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Editorial

FARMERS IN DISTRESS

"In India if agriculture goes wrong nothing will go right" said Dr.M.S. Swaminathan, Father of Green Revolution in India, during 1970's and early 1980's. However, the country could not maintain the momentum in view of various adverse reasons. Though agriculture is the lively hood of more than 55 percent of the population in India, there had been a decline in the number of cultivators from 127.3 million to 118.7 million that shows that there is a shift from the farm sector to non-farm sector employment, when the cultivation has become non –viable, un remunerative and risky due to vagaries of the weather and certain wrong policies of the government. The share of agriculture and allied sector in GDP had declined from 15.2 percent during the eleventh plan to 13.9 percent in 2013-14. According to Economic Survey, food grain production in India has declined from 208 kg per annum per capita in 1996-97 to 186 kg. in 2009-10, a decline of 11 percent.

Among the farmers in India nearly 85 percent are small and marginal who could not reap the benefit of various schemes in the form of subsidy provided by the government. Cultivation continued to be manual with high labour cost. Small famers also are deprived of minimum support price for their products, nor the storage facility. They also lack access to Food Corporation of India (FCI) the procuring agency of the government to procure their produce. Consequently they depend on local market and sell their produce at the distress price. All these adverse factors made the cultivation become non viable.

Added to their woe, famers also find difficult to get working capital for cultivation when they do not have adequate collateral for bank credit. Consequently they are forced to depend on local money lenders at exorbitant rate of interest. Indian farmers are also reeling under the impact of freakish weather as unseasoned weather such as draught or flood, destroy their crop adding to their misery. This situation makes them to default their loan inviting the wrath of the money lenders. When the situation become unbearable with the threat from the lenders, farmers are forced to take extreme step of ending their lives. Farmers have been committing suicide from every part of the country for many years. Instead of taking a concerted step to find a solution to this recurrent problem, political parties indulge in blame game especially while sitting in opposition to take advantage of the situation. The irony is that every political party in India has become farmers friendly and claims to be true champion of farmers, including the declaration

of loan waiver scheme during election except looking in to the real problem they are facing.

As far as the food security is concerned there is a mismatch between the demand and supply. It is always linked to food production. As such due importance is to be given by the government to agricultural sector by providing liberal credit facility, with subsidized manure, pesticides and seeds of high quality. However, the over use of pesticide had its impact on the health of people and the quality of the soil. Excessive use of pesticides and chemicals reduce the resistance power and quality of the soil, resulting in the spoiling of plants and trees. It is reported that similar situation in Punjab has degraded the soil that has led to depletion of soil carbon, the bed rock of the soil productivity and nutrition.

There is also no proper water management in the county. While people are struggling due to flood in certain areas, other areas are suffering due to persistent draught. When there are allocation of fund for irrigation there is no project for soil and water management. The proposal to inter connect rivers in the country though many decades old they are still on paper, pending for certain regional apprehension.

Still the farmers continue their profession because lack of alternate opportunities. This bitter experience also makes many farmers to discourage their children nor the coming generation from entering into that venture. It is also reported that this situation also had its impact, in matrimonial alliance where people do not want to give their daughters to the farmer's family due to bleak future to the sector. Being at the bottom of the socio economic order is a horrifying experience to the affected farmers.

When the cultivation is not profitable, farmers turn in to alternative avenues, including migrating to urban areas for better pasture, thereby the cultivable land become idle. As such government should have some serous thinking as to how to rehabilitate the farmers and bring back the industry in the interest of national economy.■

Labour Issues

EPFO EASES UAN NORMS FOR PF CLAIMS, WITHDRAWAL

Employees who left EPFO membership before January 1, 2014, now do not need to furnish their Universal Account Number (UAN) for settlement of PF claims or withdrawal.

"Claim forms may be accepted without UAN if the date of leaving / exit of the member is before 01.01.2014," says a circular dated July 13, by the Employees Provident Fund Organisation (EPFO) sent to all zonal and regional offices.

