

## **BIHAR HUMAN RIGHTS COMMISSION**

*9, Bailey Road, Patna*

**File No. BHRC/Comp. 760/15 & 1403/12**

### **Case of Mina Sinha & Kanhaiya Kr. Lal (Case of non-payment of pension)**

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27.06.2016

Present in the morning session petitioner Kanhaiya Kr. Lal; MD, Bihar State Fruits & Vegetables Development Corporation Ltd. Sri Arvinder Singh with OSD, Sri Pawan Kumar. Principal Secretary, Finance Department, represented by its OSD.

These two files, namely, File No.1403/12 & 760/15 relate to same issue. The matter essentially relates to non-payment of pension and pensionary benefits.

The employees of the Bihar State Fruit & Vegetables Development Corporation Ltd. one of the complainants came to this Commission as early as in April 2012. A detailed order was passed on 27.11.2012. The order mentions that a lady had approached the Commission that her husband had superannuated on 30<sup>th</sup> June 2010. He had not been paid his dues. In between her approaching the Commission and Commission's order dated 27.11.2012 the lady had died and her husband came on record.

The Commission noted that the lady who approached this Commission died of cancer without treatment because her husband could not get his dues on time. The portion of the order dated 27.11.2012 is quoted below:-

“The complaint in this matter is about non-payment of in-service and retiral dues of Ram Krishna Prasad, a former employee (salesman) of the Bihar State Fruits & Vegetables Development Corporation Ltd. He superannuated from service on 30.6.2010. The complaint was made by his wife, Meena Sinha, who unfortunately died during pendency of the proceedings. (It was stated that she could not be given proper medical treatment for want of money.) In the circumstances, Sri Ram Krishna Prasad himself appeared. Sri Arvinder Singh, Director, Agriculture, who is also Managing Director of the Bihar State Fruits & Vegetables Development Corporation Ltd, appeared.”

The original notice was issued by the Commission on 24.4.2012. Ultimately, the respondents appeared in November 2012. It was stated before the Commission that the Corporation had not sufficient funds to pay dues to its employees. Therefore, a meeting of the Board of Directors of the Corporation was held on 27.7.2009. In this meeting it had been resolved that steps would be taken to revive the unit and the employees liabilities would be cleared after commencements of production. The Commission noted that revival of the Corporation would be a long drawn affair and the payment of pension and pensionary benefits could not be dependent on commencement of production and it observed that:-

“Sri Arvinder Singh submitted that like the applicant, there are several other employees who too have not been paid their dues and

their cases have to be considered. He stated that the total liability in this regard comes to about Rs.2.30 crores (approx.) and the financial position of the Corporation does not at all permit payment. The Commission endorses the submission of the Director to the effect that the claim of all similarly situate persons of the Corporation should be considered. However, the Commission is also of the view that as the matter involves human rights issues of a large number of persons, some way has to be found, and therefore, it would be appropriate to hear the matter in presence of Secretary, Agriculture Department.”

Nothing happened thereafter. When the matter was taken up on 11.12.2012 MD, Bihar State Fruits & Vegetables Development Corporation Ltd., Sri Arvinder Singh appeared before the Commission. The order noted that the Agriculture Secretary was not present although he had been directed to be present but he had deputed Sri Ajay Kr. Shrivastava to appear before the Commission. They informed the Commission that it has been decided that a portion of the funds made available by the Government for the revival of the Corporation will be utilized for payment of salary/retiral dues of the employees of the Corporation.

It appears that the government had decided as early as on 2.08.2012 to pay the benefits to the retired employees from the amount which had been made available to it for revival. Even after the order on 11.12.2012 nothing was done by the government or the Corporation. The Commission passed the following order on 11.04.2013. This order is brief and is reproduced:-

“In view of the report dated 2.4.2013 (page 23/c) put up after six weeks. Status report may be submitted by the Department by 27.5.2013.

Meanwhile, copy of page 23/c may be sent to the applicant for information.”

These proceedings show that the government had sanctioned 21.03 crores rupees for revival of the Corporation and a proposal had been sent to Finance Department for clearance so that liabilities on account of pension and pensionary benefits could be discharged. Even then nothing was done. It may not be out of place to mention that this amount is lying in the bank and has already earned an interest of 8 crore rupees and the Corporation has not been revived even after 4 years.

