

**Court No. - 10**

**Case :-** WRIT - A No. - 12283 of 2023

**Petitioner :-** Ram Kumar

**Respondent :-** State of U.P. and Another

**Counsel for Petitioner :-** Harishchandra Dubey, Aaditya Dhar Dwevedi

**Counsel for Respondent :-** C.S.C., Gautam Dubey

**Hon'ble Kshitij Shailendra, J.**

1. Heard Sri Harishchandra Dubey, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.
2. Sri Gautam Dubey has accepted notice on behalf of the respondent no.3.
3. The submission of learned counsel for the petitioner is that the petitioner was appointed on the post of Safai Karmchari on 01.10.1990 and though papers for regularization were forwarded in the year 1996, his services were regularized in 2008 and, after serving the respondent municipality, he retired from his post after attaining the age of superannuation on 31.07.2020.
4. The grievance of the petitioner is that post retiral benefits including pension have not been released in his favour despite certain applications moved by him.
5. Withholding of retiral benefits of retired employees for years together is not only illegal and arbitrary but a sin if not an offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired employee must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillars of our constitution.

6. The respondents being "State" under Article 12 of the Constitution of India, its officers are public functionaries. Under our Constitution, sovereignty vests in the people. Every limb of constitutional machinery, therefore, is obliged to be people oriented. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour. It is high time that this Court should remind respondents that they are expected to perform in a more responsible and reasonable manner so as not to cause undue and avoidable harassment to the public at large and in particular their ex-employees and their legal heirs like the petitioner. The respondents have the support of entire machinery and various powers of statute. An ordinary citizen or a common man is hardly equipped to match such might of State or its instrumentalities. Harassment of a common man by public authorities is socially abhorring and legally impressible. This may harm the common man personally but the injury to society is far more grievous. Crime and corruption, thrive and prosper in society due to lack of public resistance. An ordinary citizen, instead of complaining and fighting mostly succumbs to the pressure of undesirable functioning in offices instead of standing against it. It is on account of, sometimes, lack of resources or unmatched status which give the feeling of helplessness. Nothing is more damaging than the feeling of helplessness. Even in ordinary matters, a common man who has neither the political backing nor the financial strength to match inaction in public oriented departments, gets frustrated and it erodes the credibility in the system. This is unfortunate that matters which require immediate attention are being allowed to linger on and remain unattended. No authority can allow itself to act in a manner which is arbitrary. Public administration no doubt involves a vast amount of administrative discretion which shields action of administrative authority but where it is found that the

exercise of power is capricious or other than bona fide, it is the duty of the Court to take effective steps and rise to occasion otherwise the confidence of the common man would shake. It is the responsibility of Court in such matters to immediately rescue such common man so that he may have the confidence that he is not helpless but a bigger authority is there to take care of him and to restrain arbitrary and arrogant, unlawful inaction or illegal exercise of power on the part of the public functionaries.

7. In our system, the Constitution is supreme, but the real power vests in the people of India. The Constitution has been enacted "for the people, by the people and of the people". A public functionary cannot be permitted to act like a dictator causing harassment to a common man and, in particular, when the person subject to harassment is his own employee.

8. Regarding harassment of a common man, referring to observations of **Lord Hailsham in Cassell & Co. Ltd. Vs. Broome, 1972 AC 1027** and **Lord Devlin in Rooks Vs. Barnard and others 1964 AC 1129**, the Apex Court in **Lucknow Development Authority Vs. M.K. Gupta JT 1993 (6) SC 307** 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..... 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.....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."*  
(para 10)

9. The above observations as such have been reiterated in **Ghaziabad Development Authority Vs. Balbir Singh JT 2004 (5) SC 17**.

10. 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.

11. In **Registered Society Vs. Union of India and Others (1996) 6 SCC 530** the Apex court said:

*"No public servant can say "you may set aside an order on the ground of mala fide but you can not hold me personally liable" No public servant can arrogate in himself the power to act in a manner which is arbitrary".*

12. In **Shivsagar Tiwari Vs. Union of India (1996) 6 SCC 558** the Apex Court has held:

*"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."*

13. In **Delhi Development Authority Vs. Skipper Construction and Another AIR 1996 SC 715** has 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."*

14. This Court, way back in the year 1992, in the case of **Mukti Nath Rai Vs. State of U.P. (through the Superintending Engineer, P.W.D.) and others: (1992) 2 AWC 644**, had issued **GENERAL MANDAMUS** to all the Departments under the State Government to expeditiously complete all formalities for releasing the post retirement

dues. Relevant directions issued by the said judgment are being extracted herein below:-

*"6. In these hard days it is essential that payment of pension should begin promptly. A society is judged by the care it takes for its aged and infirm. In these circumstances I regard it necessary to issue a **general mandamus** to all U.P. government departments.*

*7. The relevant procedural rules for grant of pension are contained in the U.P. Civil Service Regulations (Published in the U.P. Pension Manual), and other rules, and government orders relevant to pension. Rules 906 to 960 of the Civil Service Regulations meticulously lay down the procedure for grant of pension, and throughout these rules the emphasis is on promptness (as is evident from the repeated use of the word 'promptly', 'immediately' etc.). Rule 906 lays down that **every Head of Department shall have a list prepared every six months, i.e. on the 1st January, and 1st July each year and of all gazetted and non-gazetted Government servants who are due to retire within the next 12 to 18 months of that date. A copy of the list shall be sent to the Audit officer not later than 31st January or 31st July, as the case may be of that year.***

*9. I, therefore, direct that henceforth rules 906 to 960 of the Civil Service regulations be followed strictly by all concerned officials, and payment of pension must begin promptly on the retirement of U.P. Government employee. **This mandamus must be strictly complied with, and all those responsible for its violation, whether in the parent department of the retiring employee or in the Accountant General's office shall be held accountable at this Court for such violation.***

*12. A copy of this judgment will be sent to the Chief Secretary, U.P. Government, Lucknow and also the Accountant General, U.P., Allahabad. The Chief Secretary is directed to circulate copies of this judgment to all heads of departments for compliance of the general mandamus hereinbefore issued."*

15. As a matter of experience and with most anguish, it is observed that **the said general mandamus is not being obeyed by the departments and, therefore, this Court is flooded with hundreds and thousands of writ petitions claiming post retiral benefits.**

16. This writ petition is being **disposed of** in the following terms:-

(a) The Executive Officer, Nagar Palika Parishad, Seohara, District Bijnor (respondent no.2) shall take up the matter with utmost priority

and take a decision on the admissibility of post retiral benefits payable to the petitioner, **not later than by 15.10.2023.**

**(b) The Registrar General of this Court is directed to send a copy of this order to the Chief Secretary of the State Government, U.P., Lucknow for the purposes of issuance of requisite circular to all the Departments under the control of the State Government to ensure that the directions issued by this Court in the case of Mukti Nath Rai (supra), as mentioned herein above, be complied with in their true letter and spirit so that the State, its instrumentalities and common man may not indulge in unnecessarily litigation.**

**Order Date :- 22.8.2023**

**AKShukla/-**