Narsingh Rai vs Deputy Director Of Education, ... on 24 July, 2018

Author: Surya Prakash Kesarwani

Bench: Surya Prakash Kesarwani

HIGH COURT OF JUDICATURE AT ALLAHABAD

Court No. - 7

Case :- WRIT - A No. - 14970 of 2018

Petitioner :- Narsingh Rai

Respondent :- Deputy Director Of Education, Varanasi, And 3 Others

Counsel for Petitioner :- Indra Raj Singh,Adarsh Singh,Deo Prakash Singh

Counsel for Respondent :- C.S.C.

Hon'ble Surya Prakash Kesarwani,J.

1- Heard Sri Indra Raj Singh, learned counsel for the petitioner and the learned Standing Counsel for the State-respondents.

2- On 16.7.2018, this Court passed the following order:

> "1- Heard Sri Adarsh Singh, learned counsel for the petitioner and the learned standing counsel for the State-respondents.
>
> 2- This writ petition has been filed praying for the following relief:

"I. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 27.06.2018, passed by the respondent no.1-Deputy Director of Education (Secondary), 5th Region, Varanasi (Annexure No.8 to the writ petition).

II. Issue a writ, order or direction in the nature of Mandamus commanding the respondent no.1- Deputy Director of Education (Secondary), 5th Region, Varanasi to sanction pension of the petitioner for the post of Assistant Teacher L.T. Grade and to pay the same w.e.f. 31.03.2018 along with interest within stipulated time as may be fixed by this Hon'ble Court.

III. Issue any other writ, order or direction in the nature of writs, as this Hon'ble Court may deem fit and proper to meet ends of justice.

IV. Award cost of this petition to the petitioner."

3- The petitioner was working as an Assistant Teacher in the respondent no. 4 institution since 8.7.1994. He retired from service on 31.3.2018 after serving for more than 23 years. However, the respondent no.1 denied the payment of pension to him by order dated 15.2.2018, which is reproduced below:

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go vo ¼vksadkj 'kqDy½ la;qDr f'k{kk funs'kd iape e.My okjk.klhA i`olo@ys[kk@10276&78 2017&18 mlh frfFk izfrfyfi fuEufyf[kr dks lwpukFkZ ,oa vko';d dk;Zokgh gsrq izsf"kr 1& izcU/kd@ iz/kkukpk;Z]xzkeksn; b.Vj dkyst xkSjkckn'kkgiqj tkSuiqjA 2& Jh ujflg jk; fuoklh xksikyiqj iksLV dksgMk tkSuiqja go vo ¼vksadkj 'kqDy½ la;qDr f'k{kk funs'kd okjk.klh e.My okjk.klh ß 4- Against the afore-quoted order, the petitioner filed Writ -A No.7439 of 2016 (Narsingh Rai v. State of U.P. and 3 others) , which was allowed by this Court by order dated 21.3.2018, as under:

"Heard Shri Adarsh Singh, learned counsel for the petitioner and learned Additional Chief Standing Counsel for State respondents.

The petitioner is before this Court assailing the order dated 15.2.2018 passed by the third respondent, Deputy Director of Education (Secondary), 5th Region, Varanasi whereby he has declined to sanction his pension and for direction to the third respondent to sanction his pension on the post of Assistant Teacher L.T. Grade and to pay the same with effect from the date of his retirement i.e. 31.3.2018.

Learned counsel for the petitioner submits that the petitioner was initially appointed as Assistant Teacher in L.T. Grade in a recognised and aided institution namely 'Gramodaya Inter College Gaura Badshahpur, District Jaunpur' on 2.7.1994. In pursuance thereof, he joined in the institution on 8.7.1994. Since then, he has been teaching in the institution in question on the said post, and has also been paid regular salary including annual increments and selection grade of LT Grade after 10 years of service. The appointment of the petitioner was also duly approved by the District Inspector of Schools, Jaunpur on 15.7.1995. Subsequently, by the order dated 25.4.2017 passed by the Joint Director of Education, Varanasi Region, Varanasi, his services have also been regularized w.e.f. 22.3.2016. After serving more than 23 years, the petitioner has retired on 31.3.2018 on the said post after attaining the age of superannuation.

