IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C. Review No. 172 of 2011

Date of decision: 30.12.2011

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1. State of H.P. through Pr. Secretary(Forests) to the Govt. of Himachal Pradesh, Shimla
2. The Conservator of Forests, Himachal Pradesh, Shimla.
3. Divisional Forest officer, Karsog Forest Division, Karsog.

.....Petitioners.

Versus

Sh. Bhuteshwar, S/o Sh. Darshan Lal, R/o Sainj Bagra, Tehsil Karsog, Distt. Mandi, H.P.

..... Respondent.

REVIEW PETITION UNDER ORDER NO.47 RULE 1 READ WITH SECTION 114 CPC

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting? No.

For the petitioners: Mr. Rajesh Mandhotra, Deputy Advocate General.

For the respondent: Mr. Ajay Sharma, Advocate.

Deepak Gupta, J(oral)

1. The erstwhile H.P. State Administrative Tribunal vide its order dated 2.3.2006 directed that the writ petitioner be granted work charged status w.e.f. 1.1.2002 and the arrears due and payable to him be paid within three months.

2. The State filed a review petition against the said order of the Tribunal, which review petition was dismissed by a learned Single Judge of this Court on 29th October, 2010. In the meantime, the petitioner also filed CWP No. 5363 of

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2010, which was disposed of by this Court on 1st December, 2010 by the following order:-

> "***On the last date, I had called for the records of the aforesaid review petition and I find that this review petition has been dismissed on 29th October, 2006. Therefore, it is obvious that the petitioner is entitled to the relief claimed by him. The writ petition is allowed and it is directed that the respondents shall comply with the order of the Tribunal dated 2.3.2006 in Original Application No. 2979 of 2004 grant him work charge status w.e.f. 1.1.2002 and shall work out the monetary benefits due and payable to the petitioner and pay the same to him along with interest @ 6% per annum from the date when the amount fell due till the date of payment. This amount be paid to the petitioner on or before 31st May, 2011. In case this amount is not paid on or before the said date, interest shall be payable @ 12% per annum instead of 6% per annum. The writ petition is disposed of in the aforesaid terms. No order as to costs."***

3. In the order, the date of dismissal of the review petition was wrongly mentioned as 29.10.2006 instead of 29.10.2010. Be that as it may, the respondent did not comply with the orders and thereafter the petitioner filed Contempt Petition No. 306 of 2011, in which notice was issued to the contemner on 3.8.2011. Thereafter, the matter was listed before a learned Division Bench of this Court on 19.10.2011, when the Court passed the following order:-

> ***"On 1st December, 2010, a learned Single Judge of this Court has disposed of CWP No. 5363 of 2010 with the directions as follows:-***
>
> ***"The writ petition is allowed and it is directed that the respondents shall comply with the order of the Tribunal dated 2.3.2006 in Original Application***

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No. 2979 of 2004 grant him work charge status w.e.f. 1.1.2002 and shall work out the monetary benefits due and payable to the petitioner and pay the same to him along with interest @ 6% per annum from the date when the amount fell due till the date of payment. This amount be paid to the petitioner on or before 31st May, 2011. In case this amount is not paid on or before the said date, interest shall be payable @ 12% per annum instead of 6% per annum. The writ petition is disposed of in the aforesaid terms. No order as to costs."

The wages to be paid when a workman is conferred work charge status, is clearly laid down by the Apex Court in celebrated Mool Raj Upadhyay's case, which should be presumed to be known to the Government under the departments in Himachal Pradesh, since there have been thousands of cases in this regard. At paragraph No.4, it is very clearly laid down that on a workman coming to the work charged establishment, he should be paid the lowest grade in the time scale, applicable to the post.

We do not find any ambiguity with regard to the implementation of the judgment. The learned Single Jude had granted around six months time to implement the judgment with interest @ 6% per annum and default interest has been fixed as 12% per annum. Admittedly, the judgment has not been complied with before 31st May, 2011. Therefore, the self working order in the judgment has come in effect, to the effect that the writ petitioner is entitled to 12% interest from the date of conferment of work charge status, namely 01.01.2002. Thus, there is loss to the public exchequer for the interest portion of 6% from 01.01.2002 till the date of payment. There will be a direction to the Chief Secretary, Government of Himachal Pradesh to file an affidavit as to what was the reason for the delay, who are the persons responsible for the delay and why the said amount shall not be recovered from the persons, who caused the delay. The affidavit shall be filed within one month.