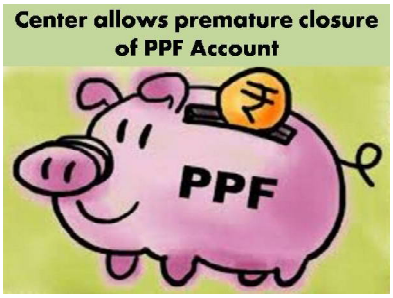
Interestingly, the circular added that in "exceptional cases", the officers –in-charge of a regional office may "at their discretion based on merits of the case allow acceptance of claim forms without UAN". With effect from January 1, 2016, the EPFO had made it mandatory for all members to furnish the (UAN) for settlement of claims, such as PF withdrawal. EPFO said the decision to relax norms was taken after instances of some difficulties for members who had ceased to be in employment before January 1, 2014 were brought to light, "given the fact that initially UAN was allotted to only members who were subscribers during January 2014 to June 2014." The retirement fund body has so far allotted over four crore UANs to its contributing subscribers. EPFO has about nine crore inoperative or dormant account, and at least 80 percent of these accounts are in all likelihood of members who exited before 2014. "Therefore, almost seven crore exited EPFO members can expect to benefit from this move, should they choose to withdraw their PF,".■

Source: Business Line,Dt.15.7.16

TO SEEK A FAVOUR IS TO BARTER AWAY ONE'S FREEDOM

CENTRE ALLOWS PREMATURE CLOSURE OF PPF ACCOUNT

In a significant move, the Finance Ministry has allowed subscribers of the Public Provident Fund (PPF) to prematurely close their account after a minimum of five years for reasons such as higher education or expenditure towards medical treatment.



The Ministry, in a notification, said, the subscribers can close the account if "the amount is required for serious ailments or life threatening diseases of the account holder, spouse, dependent children or parents... or the amount is needed for higher education of the account holder or the minor account holder." It further added that supporting documents and bills will have to be produced.

But such subscribers will get one percent interest less than other accounts. For instance, instead of an interest of the current 8.1 percent, a subscriber who chooses to prematurely close his PPF account would earn interest of 7.1 percent on the deposit. At present, withdrawals from the PPF account are allowed after seven years of opening the account. But it is only up to 50 percent of the total deposit till the end of the fourth year. The account matures after 15 years, when full withdrawals are permitted.

Interest rate

The return on PPF is maintained at 8.1 percent in the July-September quarter, the same as that in the quarter ending June 30, 2016.■

Source: Business Line, Date 21.6.2016

Artide

TIME LIMIT TO FILE A CLAIM BEFORE THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972

In order to understand the real picture of time limit to file a claim application for gratuity before Controlling Authority appointed under section 3 of the Payment of Gratuity Act, 1972, it is expedient to examine the provisions of section 4 and section 7 of the Act 1972 collectively and not in isolation. Virtually the provision of section 4 of the Act 1972 ensures the right of the employee to receive gratuity from his employer, whereas the provision of section 7 (2) of the Act, thrust the statutory obligation upon the employer to pay gratuity as per provision of section 4 on fulfilling certain conditions prescribed in the Act. One must not be confused with the provision of section 7 (1) of the Act which provides to send a written application to the employer only. The obligation to make payment of gratuity will never get discharged particularly due to default of the employee to prefer the claim as required under section 7 (1) of the Act. A combined reading of sections 4 and 7 of the Act makes it clear that Parliament has not prescribed any time limit in the Act, 1972 to file claim before the Controlling Authority appointed under section 3 of the Act. It is the rules only, made by the appropriate Government under section 15 of the Act 1972 for carrying out the provisions of the Act, which prescribed ninety days to file claim before the Controlling Authority with a proviso clause to accept the application after ninety days on sufficient cause being shown by the applicant. The issue was scrutinized by Hon'ble High Court of Allahabad in **Kraft Palace v. Appellate Authority under Payment of Gratuity Act and others,'** and it is observed that the obligation is upon the employer under section 7 (2) and (3) to determine the amount of gratuity and give a notice in writing to the employee alongwith a copy to the Controlling Authority specifying the amount of gratuity so determined and to pay the same within thirty days. If it is not done the Controlling Authority is fully justified to award the interest as prescribed under section 7 (3-A) of the Act, 1972. If above exercise is not done and the employee is forced to approach the Controlling Authority it cannot be

said that the employee slept over on his statutory right.