Learned counsel for the petitioner apprises to the Court that the claim set up by the petitioner is squarely covered by the judgement and order passed by this Court dated 7.3.2018 in Writ A No.5737 of 2018 (Ishrat Jahan vs. State of UP and 3 others), which was allowed on 7.3.2018, with following observations:-

"17. The short question which need determination in this case is whether the petitioner who was appointed on adhoc basis and also superannuated in the same capacity without her regularisation can be held to work on a regular basis. The terms under "ad hoc" "stopgap" and "fortuitous" came to be considered by the Supreme Court in the case of Rudra Kumar Sain v. Union of India, (2000) 8 SCC 25. The Court found that a person, who has a requisite qualification and who is appointed with the approval of the appropriate authority and if he is allowed to continue on the post for a considerable long time then such appointment cannot be held to be stopgap/ fortuitous or purely adhoc appointment. The Supreme Court observed as under :-

"In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc".

18. The Supreme Court in the case of Ramesh K. Sharma v. Rajasthan Civil Services, (2001) 1 SCC 637, considered the word "substantive basis" following the judgment of Baleshwar Dass v. State of U.P. (AIR 1981 SC 41). The Supreme Court held that if an incumbent holds the post for indefinite period then it cannot be said to be adhoc appointment. The Court held as under :-

> "If an incumbent is appointed after due process of selection either to a temporary post or a permanent post and such appointment, not being either stopgap or fortuitous, could be held to be on substantive basis. But if the post itself is created only for a limited period to meet a particular contingency, and appointment thereto is made not through any process of selection but on a stopgap basis then such an appointment cannot be held to be on substantive basis. The expression "substantive basis" is used in the service jurisprudence in contradistinction with ad hoc or purely stopgap or fortuitous."

19. This Court in the case of Dr. Hari Shanker Asopa v. State of U.P. And another, reported (1989) UPLBEC 501, considered the Article 361 and Clause (e) of Rule 56 of Fundamental Rules as applied in Uttar Pradesh and the Civil Service Regulations. Dr. Hari Shanker Asopa was appointed on temporary basis on the post of lecturer in the department of Surgery at S.N.Medical College, Agra on 4th August, 1964. In the year 1969, he was appointed on a substantive post of Reader in Surgery at same College that appointment too was on temporary basis. The term of the appointment was one year or till the candidate selected by the U.P.Public Service Commission was available, whichever was earlier. After three years, he was promoted to the post of Professor in Surgery in Jhansi Medical College. The said appointment was also temporary and it was for a period of one year or till the candidate regularly selected by the U.P.Public Service Commission was available or till the services of Dr. Asopa were needed, whichever was earlier. Dr. Asopa uninterruptedly continued for 18 years as a Lecturer, Reader and Professor on temporary basis. His request for voluntary retirement was allowed by the State Government in the year 1983 with a condition that no pension would be paid to him, as he was not permanent on any post of the Government Service. Dr. Asopa feeling aggrieved by the said order dated 21.2.1983 preferred a writ petition before this Court.

20. In the case of Hans Raj Pandey v. State of U.P. and others, 2007 (3) UPLBEC 2073 (supra) this Court had occasion to consider the provisions of U.P. State Aided Educational Institution Employees Provident Fund, Insurance and Pension Rules, 1964 also. Rule 43 ,44 and 45 of the said Rule has been considered at length by this Court and also the Regulations 465 and 465 A of the U.P. Civil Service Regulations. The Court held as under :-

> "In the present case, so far as the condition Nos. A and C are concerned, they are satisfied and the dispute is only with respect to condition No. B i.e., lack of permanent character of service. However, in out view, the aforesaid provisions stand obliterated after the amendment of Fundamental Rule 56 by U.P.Act No. 24 of 1975 which allows retirement of a temporary employees also and provides in clause (e) that a retiring pension is payable and other retiral benefits, if any, shall be available to every Government Servant who retires or is required or allowed to retire under this Rule. Since the aforesaid amendment Rule 56 was made by an Act of Legislature, the provisions contained otherwise under Civil Service Regulations, which are pre-constitutional, would have to give way to the provisions of Fundamental Rule 56. In other words, the provisions of Fundamental Rule 56 shall prevail over the Civil Service Regulations, if they are inconsistent. Condition -B (supra) of Article 361 of Civil Service Regulations are clearly inconsistent with Fundamental Rule 56 and thus

is in operative."