Then came an order on 20.08.2013. This order is produced in full:-

“The complaint is about non-payment of in-service and retiral dues of Ram Krishna Prasad – a former employee of the Bihar State Fruits & Vegetables Development Corporation Ltd. He superannuated from service on 30.6.2010 but has not been paid his dues. The Commission is given to understand that like Ram Krishna Prasad, there are hundreds of employees – past and present – who are not being paid their salary/retiral dues.

At one stage – in view of the report of the Corporation and the submissions of Sri Arvinder Singh, the then Managing Director of the Corporation – notice was issued to Secretary, Agriculture Department. On 11.12.2012 Sri Ajay Kumar Shrivastava, Deputy Secretary appeared on behalf of Secretary who was out-of-station. Sri Shrivastava informed the Commission that Agriculture Department has resolved that portion of the fund made available by the government for revival of the Corporation may be utilised for payment of salary and retiral dues of the employees but this requires concurrence of the Finance Department, and proposal to this

effect will be sent to the Finance Department in course of the week. The Commission directed the Department to submit progress report. On 2.4.2013 a brief report was received from the Department to the effect that proposal was sent to the Finance Department which made certain queries and a fresh revised proposal was being sent. The Corporation is not aware of the development, if any, during the intervening period.

In the circumstances, the matter was fixed for hearing but due to oversight, notice was not issued to the Agriculture Department. It is clear that the matter cannot be effectively heard in the absence of the Agriculture Department.

Put up on 29.8.2013.

Issue notice to Secretary, Agriculture Department to cause appearance on the next date.

As the order has been dictated in presence of the applicant and Sri Kanhaiya Kumar Lal appearing for the Corporation, the next date need not be formally communicated either of them. They should be present/represented on the next date as before.

Copy of this order may be sent to Secretary, Agriculture Department by fax in course of the day.”

This order again noted that Sri Ajay Kr. Shrivastava, Deputy Secretary who had appeared for the Secretary, Finance had made a statement that a portion of the funds made available by the Government for revival of the Corporation will be utilized for payment of the salary and retiral dues of the employees. Then again the matter came up on several occasions, several orders were passed but the insensitiveness of the officials could not be cured.

The Commission even on 10.09.2013 recorded its dissatisfaction by following:-

“Be that as it may, considering the human rights violations arising from non-payment of salary to a large number of employees the Commission would expect officials to show some sensitivity to their plight and take necessary steps at the earliest. It need hardly be pointed out that the salary dues have to be paid sooner or later, and if there is delay it may be a classic example of the saying ‘Justice delayed is justice denied’. May be, some of the employees are in need of money to meet cost of medical treatments and if money is not paid to them, they may even die. The blame would squarely be on the Government/Department.”

Thereafter the Commission again tried all its options to see that the justice is being done and the grievance of the petitioners and others who are entitled to their retiral benefits are redressed. In between it was submitted while hearing File No.1403/12 that the order of the Commission dated 10.09.2013 had been challenged in the High Court but no order was produced before the Commission and it appeared that similar contentions raised by respondents before the High Court had been dismissed by single bench and an appeal was pending.

No orders were however ever produced before the Commission. The order which noted the contentions of the respondents with regard to pendency of writ petition is reproduced which was passed on 4.7.2014:-

“This case raises some important questions on law in view of the stand taken by the respondents that they will not pay the legitimate dues to the Corporation employees as the Corporation has become non-functional. It is further contended that they will not be paid even their pensionary benefits. The Law Department has opined that an order of this Commission dated 10.9.2013 should be challenged in the High Court. It appears from the file that similar

contentions of the government have been rejected by the High Court earlier in writ petition in Civil Writ Jurisdiction Case No.21893/2011 decided by single judge on 27.8.2012. The record further reveals that an appeal has been filed against the order of the learned single judge. It is not revealed from the record whether the order of the single judge has been stayed or not. There are certain legal issues which need to be looked into before the Commission disposes of the matter. Therefore, the respondents are directed to make available an advocate well versed with the case to assist the Commission.

Let the case come up on 21.7.2013”

Then again this Commission took note of the contention that the matter was pending in the High Court and passed an order on 13.08.2014 that is also reproduced:-

“On 10.09.2013 a detailed order was passed. The petitioners are not being paid their pension although 21 crores were made available to the Corporation towards payment of salary dues. Four crores have been earned as interest and rest amount of Rs.25 crore is available.

