

NORTHERN AREAS SUPREME APPELLATE COURT

S.M.C. No. 4 of 2009,

PAYMENT OF P.W.D. EMPLOYEE'S SALARIES

Present: **Mr. Justice Muhammad Nawaz Abbasi, C.J**
 Mr. Justice Syed Jaffar Shah, J
 Mr. Justice Muhammad Yaqoob, J

Advocate-General along with Chief Engineer NA PWD.

ORDER

This Suo Motu case has arisen out of news item published on 23-5-2009 in daily News K-2 wherein was reported that the large number of employees of NA PWD have not been paid their salaries for considerable period as a result of which they due to the financial hardships were facing starvation. The report was called in the matter from Secretary Works wherein it has been stated that some illegal appointments of work charge employees were made by the then Chief Engineer (late Mr. Shafqat Wali) and an inquiry committee under the order of Chief Secretary Northern Areas was constituted to ascertain the factual position regarding the claim of work charge employees. The Chief Engineer appearing before the Court stated that the dispute related to the payment of salaries of work charge employees who were appointed by the then Chief Engineer in violation of rules/departmental policy and consequently these work charge employees were neither taken on duty nor they were entitled to claim salaries.

The case of work charge employees was that the department without any legal justification was unnecessarily delaying the payment of their salaries and they were being deprived of their legal remunerations on the technical ground that their appointments were made in violation of rules/policy.

The learned A.-G. advancing the case of department asserted that it was not clear on the record as to whether the work charge employees have actually rendered services to the department or not and unless a detail probe was to made in the matter, no presumption could be raised in favour of genuineness of the claim of work charge employees.

In view of the above factual controversy, we considered it proper to appoint learned District and Sessions Judge Gilgit as an inquiry officer to hold an inquiry into the matter and ascertain the correct factual position.

The inquiry officer recorded the evidence of the parties and in the light of oral and documentary evidence produced before him submitted a detail report. The conclusion drawn by him in the operative part of inquiry report is as under:

"Out of 545 employees 302 work charge employees of P.H.E. Division have got recorded their statement through their Attorney and Counsel to the effect that they were appointed in

P.H.E. Division NA PWD as work charge employees under the Head of Maintenance from September to December, 2008. They are performing their duties since their appointment to till now but their salaries have not been paid so far. They are entitled to get their pay from the department. They have produced muster rolls and other copies in proof of their contention.”

Secretary Works and S.E. Circle Gilgit have denied claim of the employees in their statement by saying that all the appointments were made by Mr. Shafqat Wali Khan (late) the then Superintending Engineer Circle Gilgit in violation of rules/regulations therefore, the appointments were held in abeyance and the employees were not taken on roll for duty nor they have rendered any duty for the department therefore, not entitled to claim any remuneration from the department.

Contrary to the contention of Deputy Secretary Works and S.E. NAPWD Circle Gilgit Wazir Muhammad Tajwar Khan Executive Engineer P.H.E. Division NA PWD Gilgit who is in charge of the Division and in possession of record stated that appointments of 545 Work charges employees under Maintenance Head of (A 13602) running pay and fixed pay were made by Secretary Works, Superintending Engineer Circle Gilgit and Executive Engineer P.H.E. Division NA PWD Gilgit from 1-11-2008 to 18-6-2009. All work charge employees of P.H.E. Division were performing duties up to date except 47 shown in Annexure-F who have not performed their duty since their appointments.

As per statement of Executive Engineer P.H.E. Division NA PWD Gilgit most of the Work Charge Employees of P.H.E. Division are performing their duties except 47 but their salaries have not been paid so far. In the light of statement of the parties and material available on record I have come to the conclusion that:--

- (1) 87 Number of Work Charge employees of P.H.E. Division transferred from 2% to Running pay are performing duties up to date. But their salaries have not been paid since November, 2008 (list attached as annexure-A).
- (2) 26 Number of Work Charge employees of P.H.E. Division appointed fresh on Running Pay performed duty up to date but paid fixed pay Rs.4,000 per month from December, 2008 to April 2009 (list attached as Annexure-B).
- (3) 51 Number of Work Charge employees of P.H.E. Division transferred from 2% provision to Maintenance Head are performing duties till date but their salaries have not been paid since April, 2008 (list attached as Annexure-C).
- (4) 299 Number Work Charge employees of P.H.E. Division fresh appointed under Head of Maintenance in P.H.E. Division performing duties till date but their salaries have not been paid since November, 2008 (list attached as Annexure-D) performing duties till date but their salaries

have not been paid since November, 2008 (list attached as annexure-E).