"21. The principle, which can be discerned from the above mentioned judgment, is that if adhoc/stopgap/temporary employee having essential qualification and is appointed in terms of the statutory Rules and he continues for a long time and fulfils the qualifying service, is entitled for pension and other retiral benefits.

22. Having regard to the facts and circumstances of the case, I am of the view that petitioner is entitled for the post retiral benefits as her appointment was made in terms of the statutory Rules and the same was also approved by the District Inspector of Schools by an order dated 8.5.2013. Admittedly, on account of an interim order dated 20.1.2004 passed in Writ Petition No.38769 of 2000, the petitioner continued to work in the institution and finally retired on attaining the age of superannuation on 1.7.2017 (worked under the sessions benefit upto 31.3.2018) and she worked uninterruptedly for more than 25 long years.

23. A direction is issued to the respondents to pay the post retiral benefits to the petitioner in accordance with law as expeditiously as possible preferably within three months from the date of communication of this order.

24. Consequently, the writ petition is allowed."

Learned counsel for the petitioner further states that the claim set up by the petitioner is on the better footing, as his services have already been regularized on 22.3.2016 as per provisions contained under Section 33-C of U.P. Intermediate Education Act, 1921. The request has been made that the present writ petition is also liable to be allowed in terms of the aforesaid judgement.

Learned Additional Chief Standing Counsel does not dispute the factual and legal aspect of the matter.

The Court has proceeded to examine the record in question and finds that while passing the order impugned the Deputy Director of Education (Secondary), 5th Region, Varanasi has taken note of the regularization of the petitioner by an order dated 22.3.2016 and thus, the case of the petitioner is squarely covered by the aforesaid judgement.

In view of above, the impugned order cannot sustain and the same is accordingly set aside.

Consequently, the writ petition is allowed and the matter is remanded back to the Deputy Director of Education (Secondary) to take appropriate decision afresh in the light of the aforesaid judgement passed in Ishrat Jahan's case (supra) within a period of two months from the date of production of certified copy of this order."

5- Referring to the aforesaid facts and the order passed in Writ-A No.7439 of 2016 filed by the petitioner, this Court passed an order dated 16.7.2018 in this writ petition as under:

"5- Despite the aforesaid facts and the legal position not disputed by the respondents for entitlement of the petitioner for pension, the impugned order dated 27.6.2018 was passed by the respondent no.1 to the same effect, as was earlier passed by him on 15.2.2018. The aforesaid order dated 15.2.2018 was quashed by this Court by the afore-quoted order dated 21.3.2018 in Writ-A No.7439 of 2018.

6- Thus, the respondent no.1, prima-facie, has committed gross misconduct and attempted to prevail over the afore-quoted order of this Court dated 21.3.2018 in Writ-A No.7439 of 2018.

7- Under the circumstances, the respondent no.1 is directed to show cause as to how he passed the impugned order in gross disobedience of the afore-quoted order passed by this Court. He shall also show cause as to why exemplary cost be not imposed upon him to be recovered from his personal salary. The cause may be shown by the respondent no.1 by means of a personal affidavit on or before the next date fixed. He shall also be present personally before this Court on the next date fixed.

8- List/put up in the Additional Cause List on 23.7.2018.

9- Let a copy of this order be given free of cost to the learned Chief Standing Counsel for communication to the respondent Nos. 1 and 2."

6- In compliance to the afore-quoted order, a personal affidavit on behalf of respondent no.1 was filed yesterday, which was taken on record.

7- In paragraph 17 of the personal affidavit dated 23.7.2018, the deponent of the affidavit, namely Sri Onkar Shukla, Deputy Director of Education (Secondary), Vth Region, Varanasi, has stated that he has passed an order dated 20.7.2018 granting pension to the petitioner. A copy of the order dated 20.7.2018 has also been filed as Annexure PA-3 to the personal affidavit.