Again while scrutinizing a case of payment of difference of gratuity amount Hon'ble High Court, Allahabad in **U.P. Power Transmission Corporation Ltd. v. Jagdish Narayan Rawat and others,** has opined that the employee is free to opt and to get better terms of gratuity in view of section 4 (5) and section 14 of the Act, 1972. But if the employee itself slept over his statutory claim for nine years the order to pay the interest on the difference amount is not justified.

An enlightening exposition is given regarding the real theme of sections 4 and 7 of the Act by Hon'ble High Court Hyderabad in **Krishna District Milk Producers Mutally Aided Co-operative Union v. State of Hyderabad and others** by holding that the provision contained in sub-section (1) of section 7 of the Act are purely directory and the provisions contained under sub-sections (2) and (3) of section 7 of the Act are mandatory in content and scope. It is further observed that right of employee to receive gratuity under section 4 of the Act has not been extinguished by the failure to comply with sub-section (1) of section 7 of the Act. Thus the obligation to make payment of gratuity will never get discharged particularly due to default of the employee to prefer a written application to the employer. In the absence of any such extinguishment of rights and obligations statutorily cheated by section 4 of the Act, the provision of any period of limitation become purely procedural and they are liable to be treated non-substantive. But the author of this write-up is of the determined view that the rules regarding the limitation period of ninety days must be adhered as being subordinate legislation. Even the provision of section 7 (4) (a) of the Act provides to deposit the gratuity amount with the Controlling Authority as confirmed by Hon'ble High Court of Orissa in **G.M. Mahanandi Coal Fields Ltd. v. Asim Kumar and others**.

In view of delineation in above paragraph it is necessary to discuss the phrase "Substantive Law" and "Procedural Law". The definition and distinction of both the phrases are discussed by Hon'ble Apex Court in **Bharat Barrel and Drum Manufacturing Comp. Pvt. Ltd. and others v. Employees State Insurance Corporation** and it is held that substantive law deals with the right and is fundamental, whereas the procedure is concerned with legal process involving actions and remedies. In other words the substantive law is that which we enforce, while procedure deals with rules by which we enforce it.

Tested on above principle and bare perusal of the various provisions of the Act 1972, it is inferred that the employee, if he fulfills other statutory conditions, cannot be debarred to receive gratuity on the grounds of delay only. Even in exercise of rule making power under section 15 of the Act, 1972 it is not open to appropriate Government to prescribe any period of limitation which might workout to extinguish the right to get gratuity if other statutory conditions are fulfilled. Rule making power is conferred only for purpose of giving effect to the provisions of the Act and they are not liable to be utilized for creating additional burden or liability which are not contemplated in the Act itself. Any such exercise of power which tends to limit the applicability of the provisions of the statute amounts to unauthorized exercise of power and consequently "**doctrine of ultra vires"** gets attracted.

But despite above legal position most of the State Government and Central Government has made rules in exercise of the powers conferred by section 15 of the Act, providing the period of limitation of ninety days to present the claim application before the Controlling Authority with a proviso clause to show the sufficient cause for not preferring the claim application within the prescribed time limit. Here it is pertinent to distinguish the provision of section 7 (1) of the Act which says to give application before his employer, but Rule 10 (2) of Central Rules, 1972 says to apply for gratuity before the Controlling Authority for direction. Almost similar provisions are available in State rules. The proviso clause in Rule 10 clearly show the discretionary power of the Controlling Authority to accept the application. On the basis of above narrated principle, it is concluded that in

absence of any such extinguishment of rights and obligations statutorily created by section 4 of the Act the provision of any period of limitation become purely procedural and they are liable to be treated as non-substantive. The Controlling Authority appointed under section 3 of the Act, 1972 should consider the matter accordingly. ■

By.....M.P. Shrivastav
Asstt. Labour Commissioner and Registrar (Retired)
Source: FLR 2016 (150)

THE CONCEPT OF "NO WORK NO PAY" REVISITED : A CONTEMPORARY APEX JUDICIAL DICTUM

A workman, who was working in Camp Services and Works Division, remained absent for a long time (nearly one and half years) as he was suffering from depression. I, myself, with some works committee members and union's office bearers, went to his house and brought him to workplace. He worked for a month but his salary 'was not prepared. When the matter was enquired into the Chief Administrative Officer of the establishment told that since he remained absent for a long time he cannot be allowed to report for duty. He will be issued with charge-sheet and proceeded against departmentally. After that the workman stopped reporting for duty. Thereafter, the trade union made a representation for the salary including salary for the period of absence after one working of that workman. The Director of the Establishment (Dr KG Narayanan Distinguished Scientist and Former Chief Advisor [Technology], DRDOHqrs), fortunately, trusted me. The matter went to him. He ordered that the matter need be legally examined by ALWC (C). The matter came to me. I opined as follows:

