

Akhilesh Kumar Kardham and Another Vs Zila Basic Siksha Adhikari and Another

Court: Allahabad High Court

Date of Decision: Dec. 3, 2009

Citation: (2010) 2 AWC 1227 : (2010) 124 FLR 596

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sudhir Agarwal, J.

The sole grievance of the petitioners is that the father of petitioner No. 1 and husband of petitioner No. 2 late Sri Jagat

Singh, who was working as Headmaster in Primary School died on 27.8.2004 and since then the petitioners are requesting the respondents to pay

retiral dues of the deceased employee like, provident fund, gratuity, insurance and arrears of family pension etc. but till date nothing has been done

by the respondents.

2. In the counter-affidavit filed by respondents the only defence taken is that matter is under consideration. It also appears from the counter-

affidavit that for the first time in 2005 the respondents initiated the matter regarding payment of retiral dues of the deceased employee, passing the

order dated 30.11.2005, declaring that the suspension of the deceased employee stands terminated on 27.8.2004 and he will be deemed to have

been reinstated on the said date for the purpose of retiral benefits but without any salary. Thereafter, the only factum mentioned in the counter-

affidavit is that an objection was raised by the Finance and Accounts Officer, Basic Education, Moradabad about the status of the deceased

employee which was clarified by letter dated 29.8.2008 and since then the matter is pending and under consideration.

3. Virtually there is no defence at all. It is evident that the respondents are simply sitting tight over the matter which cannot be for any bona fide

reasons. Once it is not disputed that the deceased employee was entitled for retiral dues and the same were liable to be paid, inaction on the part

of the respondents in clearing the dues and that too for almost more than five years is really very serious and deserves to be dealt with strictly.

4. The respondents should not forget that they are employees of a statutory body constituted under an Article of the State Legislation. The body,

constituted "State" Under Article 12 of the Constitution. The employees are the servants of the people. Use of their power must always be

subordinate to their duty of service. If a public functionary acts maliciously or oppressively and the exercise of power results in harassment and

agony then it is not an exercise of power but it is abuse. The same would apply to a case of inaction also, i.e., where it is bound to exercise its

power but fail to do so. An ordinary citizen or a common man is hardly equipped to match the might of the State, its instrumentalities or authorities.

It is the duty of the Court, therefore, to check such arbitrary, capricious action on the part of the public functionaries to rescue the common man. It

is a matter of common knowledge and judicial cognizance can be taken of the fact that in most of the matters where the sufferance is minor, the

common man does not even complain and silently suffer it. He takes it as destiny or fate. The time has come when this Court has to remind the

public authorities that harassment of a common man is socially abhorring and legally impermissible. It may harm the common man personally but

injury to society is far more grievous. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more

damaging than the feeling of helplessness. The ordinary citizen instead of complaint and fight normally succumbs and surrender to the undesirable

functioning instead of standing against it. He has to be given a confidence and strength enough to stand and expose such illegality and apathy of

public functionaries. The Courts have onerous responsibility to generate such confidence and strength in common man.

5. It would also be useful to remind the public functionaries that 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.

6. Regarding harassment of a Government employee, referring to observations of Lord Hailsham in *Cassell and Co. Ltd. v. Broome* 1972 AC

1027 and Lord Devlin in *Rooks v. Barnard* 1964 AC 1129, the Apex Court in *Lucknow Development Authority Vs. M.K. Gupta*, 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

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.

7. In *Registered Society v. Union of India and Ors.* (1996) 6 SCC 530, the Apex Court held as under:

No public servant can say ""you may set aside an order on the ground of mala fide but you cannot hold me personally liable"" No public servant can

arrogate in himself the power to act in a manner which is arbitrary

8. In *Shivsagar Tiwari Vs. Union of India (UOI) and Others*, the Apex Court held as follows:

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.

9. In *Delhi Development Authority Vs. Skipper Construction and another*, the Apex Court 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.

10. Where, the authorities have acted negligently showing laxity and apathy to the need of the legal heirs of the deceased employee or the retired

employees and have delayed payment of statutory and rightful dues, they are liable to pay interest compensatory in nature for the reason that such

delay is nothing but culpable delay warranting liability of interest. In *State of Kerala and Ors. v. M. Padmanabhan Nair* 1985 (50) FLR 145, the

Apex Court considering delay in payment of retiral dues to a Government servant and liability of interest of the Government in such matter held as

under :

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 atleast 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 penal interest on these dues at the current market rate should

commence at the expiry of two months from the date of retirement.

11. In view of the above the writ petition is allowed. The respondents are directed to release the retiral dues of the deceased employee to the

petitioners within a period of two months from the date of production of a certified copy of this order alongwith interest at the rate of 10% per

annum which shall be payable from the date of filing of the present writ petition, i.e., 23.7.2007 till the amount is actually paid. The petitioner shall

also be entitled to cost which is quantified to Rs. 10,000. However, the respondent No. 2 shall be at liberty to make appropriate disciplinary

inquiry in the matter and to find out the officials responsible for such extraordinary delay in payment of retiral benefits of the deceased employee to

the petitioners and to realize the amount of interest and cost awarded under this order from such officer(s)/employee(s) as the case may be.