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Chamber :

Room No. 19

Jharkhand High Court Ranchi

Ref. No. Legal Notice / Commissioner-CMPF/ 2013/01

Date : 15.04.18

To,

The Commissioner
Coal Mines Provident Fund
Post Box No. 58, Police Line
Hirapur, Dhanbad - 8216001

Sub : Legal Notice against inaction on your part resulting into depletion of pension fund and non revision of pension for last 13 years.

Dear Sir,

Under the instruction from my client, 'Coal Mines Retired Executives Association', represent by its Secretary Sri J.N.Singh. 104, Uma Shanti Apartment, Kanke Road, Ranchi - 834008. I am serving this legal notice calling upon you to act as per the provisions of the Coal Mines Provident Fund & Miscellaneous Provisions Act, 1948 and various schemes framed under the same. The related issues are brought under the following paras :

- (1) That you have been appointed as a 'Coal Mines Provident Fund Commissioner' under Section 3C of the Act. Accordingly you are the 'Chief Executive Officer of the Board'. Therefore, you are responsible for implementation of the provisions of the Act and Schemes framed thereunder.
- (2) That as per definition under section 2(d-1) 'any person employed by or through a contractor in or in connection with a coal mine' is an employee.

- (3) That as per definition under Section 2e “any contractor for the working of a coal mine or any part thereof shall be subject to this Act in like manner as if he were an employer, but not so as to exempt example the employer from any liability” is an employer. Therefore, contractor and principal employers are the employers of the workers engaged in a Coal Mine.
- (4) That you are fully aware that Coal India Ltd and its subsidiaries are engaging contractors for production (raising) of coal and removal of overburden. By now the quantum of production in C.I.L. through contractor-workers is more than 50% of production of coal and over-burden taken together. Singareni Collieries Company Ltd has been engaging contractors for such production on the lines of Coal India Ltd.
- (5) That you are aware that the number of contractor- workers in Coal India Ltd. by now, has exceeded 3 lakhs out of which not more than 40 thousand workers have been enrolled as members of the CMPF.
- (6) That you are aware that as per clause 25A (1-v) of the Coal Mines Pension Scheme, 1948 framed under the CMPF & MP Act, 1948 that every employee who has put in an attendance of 30 days or more in any month or quarter is to be made the member of the CMPF. However, you have been very liberal and considerate to leave it to the contractor (or the principal employer like CIL and SCCL) to get them enrolled as CMPF member or not. Your inaction into the matter is a serious default on your part as it amounts to deliberate non-implementation of laws on the subject.
- (7) That you are fully aware that C.I.L. (and also SCCL) is increasing its production of Coal and removal of Over-burden and simultaneously reducing its own manpower. Such achievement is on account of **Illegal Mining** carried out by them in violation of the Section 10 of “The Contract Labour (Regulation and Abolition) Act, 1970 mandated through the notification issued by the Ministry of Labour & Employment vide S.O. 488 dated 01.12.1975 and S.O.

2063 dated 21.06.1988. They went on reducing their own manpower and engaged contractor after contractor. You did not take any action to enforce the provisions of the Act, 1948 and the relevant Provisions under Coal Mines Provident Fund Scheme, 1948. As a result, inspite of mammoth growth in production of Coal and Over-burden, the number of contributing members to the CMPF has reduced from about 8 lakhs to less than 4 lakhs. In reality the number of CMPF should have gone to a figure at least about 10 lakhs. For this state of affairs you are responsible as you did not take any action against the employer inspite the fact that you are vested with the power to prosecute the employer (both principal employer and contractor) under the Section 9 of the Act, 1948.

- (8) That you should be knowing that the contractor workers are entitled for payment of wages at the rate of principal employer's worker for same or similar kind of work. The relevant rule is quoted below :

QUOTE "The Rule 25 (2) (v-a) of the Contract Labour (Regulation & Abolition) Central Rules 1971 framed under the relevant Act, 1970 : In case where the workman employed by the contractor perform the same of similar kind of work as the workmen directly employed by the principal employer of the establishment, the wage rates, holidays, hours of work and other conditions of service of the workmen of the contractor shall be the same as applicable to the workmen directly employed by the principal employer of the establishment on the same or similar kind of work "UNIQUE.