That it is a fact that the workman remained absent for long but the reason need be examined and if the authorities so desire they can refer him to a medical board to ascertain whether he is suffering from depression. If his claim is found true, his period of absence can be regularised by granting commuted leave. As far as his salary for one month and thereafter is concerned, his salary should be paid as he worked for one month and thereafter he was willing to work but since salary was not paid to him for one month he stopped coming to work. It is not his fault. In this case the maxim "no work no pay" is not applicable as the no work is not attributable to him.

The learned Director, who was not originally an administrative or legal professional, agreed with my views and ordered for release of his (the workman's) entire salary. He complimented me for my logical reasoning and stated that due to this advice ADE could avoid a Court case.

In the year 2006 I was working in Naval Dockyard, Mumbai and the Dockyard was facing a similar problem. One Captain Virendra Singh Maria was my superior [A G M (P&A)]. He confronted with a situation as above. When some workers used to report for duty after prolonged absence they were not being allowed to report for duty and in some cases their identity cards were take away. The Sr. Manager (Legal)/Judge Advocate used to opine that a person remaining absent for long cannot be allowed to report for duty as he has rendered himself liable for disciplinary action by remaining absent for a very long time. Captain V.S. Maria, in his own wisdom, marked the file to me for my opinion. It is my fortune that from day one he reported, he liked and trusted me. In this case I opined as follows:

That the persons, who remained absent for long and came to report for duty, cannot be denied to report for duty as there is no such provision either in CCS (CCA) Rules, CCA (Conduct) Rules and also in Fundamental Rules. When an employee has come to report for duty, he/she is an employee, who is willing to work. If we refuse him/her from joining duty and subsequently, if he/she claims salary for the period, we will have to pay as this would not be a situation of No work No pay. It would be quite illegal and administratively incongruent to deny him/her from joining duty. For the misconduct of remaining absent for long, he / she can be proceeded against departmentally which is altogether a separate issue and should not be tagged to the present issue.

Captain Maria and Rear Admiral V. Balachandran, the then Admiral Superintendent of Naval Dockyard agreed to my reasoning and the practice was discontinued.

THE CASE-LAW:

SHOBHA RAM RATURI
V.
HARYANA VIDYUT PRASARAN NIGAM LIMITED AND OTHERS
[Civil Appeal No.11325 of 2011]
Do J: 9 DECEMBER, 2015

FACTS OF THE CASE:

One, Shri Sobha Ram Raturi was retired from the service of Haryana Vidyut Prasaran Nigam Ltd. on 31.12.2002, even though he would have, in the ordinary course, attained his date of retirement on superannuation, only on 31.12.2005. The appellant assailed the order of his retirement dated 31.12.2002 by filing Writ Petition No. 751 of 2003. The same was allowed by a learned Single Judge of the Punjab and Haryana nigh Count, on 14.9.2010. The operative part of the order is extracted hereunder:

"Accordingly the present writ petition is allowed; order dated 31.12.2002 (Annexure P-4) is quashed. The petitioner would be treated to be in continuous service with all consequential benefits. However it is clarified that since the petitioner has not worked on the post maxim of "no work no pay" shall apply and the consequential benefits shall only be determined towards terminal benefits. However there will be no order as to costs.

L.P.A. TO THE HIGH COURT:

The denial of back wages to the appellant by the High Court vide its order dated 14.9.2010 was assailed by the appellant by filing Letters Patent Appeal No. 489 of 2011. The High Court rejected the claim of the appellant, while dismissing the Letters Patent Appeal on 26th May, 2011. The orders dated 4.9.2010 and 26.5.2011 passed by the High Court limited to the issue of payment of back wages, were subject-matter of challenge before the Apex Court.

Recently, a case of this nature came up before the Hon'ble Supreme Court. Let us know as to how this maxim of No Work No pay has been interpreted by the Hon'ble Supreme Court.