Post on 01.12.2011."

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4. When the matter was again listed on 1.12.2011, the learned Division Bench observed as follows:-

> ***"The complaint in the petition was that the judgment dated 01.12.2010 was not complied with. This Court directed the disbursement of eligible benefits with 6% interest within six months, i.e., on or before 31st May, 2011. A default clause was also provided that in case the amount was not paid within six months, interest rate would be 12%. Since the judgment was not complied with, this Court issued a direction to the Chief Secretary to look into the matter and file an affidavit as to who is responsible for the loss caused to the public exchequer. The Chief Secretary has filed an affidavit on 30th November, 2011. At paragraph No.6 of the affidavit, it is stated that:***
>
> > ***"...On the basis of the opinion of law and Finance Department, it was decided to implement the Court orders in its entirety and said decision was conveyed to the Pr. Chief Conservator of Forests, H.P. vide letter No. FFE-A(E) 2010/2008-II dated 11.07.2011."***
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> ***However, when the Conservator of Forests sought for expenditure sanction, it appears that the Finance Department has taken another view that the principal amount would be paid and as far as interest is concerned, the matter would be agitated further. We are afraid, the duty holders have not actually understood and it is unfortunate too, what is their binding duty in terms of implementation of the judgment. Once having decided to implement the judgment in its entirety on 11.07.2011, what was the occasion of justification for reconsideration of the stand and that too far after the time fixed by the Court, is not at all clear. Even, the opinion of the Law Department and Finance Department is far beyond the time fixed by the Court. The entire file pertaining to the communications between the Forest Department, Finance Department and Law Department etc. shall be made available to this Court on 07.12.2011.***

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Responsible officers each from the Finance Department and Law Department shall also be present on that day.

Post on 7.12.2011."

5. The matter was thereafter listed on 7.12.2011, when the Court passed the following order:-

"Record perused.

As per the submissions of Mr. Ankush Dass Sood, learned Additional Advocate General, the petitioner has been paid initially a sum of Rs.1,84,264/- and thereafter a sum of Rs.1,88,715/-. The remaining outstanding amount is more than Rs.2,65,509/-. The penal interest has not been paid to the petitioner as per penal clause referred to in the judgment. In other words, the judgment dated 01.12.2010 has not been implemented in letter and spirit till date.

List tomorrow, i.e., 8th December, 2011."

6. A perusal of this order clearly shows that till that date it was not brought to the notice of the learned Division Bench that any review petition had been filed or was contemplated to be filed.

7. This review petition was in fact filed on 2nd December, 2011. The reason given for condonation of delay is that the matter with regard to payment of interest was pending before the Finance Department. This appears to be a false statement in view of the affidavit of the Chief Secretary, relevant portion of which has been culled out in the order of the learned Division Bench on 1.12.2011, which makes it clear that after the opinion was received from the Law as well as the Finance Department, it was decided to implement the order of the Court in its entirety. Now the State will have this Court believe that in fact there was no decision to implement the order in its entirety and a decision had been

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taken to file a review petition to recall the directions for payment of interest. The only ground given is that in the order of this Court the date of dismissal of the review petition has been mentioned as 29th October, 2006 whereas in fact the review petition was dismissed on 29th October, 2010. In my opinion, this is no ground for review since this court even after its decision gave six months to the State to comply with the order and it was only thereafter that the penal clause interest came into force. This direction for payment of penal interest has no relationship with the date of decision of the review petition. The date of review petition was only indicated to show that the order of the Tribunal had attained finality.

8. Therefore, I find that there is neither any ground for condonation of delay nor any error apparent on the face of record. Accordingly, the review petition as well as CMP(M) No. 1846 of 2011 for condonation of delay are dismissed. No costs.

December 30, 2011 **(Deepak Gupta)**
(vt) **Judge.**

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