This information is furnished enabling you to determine the arrear payable by the employers (C.I.L. and SCCL) to the CMPF and thereby augmenting the Pension Fund. You have not yet exercised the power vested in you under section 7B of the Act, 1948. This is another indication of your inaction and favour to the employers named above and also the contractors concerned who are deemed to be employers under Section 2(e) of the Act, 1948 as bought out under para 3 above.

- (9) That if non-payment of the contribution (12% +12%=24%) payable to the CMPF is computed the amount that the employers have saved, may amount to about Rs. 25 thousand crores. This fund may be very conveniently diverted to the depleting Pension Fund.
- (10) That you are aware that the Section 10D (1) binds the employer to pay both the shares, that of employee's and employer's, even if the employer has not recovered the employee's share from the employee. Therefore, on computation of the arrear payable to the CMPF against non-enrolled employees as member, the entire amount can be realized from the employer.
- (11) That the contribution by the members from amongst the contractor workers, though much less than the actual deployment, is far less in quantum as their wages has not been fixed at par with principal employer's employees. This para may kindly be kept in view with para 8 above while computing arrear (dues) payable by employer.
- (12) That you have not enforced the provision of payment of quarterly Bonus to the contractor workers. As they are not paid any amount in the name of Attendance Bonus, they are entitled for 10% of their wages provided they work for at least 54 or 66 days in a quarter in underground mines or on the surface including opencast mine respectively. Denial of such payment to the contractor workers is also a result of your inaction and favour to the employer including contractor. You are aware that the Coal Mines Bonus Scheme, 1948 is still in vogue for all categories of Coal Mines workers.
- (13) That you are aware that there has been undue delay in the "Actuarial" study of the Pension Fund. As per clause 22(1) of the Coal Mines Pension Scheme, 1998 valuation of the Pension Fund is to be undertaken every third year. It is your responsibility to get the fund evaluated in time. You have not been able to get the same done in time. The FIRST Actuarial study report was submitted by Sri Bhudev Chatterjee in the month of February,

2002 as at 31.03.2001. The second report was submitted by Sri Liaquat Khan of M/s Watson Wyatt India Private Ltd. in June/July, 2006 as at 31.03.2005. He had indicated that the corpus under CMPS, 1998 had undergone a deficit to the tune of Rs. 1946.67 crores. The Actuary had recommended for enhancement of contribution from current 12% of qualifying salary to 15% with effect from 1st April 2005. The recommendation was not acted upon on the plea that the valuation was made on 40% of data.

- (14) That my client pursued the matter for upward revision of pension. In response to one of my client's letter dated 20.06.2009 addressed to Hon'ble Minister of State (Coal) for upward revision of Pension, the Ministry of Coal informed my client that "the Actuarial study has been entrusted to the National Institute of Financial Management, Sector 48, Pali Road, Faridabad and "the work of revision of pension will depend on the valuation report and availability of funds". My client followed the matter with the NIFM who ultimately informed my client that due to non-cooperation and non-submission of the information by you (then Commissioner) they have declined to complete the job. Then another Actuary was appointed who also did not complete the job. Ultimately, the third Actuary in succession namely Sri Liyaquat Khan was appointed Actuary for the second spell. On follow-up with the Ministry my client was assured that the Actuary would give a hearing to the retired employees before finalizing its report. To this effect the Ministry addressed a letter to you bearing even no dated 9th September 2010. My client mentioned to you that Actuary refused to hear us as the Commissioner did not inform the Actuary about the Govt's instruction to the Actuary.
- (15) The above narration indicates that you did not take note of the Actuarial finding bringing out the deficit to the pension fund of Rs. 1946.67 crores as at 31.03.2005. The Actuarial Report submitted recently must have indicated heavy deficit. My client had availed the services of Sri Bhudev Chatterjee, Actuary. A report prepared by him was handed over to you in person by my client on 19th July

2012. According to Sri Chatterjee's study the deficit worked out to Rs. 17992.52 crores. Your Actuary might have given you figures close to this estimate.

(16) That your inaction resulted into receiving the Actuarial Report after SIX years of the second report i.e. double the period stipulated under clause 22(1) of the CMPS, 1998.