- (5) 47 Number of Work Charge employees fresh appointed on fixed pay Rs.4,000 per month in P.H.E. Division NA PWD Gilgit. They have not submitted joining reports nor performed duties in the department therefore, not entitled to claim salary from the department (list attached as Annexure-F).

The learned A.-G. assisted by Chief Engineer and Deputy Secretary NA PWD has vehemently resisted the claim of work charge employees on the sole ground that the appointments in question were made in violation of rules/regulations by the then S.E. and work charge employees were neither brought on roll of the department nor they have rendered any service to the department to claim the salaries. He with reference to the statement of Deputy Secretary who appeared before inquiry officer on behalf of Secretary Works asserted that claim of the work charge employees was categorically denied before the inquiry officer with the explanation that their appointments were not only violative of rules/regulations but were also fake, therefore, their claims was entirely unfounded on the record. The learned A.-G. when confronted with the statement of XEN of concerned Division made by him before inquiry officer to the effect that as per record of the department the employees so appointed were still performing their duties but their salaries were withheld, he had not been able to satisfy us that claim of work charge employees was without any basis. The Chief Engineer present in Court also has not been able to justify the non-payment of the salaries of work charge employees dully appointed by the competent authority.

Mr. Ehsan Ali, Advocate representing the work charge employees submitted that no exception can be taken to the report of inquiry officer and there being no ambiguity in the claim of the work charge employees the department may be directed to make payment without any further delay.

This is not denied that Superintending Engineer was competent to make appointment of work charge employees, therefore notwithstanding the objection that appointments were made in violation of rules/regulations, the work charge employees in their own right were entitled to the payment of salaries for the service rendered by them to the department. This is said that concerned authorities instead of proceeding against the officials who have committed alleged irregularity in the appointments withheld the salaries of employees depriving them from their legal right. We may point out that withholding payment of legal remuneration of a person is an actionable act in law and an aggrieved person can avail legal remedy for recovery of his claim as of right. The Inquiry in the matter was held by a Judicial Officer under the direction of this Court and we having gone through the inquiry report would take no exception to the conclusion drawn therein, therefore, the competent authority may proceed against the officer/officials who without any legal justification withheld the salaries of work charge employees.

The inquiry officer after detail discussion of oral and documentary evidence brought on record has concluded that only 47 employees have not joined the duty and rendered service to the

department to claim payment of salary, whereas the remaining employees mentioned therein having rendered the actual service were entitled to the payment of salaries. The learned A.-G. and departmental representatives have not been able to controvert the claim of employees determined by the inquiry officer in inquiry report which is made part of this judgment.

The learned A.-G. has supported the case of department with vehemence and the valuable assistance rendered to the Court, is appreciable. However, we noticed that due to the negligence of the concerned Officials, who illegally withheld the salaries of work charge employees, the Department has been dragged in unnecessary litigation, therefore Chief Secretary will look into the conduct of these officials/officers and fix their responsibility for an appropriate departmental action in accordance with law.

We may point out that departmental -representative usually without consulting learned A.-G. who is principal law officer appear in the Court and do not properly watch the interest of Government. The Chief Secretary may also take notice of the matter and issue instructions accordingly.

In the light of the foregoing discussion we dispose of this suo motu case with the direction that the department without disturbing the appointment of work charge employees may proceed for their E regularization and will make payment of their unpaid salaries in terms of inquiry report before 15th September, 2009 positively. The copy of inquiry report with this order shall be supplied to the Secretary Works for implementation and compliance report will be submitted to the Registrar of this Court for our perusal in chamber.

Chief Judge

Judge

Judge