S.L.P. TO THE SUPREME COURT:

Having felt aggrieved by the order of the Division Bench, Shri Raturi filed a Special Leave Petition in the Hon'ble Supreme Court, which, on grant of special leave, became Civil Appeal No. 11325 of 2011.

THE ADJUDICATION:

On giving its thoughtful consideration to the controversy, the Hon'ble Supreme Court stated that it is satisfied that after the impugned order of retirement dated 31.12.2002 was set aside, the appellant was entitled to all consequential benefits. The fault lies with the respondents in not having utilized the services of the appellant for the period from 1.1.2003 to 31.12.2005. Had the appellant been allowed to continue in service, he would have readily discharged his duties. Having restrained him from rendering his services with effect from 1.1.2003 to 31.12.2005, the respondent cannot be allowed to press the self-serving plea of denying him wages for the period in question, on the plea of the principle of "no work no pay ''

THE CONCLUSION:

For the reasons recorded hereinabove, the Hon'ble Supreme Court told, it is satisfied that the impugned order passed by the High Court, to the limited extent of denying wages to the appellant, for the period from 1st January, 2003 to 31st December, 2005 deserves to be set aside

THE VERDICT:

1. The order of the Division Bench of the High Court was set aside

2. The appellant was directed to be paid wages for the above period within three months from

the date of the judgment.

3. His retiral benefits, if necessary, was to be, re-calculated on the basis thereof, and be released to him within a further period of three months.

4. The appeal was allowed in the above terms.
[aks,Dhanbad:13 January, 2016]

***By.....* Ajaya Kumar Samantaray**
Dy/ Chief Labour Commissioner (Central)
Source : FLR 2016 (148)

STOP ANTIBIOTIC RESISTANCE NOW

Aggressive superbugs that have the power to kill are a reality. Inappropriate use of antibiotics has led to the evolution of illness causing microbes, resulting in nearly 700,000 people dying each year from conditions that were once straightforward to manage from seemingly benign cuts and abrasions to diarrhea and skin sores.

A Return to the dark, pre-antibiotic era of public health is looming

By 2050, if present trends continue, that figure is expected to rise to 10 million. The reduced effectiveness of antibiotics, an outcome of antimicrobial resistance, constitutes a mortal threat to health security. It must be arrested now.

Countries in the W H O South–East Asia Region are particularly vulnerable. Alongside gaps in healthcare services, dense populations and often poor sanitation contributes to a breeding ground for superbugs.

In Jaipur, India, in 2011, countries in the region recognized the need to prevent and contain the problem, and acknowledged that the most significant driving factor is irrational use of antibiotics from over-the –counter availability and over prescription. They also recognized that while the problem could lead to an epidemic, it is already leading to loss of lives, long-term suffering, disability, and reduced productivity and earnings. While some concrete measures have been taken, more must be done. With a dearth of new antibiotics being developed, we must closely guard the efficacy of those that we already have.

Time for action

There are simple and effective measures governments must take. They must ensure legitimate antibiotics are only obtained via a doctor 's prescription and must enforce legislation to prevent the manufacture, sale and distribution of substandard antibiotics. This will disrupt our tendency to reach for, say, amoxicillin at the first sign of a cough or skin sore, and will ensure that the antibiotics consumed are of the highest quality. Governments must also promote changes in the prescription habits of doctors by emphasizing the diminishing returns of antibiotics. This will help medical professionals feel confident in the treatments they recommend and will enhance their ability to resist pressure–whether from industry or patients –to prescribe powerful antibiotics as an easy fix.

And governments must take urgent action to regulate the use of antibiotics for purposes that have no relation to health. In the South –East Asia Region, this means ensuring that the livestock and fisheries industries desist from using life-saving antibiotics for 'growth promotion' in animals.

Advances in the quality of healthcare across the region are already being reversed.

Economic implications

Resistance to first –time antibiotics means treating once basic illnesses is more difficult, costly and time-consuming. In resource –poor settings, this matters. Not only is a farmer in Nepal, a fisherman in Sri Lanka, or a factory worker in Indonesia biologically imperiled by antimicrobial resistance, as we all are, but they must also deal with the potentially ruinous burden of having to pay more for care while taking a greater

amount of time off of work in order to get well.