8- A second personal affidavit dated 24.7.2018 has been filed today, which is taken on record. In paragraph Nos. 8 and 9 of the affidavit, the aforesaid Deputy Director of Education (Secondary), Vth Region, Varanasi, has stated, as under:

"9.That the impugned order which has been passed, has not been passed by the deponent deliberately or willfully although mistake occurred by the deponent but it is not deliberate and willfully.

10.That in view of aforesaid facts, it is expedient in the interest of justice that this Hon'ble Court may kindly be pleased to pardon the deponent in passing the impugned order and the deponent assured this Hon'ble Court that in future no such type of mistake will be occurred."

9- Thus, after harassing the petitioner by his malafide and arbitrary action, the respondent No.1 has now passed an order dated 20.7.2018 for pension.

10- In the case of Lucknow Development Authority v. M.K. Gupta, (1993)6 JT 307 (Paragraph Nos. 8,10 and 11), Hon'ble Supreme Court, held as under :

> "8. .....
>
> Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation. The word compensation' is again of very wide connotation. It has not been defined in the Act. According to dictionary it means, 'compensating or being compensated; thing given as recompense;'. In legal sense it may constitute actual loss or expected loss and may extend to physical, mental or even emotional suffering, insult or injury or loss. Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation. The provision in our opinion enables a consumer to claim and empowers the Commission to redress any injustice done to him. Any other construction would defeat the very purpose of the Act. The Commission or the Forum in the Act is thus entitled to award not only value of the goods or services but also to compensate a consumer for injustice suffered by him.
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> 10. Who should pay the amount determined by the Commission for harassment and agony, the statutory authority or should it be realised from those who were responsible for it? Compensation as explained includes both the just equivalent for loss of goods or services and also for sufferance of injustice. For instance in Civil Appeal No. ... of 1993 arising out of SLP (Civil) No. 659 of 1991 the Commission directed the Bangalore Development Authority to pay Rs 2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to mala fide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The

> Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus:
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> "Even where there is no ministerial duty as above, and even where no recognised tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in public office, and which includes malicious abuse of power, deliberate maladministration, and perhaps also other unlawful acts causing injury."

The jurisdiction and power of the courts to indemnify a citizen for injury suffered due to abuse of power by public authorities is founded as observed by Lord Hailsham in Cassell & Co. Ltd. v. Broome13 on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. 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. It acts as a check on arbitrary and capricious exercise of power. In Rookes v. Barnard14 it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. 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. Compensation or damage as explained earlier may arise even when the officer discharges his duty honestly and bona fide. But when it arises due to arbitrary or capricious behaviour then it loses its individual character and assumes social significance. 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. Crime and corruption thrive and prosper in the society due to lack of public resistance. Nothing is more damaging than the feeling of helplessness. An ordinary citizen instead of complaining and fighting succumbs to the pressure of undesirable functioning in offices instead of standing against it. Therefore the award of compensation for harassment by public authorities not only compensates the individual, satisfies him personally but helps in curing social evil. It may result in improving the work culture and help in changing the outlook. Wade in his book Administrative Law has observed that it is to the credit of public authorities that there are simply few reported English decisions on this form of malpractice, namely, misfeasance in public offices which includes malicious use of power, deliberate maladministration and perhaps also other unlawful acts causing injury. One of the reasons for this appears to be development of law which, apart, from other factors succeeded in keeping a salutary check on the functioning in the government 13 1972 AC 1027 (1972) 1 All ER 801 14 1964 AC 11 29 (1964) 1 All ER 367, 410 or semi-government offices by holding the officers personally responsible for their capricious or even ultra vires action resulting in injury or loss to a citizen by awarding damages against them.

