

Deokinandan Prasad

Vs

State of Bihar and Others

Civil Miscellaneous Petition No. 28306 of 1983 in Writ Petition No. 3053 of 1980

(D. A. Desai, O. Chinnappa Reddy JJ)

16.07.1984

ORDER

1. This is just to call 'amen' to a heroic struggle waged by the petitioner in the fall of his life for recovering his hard-earned dues from heartless, unsympathetic and occasionally hostile bureaucracy. In an unequal fight between the mighty State and a retiree, judicial process at the Apex Court had to interpose itself more than once to tilt the balance heavily against the petitioner. The outcome is reassuring in that the wrong has been righted and a festering wound has healed but the frightening legacy of the whole episode is so disturbing that one shudders at the thought as to how after rendering long, meritorious and devoted services for 38 years the employee was thrown on the thorns of life and left to bleed.

2. A Constitution Bench of this Court in *D.S. Nakara v. Union of India* ((1983) 2 SCR 165 : (1983) 1 SCC 305 : 1983 SCC (L & S) 145 : 1983 UPSC 263 : (1983) 1 LLJ 104) posed three questions : "What is a pension ?, What are the goals of pension ? and what public interest or purpose, if any, it seeks to serve ?" and proceeded to answer the same inter alia that pension is not only a compensation for service rendered in the past but it has a broader significance in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and therefore, one is required to fall back on savings. Article 41 obligates the State within the limits of its economic capacity and development to make effective provisions amongst others for assistance in case of old age, sickness and disablement. Pension provisions are to some extent the legislative response to the constitutional expectation. But this legal conundrum would provide a paper guarantee if the statutory right to pension is not translated into action in a reasonably short time on retirement leaving the employee to penury and economic destitution.

3. The petitioner, a retiree of 1967 had to twice invoke the jurisdiction of this Court under Article 32 of the Constitution for claiming a paltry pension. It is not necessary to recapitulate the history of litigation. It does no credit to the respondents and it brings the administration into dispute (sic disrepute). One has only to refer to the two decisions of this Court in *Deokinandan Prasad v. State of Bihar* (1971 Supp SCR 634 : (1971) 2 SCC 330 : (1971) 1 LLJ 557 : 1971 Lab IC 881) and another inter-partes (*Devaki Nandan Prasad v. State of Bihar*, (1983) 2 SCR 921 : (1983) 4 SCC 20 : 1983 SCC (L & S) 495 : (1984) 1 LLJ 237) to gauge the agony and the harassment heaped on the petitioner.

4. In the second decision hereinbefore mentioned this Court issued a mandamus to be carried out within a time-bound programme, the terminal date being July 31, 1983 with a clear indication that the time is the essence of the matter and the deviation would be visited with serious consequences.

5. An affidavit was filed by one Mr A. D. Mukherjee, Additional Secretary, Department of Education, Government of Bihar stating that the payment for arrears of pay and allowances from November 1, 1949 to January 10, 1967 as admissible to the petitioner have been sanctioned vide G.O. 670 of July 26, 1983. Soon thereafter on September 12, 1983 petitioner moved the present petition pointing out that no payment has been done to him, that the pension computation is contrary to the directions of this Court and that the affidavit of Mr Mukherjee is false and misleading. The Court thereupon issued notice to three officers Mr G. R. Patwardhan, Educational Commissioner-cum-Secretary, Department of Education, Mr A. B. Mukherjee, Additional Secretary, Department of Education and Mr Gobind Deo Mukherjee, Director (Administrator)-cum-Joint Secretary, Department of Education to show cause why they should not be held in contempt of the Court. In response to the notice, the officers appeared and the learned counsel on their behalf readily conceded that everything as directed by the Court will be carried out as expeditiously as possible. Accordingly on September 26, 1983 the Court directed the learned counsel for the respondents to draw up and hand over the calculations by which they arrived at the figures set out in the affidavit of Mr G. R. Patwardhan, to the learned counsel for the petitioner latest by November 21, 1983. Further detailed directions were given as to what the statement must contain. In the mean time, the petitioner filed a detailed affidavit to which he annexed all the calculations which according to him should be adopted by the respondents for effectively implementing the mandamus of the Court. The respondent submitted detailed calculations set out in numerous charts to which the petitioner filed affidavit in opposition. It appears both the sides went on disputing the calculations of the other side and furnished its own tables. Ultimately on April 3, 1984 this Court by the consent of parties directed that the case file of the petitioner pertaining to the computation of pension, arrears of salary and provident fund shall immediately be forwarded by the Education Department to the Finance Commissioner, Government of Bihar with certain other documents. The Finance Commissioner was requested to make necessary computation with regard to the prayer mentioned in the petition of the petitioner and draw up the computation within two weeks from the date of the receipt of the file. The Court further directed that without any further quibbling Government of Bihar shall deposit the amount found due and payable by the Finance Commissioner in the account of the petitioner, the number of which with the name of the bank was to be furnished by the learned counsel for the petitioner to the respondents. Thereafter the matter came before this Court on April 26, 1984. It must be said in fairness to the Finance Commissioner that he carried out his onerous duty within the short time fixed by this Court and he submitted the entire file to this Court for its perusal. The care and anxiety with which the Finance Commissioner has dealt with the case has considerably impressed us. If this exercise was undertaken way back in 1974 when the then Chief Minister late Mr Kedar Pandey requested all concerned to dispose of the case in consonance with the mandamus of the Supreme Court, this prolix and costly litigation and the agony of the petitioner with the history of a hear-attack could have been easily avoided. That was not to be for reasons which we are unable to appreciate. Utter indifference to the plight of once a colleague, and failure to realise that each employee in pensionable service must retire, and face the same callous indifference permeates the whole episode. When the entire calculations along with report of the Finance Commissioner was handed in to the petitioner, he heaved a sigh of relief and requested the Court that the calculations be accepted and the notice for taking action and (sic for) contempt may be discharged.

6. In Para IV of the Finance Commissioner's report, it is pointed out that over and above payment of Rs 1,56,444.18 p. already paid to the petitioner on account of the earlier calculations which were contrary to the rules and directions, a further sum of Rs 2,77,719.39 p. is due and payable to the petitioner which amount has been deposited in the State Bank of India at New Market Branch, Patna on April 20, 1984. The petitioner was thus paid Rs 4,34,163 to which a sum of Rs 25,000 was added

as directed to be paid by this Court as and by way of exemplary costs. The Finance Commissioner says in his report that the petitioner has thus been paid Rs 4,53,163.37 p. The pension payment order evidencing pension payable to the petitioner has been handed over to him. That is the final of this agonising and disturbing albeit unwarranted and uncalled for litigation.

7. We hope and desire that in future the employees who serve the Government would not be exposed in the fall of their life to such a costly and unending litigation to claim what is justly due to them on the date on which the bond of service is sapped.

8. In view of the discussion and the fact that wiser counsels prevailed with the respondents, we discharge the notice issued to the respondents and the petition stands disposed of accordingly.

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