The wider economic implications of this are troubling. If present trends continue, it has been estimated that by 2050 antimicrobial resistance will result in a 2 percent to 3.5 percent reduction in GDP, representing a significant opportunity cost for the region's developing economies.

The good news is that commitment to tackle the problem is crystallizing. Governments, pharmaceutical companies and multilateral organizations have recognized that concerted action is needed, and that adhering to WHO 's Global Action Plan on Antimicrobial Resistance is the surest way to fight back. Governments are now working on a roadmap to achieve the Global Action Plan's targets, including drafting and implementing national action plans with clear outcome –based protocols for measuring, documenting and reporting progress. What can't be measured after all can't be achieved. As with all public health interventions, the push to reverse antimicrobial resistance and the menace it represents to health security requires intelligent policy –making backed by keen and effective enforcement.

It also demands more than a little old-fashioned grit and a society-wide resolve to see these efforts through. If words aren't transformed into meaningful, multi sector action, Antimicrobial Resistance 's future consequences will be many times more catastrophic than they already are.■

Source: Business Line-Dt.3.3.16

ORDEAL ON INDIAN ROADS

It will be a stomach churning situation when one hears the news of any gruesome road accident reported from anywhere in the country on day to day basis. It can be about an injury, severe to very severe, critical or fatel. The number of road accidents in India has gone up to 501423 in the year 2015 from 489400 in the previous year, with 146133 people lost their lives in the year 2015 as against 139671 in the year 2014 with an average of 400 deaths per day irrespective of age group. Of the accidental death 54.1% are in the age group of 15-34 with an average of 216 deaths per day. It is also reported that 40% of accidents are taking place mostly during early hours and 60% during the day time. Drivers fault is the reason for 77.1 of the accidents that includes death and injuries, as in many cases they are not competent mentally and physically while driving due to stress or faulty licensing method. In many cases those experienced drivers are also must be driving under great stress and strain, when there is no reliever during long or night journey. In India's scorching weather condition the heavy vehicle drivers especially the truck drivers should have better working condition. Fixation of target or time schedule makes them to over speed and violates traffic rules.

There are reports of juvenilies from many effluent families creating havoc on the road when they drive the vehicle recklessly with or without the knowledge of their parents leading to fatal accidents and damage to other vehicles or properties. The two wheelers account for 29 percent of the accidents. In order to avoid fatal accidents to two wheeler riders many states have started implementing wearing of helmets not only for drivers but also for the pillion riders.

India has one of largest road net work in the world spread over 48.65 lakh km. It comprised of national highways, express ways, state highways, district and village roads, though the road connectivity is not at the required level commensurate with the size of the population and the number of vehicles. This

connectivity is very much relevant to countrys economic growth. As such government proposes to improve our express way connectiing all metros and ports, though there are various constraints of acquiring agricultural land and human settlements.

Of late the change in the life style of the people made them to opt for four wheelers as against the existing two wheelers, proportionate to the size of the family. This has added to the congestion on the road as it is reported that every year more than 10 percent of the vehicles are being added on already congested road, leading to more accidents. As per report New Delhi and Bangalore are having the highest numbers of vehicles on the road in the country with 61 lakh and 88 lakh respectively. With the improvement in the economic condition of the people and easy access to finance from the banks and other financial institutions, facilitate people to purchase more vehicles irrespective of the capacity of the road. Now Indian roads are choked with many brands of vehicles beyond their capacity.

Over speed is the villain that creates accidents on the road. In order to control the speed the Central Government issued direction to various State Governments to fix speed governors on the heavy vehicles. However, many states are yet to implement the system under the pressure from the vehicle owners. If the system is installed many accidents on the road could have been averted.

Government on their part also require to enforce the law strictly on the road safety, besides creating awareness among the road users and drivers on the dangers of violating the traffic rules. Ignorance of basic traffic rules is another reason for most of the accidents, such as about over speeding, overtaking, drunken driving, usage of mobile phone while driving, over taking at a curve or bent etc. Apart from the driving being a thrill too many especially among the youngsters, the present day life style also make people to move fast, ignoring the other road users. Using mobile phone while driving is another social evil that create accidents. Many of the congestion on the road is due to overtaking preventing the incoming vehicle to pass, forgetting one's commitment to the society.