11. Today the issue thus is not only of award of compensation but who should bear the brunt. The concept of authority and power exercised by public functionaries has many dimensions. It has undergone tremendous change with passage of time and change in socioeconomic outlook. The authority empowered to function under a statute while exercising power discharges public duty. It has to act to subserve general welfare and common good. In discharging this duty honestly and bona fide, loss may accrue to any person. And he may claim compensation which may in circumstances be payable. But where the duty is performed capriciously or the exercise of power results in harassment and agony then the responsibility to pay the loss determined should be whose? In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same. It was never more necessary than today when even social obligations are regulated by grant of statutory powers. The test of permissive form of grant is over. It is now imperative and implicit in the exercise of power that it should be for the sake of society. When the court directs payment of damages or compensation against the State the ultimate sufferer is the common man. It is the tax payers' money which is paid for inaction of those who are entrusted under the Act to discharge their duties in accordance with law. It is, therefore, necessary that the Commission when it is satisfied that a complainant is entitled to compensation for harassment or mental agony or oppression, which finding of course should be recorded carefully on material and convincing circumstances and not lightly, then it should further direct the department concerned to pay the amount to the complainant from the public fund immediately but to recover the same from those who are found responsible for such unpardonable behaviour by dividing it proportionately where there are more than one functionaries."

(Emphasis supplied by me) 11- Similar observation has been made by Hon'ble Supreme Court in the case of Ghaziabad Development Authority v. Balbir Singh, 2004 (5) JT 17.

12- In N. Nagendra Rao & Co. v. State of Andhra Pradesh (1994)6 SCC 205 (Para 25) Hon'ble Supreme Court, held as under :

> "25. But there the immunity ends. No civilised system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy. From sincerity, efficiency and dignity of

State as a juristic person, propounded in nineteenth century as sound sociological basis for State immunity the circle has gone round and the emphasis now is more on liberty, equality and the rule of law. The modern social thinking of progressive societies and the judicial approach is to do away with archaic State protection and place the State or the Government on a par with any other juristic legal entity. Any watertight compartmentalization of the functions of the State as "sovereign and non-sovereign" or "governmental and non-governmental" is not sound. It is contrary to modem jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for sake of society and the people the claim of a common man or ordinary citizen cannot be thrown out merely because it was done by an officer of the State even though it was against law and negligent. Needs of the State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a Welfare State is not shaken. Even in America where this doctrine of sovereignty found its place either because of the "financial instability of the infant American States rather than to the stability of the doctrine's theoretical foundation", or because of "logical and practical ground", or that "there could be no legal right as against the State which made the law" gradually gave way to the movement from, "State irresponsibility to State responsibility". In Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers for which no rational basis survives has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity. The determination of vicarious liability of the State being linked with negligence of its officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable the State cannot be sued. The liability of the officer personally was not doubted even in Viscount Canterbury4. But the Crown was held immune on doctrine of sovereign immunity. Since the doctrine has become outdated and sovereignty now vests in the people, the State cannot claim any immunity and if a suit is maintainable against the officer personally, then there is no reason to hold that it would not be maintainable against the State.

(Emphasis supplied by me) 13- In Common Cause, A Registered Society v. Union of India and others, (1996)6 SCC 530 (Para 26), Hon'ble Supreme Court held as under:

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

14- In Shivsagar Tiwari Vs. Union of India and others (1996) 6 SCC 558, Hon'ble Supreme Court quoted with approval of the observations of Edmund Burke, as under:

> "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."

15- In Delhi Development Authority Vs. Skipper Construction and Another AIR 1996 SC 715 (Para 6) Hon'ble Supreme Court observed as under:

> "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 defect 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."

16- In Mohammad Iqbal and Anr. v. State of U.P. and others 2016 (9) ADJ 593 (Para 11 and 17), this Court held as under:

> "11. In a democratic system governed by rule of law, 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 Government or its officials have acted with gross negligence and unmindful action causing harassment of a common and helpless man, this Court has and never would be a silent spectator but always react to bring authorities within rule book or to make them accountable."

17. We, therefore dispose of this writ petition with cost of Rs.2 lacs which shall be paid at the first instance by respondent-1 since respondent-3 is the official and agent of respondent-1, but it shall have liberty to recover such amount from authority concerned who is responsible for such illegal action of detention of petitioner's vehicle on 3.10.2014 and onwards."

