

**Central Administrative Tribunal
Principal Bench**

OA No. 4219/2014

Order Reserved on: 05.04.2016
Order Pronounced on: 26.04.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Pravin Kumar Kulshrestha
Aged 60 years,
S/o Shri Rajendra Prakash,
R/o D-II(Type)/62,
Andrews Ganj,
New Delhi

-Applicant

(Applicant in person)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi

2. Director General,
CPWD, Nirman Bhawan,
New Delhi

-Respondents

(By Advocate: Shri D.S. Mahendru)

O R D E R

The short question involved in the instant Original Application is that whether the claim of the applicant for payment of Rs. 38,06,350/- as a measure of damage for dishonoring of the Hon'ble Supreme Court's ruling in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava &**

Anr. (Civil Appeal No. 6770/2013) and harassment caused to him is still to be paid.

2. Admittedly, the applicant retired as Superintending Engineer on 31.10.2014. Prior to his retirement, the applicant had represented the respondents for release of his retirement benefits vide letter dated 22.10.2014 on the ground that right to receive pension is to be treated as property under Article 31(1) of the Constitution, which the State could not take away by virtue of an executive order. The entire case of the applicant was based upon **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (supra).

3. The applicant has prayed for the following reliefs:-

- “i) To allow the O.A.
- ii) To kindly give direction to the respondent to release the retirement benefits of the applicant in the honour of judgment of Hon’ble Supreme Court of India.
- iii) To issue directions to the respondents to pay damages (which is double the amount due to the retirement benefits) for the harassment caused to the applicant and recover the extra cost from Shri Dewakar Garg, DG, CPWD, for his inactions, apathy and his callous attitude towards the applicant.”

4. The respondents have filed a counter affidavit stating that the case relied upon by the applicant in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.**

(supra) was not applicable to the facts of the instant case and that on the date of his retirement, departmental proceedings were pending against him, thereby necessitating a recourse to Rule 69 of CCS (Pension) Rules, 1972. The respondents admitted that the applicant had not been allowed commutation of pension and payment of Death-cum-Retirement Gratuity (DCRG). As such, the respondents prayed for dismissal of the OA.

5. I have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side and have patiently heard the arguments advanced by the learned counsel for the parties.

6. It is to be noted that on 10.12.2014, this Tribunal directed the applicant to file an affidavit indicating the terminal benefits not paid to him as well as the provisions of the rules under which he is entitled to such amounts. The applicant, in compliance to this order, filed an affidavit dated 18.11.2015, which is being extracted better clarity:-

“1. I say that the all dues have been paid by the department. However, the claim for damages for dishonor of the Hon’ble Supreme Court ruling and harassment cost which is Rs.38,06,350/- is still to be paid. The paid dues are interim and claim is subject to the revision on the outcome of the petitions filed by the deponent before this Hon’ble Tribunal and with the department etc.”

7. It is to be noted that the afore affidavit unequivocally admits that all dues have been paid by the department. What survive is the claim for damages for dishonoring of the Hon'ble Supreme Court's ruling in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (supra) and harassment caused amounting to Rs.38,06,350/-. The dues paid are interim and claim is subject to outcome of this OA.

8. In view of the above developments, the lone issue that is to be considered by me is whether there has been any derogation/dishonor to the orders of the Hon'ble Supreme Court in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (supra).

9. In the case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (supra), the appellants were governed by the provisions of Rules 43(b) of Bihar Pension Rules, as applicable to the State of Jharkhand, including its proviso and the Hon'ble Supreme Court in this case held as under:-

“15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300A. On the basis of such a circular, which is not having force of law, the applicant cannot withhold – even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation.

Had there been any such provision in these rules, the position would have been different”.

10. However, in the instant case, the applicant is governed by provisions of CCS (Pension) Rules, 1972. There may be similarity in both the rules, but the very fact that they are different rules requires application of principles of *stare decisis* before any reliance is placed upon it as a binding legal precedent. In this regard, it is to be noted that the Hon'ble Supreme Court has laid down that not every decision of the superior court constitutes a binding legal precedent. In order to attract the principles of *stare decisis*, the Hon'ble Supreme Court has laid down the stringent requirements. It has laid down that a decision is only an authority for what it actually decides. What is of the essence of any decision is its ratio and not every observation found therein nor what locally follows from such observations (**State of Orissa vs. Sudhansu Shekhar Mishra**, AIR 1968 SC 647).

11. In **Divisional Controller KSRTC vs. Mahadev Shetty**, (2003)7 SCC 197, the Hon'ble Supreme Court provides as under:-

“23. So far as Nagesha's case (supra) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before

the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the Court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expression carry no weight at all. Nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority.”

This has been backed up by the decisions of the Hon’ble Supreme Court in **Bank of India & Anr. Vs. K. Mohandas & Ors.** (2009)5 SCC 313, **Bharat Petroleum Corporation & Anr. Vs. N.R. Vermani & Anr.**, (2004)8 SCC 579, **Sri Jagannath Temple Managing Committee Vs. Siddha Math & Ors.** MANU/SC/1470/2015 and **Vishal N. Kalsaria Vs. Bank of India & Ors.** MANU/SC/001/2016.

12. The import of all these decisions is that the facts in the case at hand and that being relied upon should match point to point in facts and also in *ratio decidendi* involved.

13. Considering the very fact that the instant case and case relied upon by the applicant are decided under

different provisions, I am inclined to believe that the case of **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (supra) has no applicability to the facts of the instant case. Hence, question of it being dishonored does not arise at all. Moreover, I am swayed by the fact that the matter has been given a quietus for making payment for the claim of the applicant at hand. It is a well recognized principle that costs are awarded for due harassment. I find that the language of the applicant in his representation dated 22.10.2014 wantonly aggressive which reads as under:-

“Failure to release the retirement benefits on the date of retirement on 31.10.2014 in honour of verdict of Supreme Court, will be treated as harassment to me. In the event of Non-Payment of retirement benefits on due date 31.10.2014 you will personally be liable to pay double the amount due. So, please take the appropriate action to ensure timely payments.”

It is well recognized that costs are awarded only in token terms. The applicant is not expected to be Shylock like in his exactions.

14. In the instant case, I am of the opinion that since there has been no ‘dishonor’ to the ruling of the Hon’ble Supreme Court in **State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.** (supra) and that the applicant has been aggressive in seeking his claim based upon the afore ruling, there is no case made out for

payment of this claim. However, the applicant may be paid whatever is legitimately due under CCS (Pension) Rules, 1972, including interest on delayed payment, if not already paid as per his entitlement. It is an admitted position that litigation involves costs for the party which is seamless on tag of the respondents, as the costs are picked up by the Government. However, where Government has acted within its rights enjoined in the rules, it is not harassment. In this instance, it appears that the Government has been fair in its action in making payment to the applicant. With these observations, the OA is dismissed. No order as to costs.

(Dr. B.K. Sinha)
Member (A)

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