Those monsters that drive at a breakneck speed, hogging the road, threatening to run over other road users are all in the name of reaching their destination at the cost of others lives. It looks as though the violation of road rules is the birth right of erring drivers as they do not take care of the fellow drivers or pedestrians on the road.

As per Motor Vehicle Regulations the drivers of a motor vehicle shall not pass another vehicle travelling in the same direction as he himself if:

a) His passing is likely to cause inconvenience or damage to other traffic proceeding in any direction.

b) He is near a point, bend, corner or a hill or other obstruction of any kind that render the road ahead not clearly visible.

c) He known's that the driver who is following him has begun to over take him.

d) The driver ahead of him has not signaled that he may be over taken.

e) The driver of a motor vehicle shall not when being over taken or being passed by other vehicle increase his speed or do anything in any way to present the other vehicle from passing him.

If all the drivers follow the above basic principle on the road, many accidents can be prevented. While creating an awareness among the drivers and road users through electronic and print media, bill boards or frequent announcements on the road safety rule, the motor vehicle authorities can also provide orientation course on motor vehicle rules, stress management, human psychology among the drivers especially to all the heavy vehicle and public transport vehicle drivers that may go a long way in preventing the road accidents.■

Judicial Verdict

[2016 (149) FLR 1052]

(KERALA HIGH COURT)

DAMA SESHADRI NAIDU, J.

Writ Petition (C) Nos. 19414 of 2006 (J) and 34323 of 2007

March 11, 2016

Between

SURENDRAN V.K.

and

ELAVOOR SERVICE COOPERATIVE BANK LTD. and another

Industrial Disputes Act, 1947– Sections 33-C(2) and 33– Wages– Absorption in service– Implementation of Award, passed in favour of workman– Claims for arrears of wages by workman– Bank has not chosen to challenge award, which has attained finality– Absence of challenge to award is fatal to subsequent contentions made by Bank– Section 33 involves the determination of pecuniary benefits due to workman– Labour Court has rightly excluded the period when the first respondent did not approach the employer– W.P. filed by first respondent-workman stands allowed– Bank shall settle all benefits to first respondent as has been determined. [Paras 12,13 and 15]

JUDGMENT

DAMA SESHADRI NAIDU, J.– The petitioner in W.P.(C) No. 34323 of 2007, a Co-operative Bank, engaged the first respondent on a daily wage basis from 2.8.1994. On 30.6.1999, the petitioner Bank terminated his services forcing him to raise an industrial dispute in I.D. No. 101 of 2000.

The petitioner-Bank filed W.P.(C) No. 34323 of 2007 questioning Ext.P6 order of the Labour Court. On the other hand, the first respondent filed W.P.(C) No. 19414 of 2006 seeking enforcement of Ext.P3 award.

2. For ease of reference and convenience, I take into consideration the facts and exhibits in W.P.(C) No. 34323 of 2007 for the narrative purpose.

3. As the record reveals, the second respondent, the Labour Court, rendered Ext.P3 award in the first respondent 's favour. Among other things, the Labour Court has observed thus:

> "9. Therefore it is held that the workman is entitled for notice pay and compensation in accordance with law. Since nothing of that sort was complied with, he would deem to be in service till his service is validly terminated.
>
> 10. Since all the regular appointments in the management society have to be done on the basis of recruitment rules of its own, the claim of the workman for absorption by considering the length of his service rendered cannot be accepted. The plea of the workman in that respect is rejected.

4. Subsequently, the first respondent submitted Ext.P4 representation before the petitioner Bank expressing his willingness to join duty. But, it was to no avail. Under those circumstances, the first respondent filed Ext.P5 Claim Petition and invited Ext.P6 order under section 33-C(2) of the

Industrial Disputes Act, 1947. The Labour Court in Ext.P6 has declared to the following effect:

> "In the result, Claim Petition is allowed allowing the petitioner to recover wages at the rate of ` 1040/- monthly from 1.7.1999 till 4.11.2003 and from 15.2.2005 till 6.7.2005, the date of filing the petition. The opposite party is directed to pay the amount before the expiry of one month from this date. In default, the petitioner is entitled to recover interest at the rate of 6% from the date of petition till the date of recovery."