17- In Natural Resources Allocation, In re, Special Reference No. 1 of 2002, (2012) 10 SCC 1 (Para 172 and 184) Hon'ble Supreme Court held, as under:

> "172.The judgment in LDA case brings out the foundational principle of executive governance. The said foundational principle is based on the realisation that sovereignty vests in the people. The judgment, therefore, records that every limb of the constitutional machinery is obliged to be people oriented. The fundamental principle brought out by the judgment is that a public authority exercising public power discharges a public duty, and, therefore has to subserve general welfare and common good. All power should be exercised for the sake of society. The issue which was the subject-matter of consideration, and has been noticed along with the citation

> was decided by concluding that compensation shall be payable by the State (or its instrumentality) where inappropriate deprivation on account of improper exercise of discretion has resulted in a loss, compensation is payable by the State (or its instrumentality). But where the public functionary exercises his discretion capriciously, or for considerations which are malafide, the public functionary himself must shoulder the burden of compensation held as payable. The reason for shifting the onus to the public functionary deserves notice. This Court felt that when a court directs payment of damages or compensation against the State, the ultimate sufferer is the common man, because it is taxpayers' money out of which damages and costs are paid.
>
> 184. Another aspect which emerges from the judgments (extracted in paras 159 to 182, above) is that, the State, its instrumentalities and their functionaries, while exercising their executive power in matters of trade or business, etc. including making of contracts, should be mindful of public interest, public purpose and public good. This is so, because every holder of public office by virtue of which he acts on behalf of the State, or its instrumentalities, is ultimately accountable to the people in whom sovereignty vests. As such, all powers vested in the State are meant to be exercised for public good and in public interest. Therefore, the question of unfettered discretion in an executive authority, just does not arise. The fetters on discretion are clear, transparent and objective criteria or procedure which promotes public interest, public purpose and public good. A public authority is ordained, therefore to act, reasonably and in good faith and upon lawful and relevant grounds of public interest."

(Emphasis supplied by me) 18- The respondents are State within the meaning of Article 12 of the Constitution of India. They are public functionary. As per Constitution, the sovereignty vests in people. Every government functionary including the public authorities are obliged to be people oriented. The public officers are public servants and they have been employed to serve people. They are accountable for their illegal acts and for violating the Constitutional and Statutory provisions. They cannot be a cause for harassment to the people. An ordinary citizen or a common man is hardly equipped to match such might of the officers of the State or instrumentalities of the State-Governments. Harassment of a common man by public authorities is socially abhorring and legally impermissible.

19- No civilized system can permit an executive to play with the people of its country and claim that it is entitled to act in any manner as it is sovereign. 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. Every holder of public office by virtue of which he acts on behalf of the State, or its instrumentalities, is ultimately accountable to the people in whom sovereignty vests. No legal or political system today can place the State above law as it is unjust and unfair for a citizen to be deprived of his property illegally. No public servant can say you may set aside an order on the ground of malafide but you cannot hold me personally liable. No public servant can arrogate to himself the power to act in a manner which is arbitrary. Needs of the

State, duty of its officials and right of the citizens are required to be reconciled so that the rule of law in a Welfare State is not shaken. 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. Harassment of a common man by public authorities is socially abhorring and legally impermissible. In a modern society no authority can arrogate to itself the power to act in a manner which is arbitrary. It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run from one end to other with no result. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Where the public functionary exercises his discretion capriciously, or for considerations which are malafide or where there is flagrant abuse of power the public functionary himself must shoulder the burden of costs or compensation held as payable.

20- Looking into the facts and circumstances of the case and the principles of law as discussed above, I find it a fit case to impose an exemplary cost.

21- In view of the aforesaid, the impugned order is hereby quashed. Since the relief has now been extended to the petitioner by the authority concerned, therefore, no further order is required to be passed.

22- The writ petition is allowed with cost of Rs. 25,000/- which shall be paid by the State-respondents to the petitioner within four weeks from today. Liberty is granted to the State-Government to recover the aforesaid cost from respondent no.1. Let a copy of this order be sent by the Registrar General of this Court to the Chief Secretary of the Government of Uttar Pradesh for necessary action.

Order Date :- 24.7.2018 Ak/