The Commission in its order dated 10.9.2013 took note of the fact that the Corporation cannot utilize the amount without sanction of the Agriculture Department and the concurrence of the Finance Department. The Commission was of the view that:-

“Be that as it may, considering the human rights violations arising from non-payment of salary to a large number of employees the Commission would expect officials to show some sensitivity to their plight and take necessary steps at the earliest. It need hardly be pointed out that the salary dues have to be paid sooner or later, and if there is delay it may be a classic example of the saying ‘Justice delayed is justice denied’. May be, some of the employees are in need of money to meet cost of medical treatments and if money is not paid to them, they may even die. The blame would squarely be on the Government/Department.”

The order has not been implemented so far and the Advocate submits that government has decided to challenge the order before the High Court. The Commission fails to understand the need of challenging an order of this Commission before the court because the government can refuse to accept the recommendation made by this Commission by way of an order. It appears that the government does not want to take a stand publicly that they would not pay the pension to the pensioners and therefore take the matter to the High Court.

The Commission would like to pass final orders in the matter but before that let a notice go to Principal Secretary, Agriculture and Finance and also to MD, Department of Cooperation u/s 16 of the Protection of Human Rights Act.

Therefore, issue notice in terms of section 16(a) of the Protection of Human Rights Act, 1993 to Finance Secretary and also Principal Secretary, Agriculture and MD, Department of Cooperation.

They shall file their response notice within a period of four weeks.

Put up on 15<sup>th</sup> September, 2014.”

The matter went on and on. Several orders were passed. Ultimately, an order came to be passed on 10.11.2015 when the Commission was informed that government had taken a decision in a meeting chaired by Chief Secretary that a part of the amount sanctioned for revival of the Corporation will be utilized for outstanding demands including claims relating to pension and pensionary benefits. Although this decision had been taken in 2012 yet it was taken again in 2015 and was mentioned by



Principal Secretary, Finance and Principal Secretary, Agriculture when they personally appeared before the Commission. It was stated that the matter needed to be decided by the Cabinet but could not be taken up by Cabinet because of elections. Election was held long back but decision appears to have not been taken and it also appears that the matter was never referred to the Cabinet.

The case was taken up in the morning session when OSD Finance appeared. She was not able to furnish the copy of the decision taken in the meeting held by the Chief Secretary therefore case was adjourned till 1 PM to enable her to get a copy of decision. Commission waited upto 4 PM but she did not return. The order was finally dictated at 4 PM in presence of the petitioner Sri Kanhaiya Kr. Lal, and OSD, Bihar State Fruits & Vegetables Development Corporation Ltd, Sri Pawan Kumar.

There is a report of the Corporation before the Commission which refers to this meeting which according to them was held on 8.6.2015 in which the decision had been taken.

The orders passed by the Commission on various occasions have been reproduced hereinabove just to emphasize that the Commission is tried for the last 4 years to come to the rescue of the pensioners one of the original petitioners lost her life to cancer and could not afford treatment and it is also reported that

he is also not able to get his daughter married because his dues are not being paid to him.

Since a decision has been taken many times by the Government to utilize part of the fund meant for revival to discharge the liabilities towards pension and pensionary benefits there should be no impediments to make the payments immediately. The Commission also notes that an amount of Rs.8 crores has been earned as interest therefore the amount could be utilized for discharging the liabilities of the persons who are in dire need and these persons are not asking anything in charity. They have earned these benefits rightly, legally and morally and any impediment created in making payments to them can not be tolerated. Such attitude is condemnable saying the least.

It is submitted by the MD of the Corporation that total outstanding liability on account of pension and pensionary benefits and arrears of salary is less than 1.5 crore rupees.

Therefore, I direct that from the interest earned on the amounts made available by the Government. Liabilities on account of pension, pensionary benefits and arrears of salary shall be discharged within a period of four weeks.

A report of compliance shall be sent by 1.08.2016.

Copies of this order be sent to all concerned. In addition a copy be sent to Chief Secretary and also to the Principal Secretary, to the Chief Minister who shall bring it to the notice of the Chief Minister.

***(Justice Bilal Nazki)***  
***Chairperson***