesaid terms, so also pending application(s), if any.