5. The petitioner-bank has assailed Ext.P6 order passed by the Labour Court; conversely the respondent-workman has sought the implementation of Ext.P6 order.

6. In the first place, the petitioner-Bank has not chosen to challenge Ext.P3 award which has attained finality. As has been rightly contended by the learned Counsel for the first respondent Ext.P6, at best, is only consequential in nature.

7. Indeed, Shri. Sabari, the learned Counsel for the petitioner-Bank, has strenuously contended that in terms of section 33-C(2) of the Act, the first respondent ought to have filed what is said to be the claim petition within three months. He has also contended that though the petitioner-Bank has not challenged the award per se, it has nevertheless challenged its enforcement on the grounds of limitation.

8. The learned Counsel for the petitioner-Bank has also strenuously contended that in response to Ext.P3 award, the workman did not report for duty. According to him since the respondent has abandoned his right, he could not later turned back and take any advantage of the same award.

9. In response the learned Counsel for the first respondent, placing reliance on a decision of a learned Division Bench of this Court in ***Kumaraswamy v. S.T.E. Workers' Union,*** has contended that for enforcing an award passed by the Labour Court, there is no limitation fixed.

10. Trying to meet the contention of the learned Counsel for the petitioner that the first respondent filed belatedly Ext.P4 application expressing his willingness to join, the learned Counsel for the first respondent would contend that if there were to be any delay, it would not be fatal to workman's claim for future wages from the date of award. In this regard, he has placed reliance on a judgment of another learned Division Bench of this Court in ***Annamma Thomas v. T. Joseph. Further, placing reliance on Indian Aluminium Co. Ltd. v. Aluminium Factory Workers' Union,*** Alwaye the learned Counsel for the first respondent would contend that there could not be any automatic termination of operation of award in the face of a workman's assumed unwillingness to report to duty. According to him, there is a duty cast on the employer to issue a notice fixing an ultimatum and the refusal of the workman to join duty would amount to termination of the award.

11. Heard the learned Counsel for the petitioner Bank and the learned Counsel for the first respondent workman, apart from perusing the record.

12. Indeed, in the first place, the petitioner has not challenged Ext.P3 award. And since Ext.P6 order being only consequential, challenge against it would not arrest the legal consequences flowing from Ext.P3 award, which is the primary one. In my view, absence of challenge to Ext.P3 is fatal to the subsequent contentions made by the petitioner. And it is too well established to be disputed that without challenging the primary order, challenging only the consequential one is of no consequence.

13. Further, the contention of the learned Counsel for the petitioner that Ext.P6 order is barred by limitation in terms of section 33-C(2) of the Act is misplaced. First, as has been held by the learned Division Bench, there is no limitation fixed for the enforcement of the award of the Labour Court. Second, the limitation that is spelt out, if it were to be called limitation, in section 33-C(2) of the Act is with regard to expeditious disposal of proceedings under section 33 of the Act by the labour Court, rather than a mandate to the workman to come before the Labour Court within three months. Since section 33 or the Act involves the determination of pecuniary benefits due to the workman, the legislature in its wisdom has felt it desirable to protect the workman's interest by fixing a strict time frame for the determination of the issue, so that he/ she would get the fruits of the award at the earliest.

14. Though there is a semblance of justification in the contention of the learned Counsel for the petitioner that the first respondent submitted Ext.P4 application 1/ 2 years subsequent to Ext.P3 award, I am afraid it cannot be fatal to the first respondent 's claim. Nor can it automatically terminate the operation of the award as has been held in ***Indian, Aluminium Co. Ltd. v. Aluminium Factory Workers' Union Alwaye***. Further, a perusal of Ext.P6 shows that the Labour Court has rightly excluded the period when the first respondent did not approach the employer, the petitioner-Bank, expressing his willingness to join duty.

15. Under these circumstances, I am of the considered view that W.P.(C) No. 34323 of 2007 filed by the petitioner-Bank cannot be sustained and it is accordingly dismissed. On the other hand, W.P.(C) No. 19414 of 2006 filed by the first respondent workman stands allowed.

As a result, it is directed that the petitioner-Bank shall settle all the benefits to the first respondent as have been determined and directed in Ext.P6 order.■

Ordered Accordingly.

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