(17) That you have not honoured the Judgement of "THE HIGH COURT OF JHARKHAND AT RANCHI" in writ petition no. W.P. (S) No. 4245 of 2006. You were directed to act, as expeditiously as possible as prayed by the petitioner. The petitioner is one of the associates of my client namely Kishendra Narain Singh who took up the matter as a follow up of the assurance of consideration given by you for 'Linking DA with pension' and 'Enhancement of pension amongst others to 'Coal Mines Provident Fund Pensioners Association' in a meeting on 03.12.2005.

Copy of the relevant judgement and related Annexure 4 is enclosed for your ready perusal.

More than SIX years have passed but you have not acted to honour the order of the High Court. Your inaction is proved beyond any doubt.

Likewise in various correspondence you have assured my client for needful on revision of pension after receipt of the Actuarial study.

(18) That my client has ~~to~~ come to know that a sub-committee is constituted by the B.O.T. of CMPF to suggest ways and means to augment the pension fund. They have met twice but of no tangible result. The JBCCI may have to ultimately take the view. But my client's view is that the employer and contractors have jointly caused the losses to the CMPF and thus to the Pension Fund. You are aware that the fourth revision of the Pension is due but it has not been revised even once. Inordinate delay has caused the agonies to retirees of Coal Industry. Your inaction has emboldened the employer and contractor to go as they like. They are only after their profit which has resulted into exploitation of the contractor

workers and suffering of the pensioner. It is apparent that the employers like CIL and SCCL are enjoying the exploitation of contractor workers and causing the suffering to the retired employees.

(19) That you are bound to enforce the provisions of the CMPF & MP Act, 1948 and the Schemes framed under it. In nut and shell I am to point out that you ought to take the following action to enforce the law.

- (i) Get all the Contactor-workers enrolled as members of the CMPF. Their number must be based on the volume of work performed by the contractor and not as per their statement.
- (ii) Losses suffered by the CMPF on account of not enrolling all the contractor workers as members of the fund should be computed and realized from the employers by exercising your power under Section 7B. The amount so computed on yearly basis should be realized with interest from the employers. (please also refer para 8 above). Such amount is estimated to be not less than Rs. 25 thousand Crores.
- (iii) Ensure that contribution to the CMPF (Employee's and employer's share) is deposited to the fund based on the same wages to the contractor-workers as are paid to the employees of the CIL/SCCL for same or similar work. Such enforcement will only be in compliance with the Rule 25 (2) (v-a) of the Contract Labour (Regulation & Abolition) Central Rules 1971 (Please refer para 8 above).
- (iv) Take legal action for non-compliance of the provisions of the Act, 1948 and schemes framed thereunder. You are fully empowered to do so under the Section 9 of the Act, 1948.
- (v) Ensure payment of Bonus as brought out under para -12 above.

I am only bringing to your notice the inaction on your part in the past and also let you know the way and means to rectify the non-compliance to the extent possible at this stage. However, it is expected of you that you will

take positive steps to comply with the provisions of the extant laws on the subject.

My client will wait for your positive response through me for 60 days from the receipt of this notice.

I am retaining a copy of this notice and related documents for further legal action on behalf of my client.

Yours,

R. Ranjan
Rakesh Ranjan 15.04.18

Encl : Copy of the High Court Jharkhand at Ranchi's order alongwith the Annexure-4 (Ref : para 17).

IN THE HIGH COURT OF JHARKHAND AT R A N C H I

W.P(S) No.4245 of 2006

Krishnendra Narain Singh Petitioner.

Versus

Union of India and Others Respondents.

**CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE M.Y.EQBAL**

For the Appellant : M/s. R.K.Singh.
For Respondents : M/s.J.P.Gupta, Ananda Sen.

2/20.09.06. It is pointed out by the Counsel for the petitioner that paragraph 3 to Annexure-4 contains the following quotation:-

"The CMPF Commissioner assured he will take up the matter with actuary once actuarial valuation is complete and surplus is arrived yet and the actuary will be requested for accommodation for these demands positively."

Counsel for the respondents submits that if a direction is given to the authority concerned with reference to paragraph 3 to Annexure-4 ^{it would suffice} it could be considered.

In the light of the submission made by the counsel, we direct the concerned authority to consider the same and pass appropriate order, as expeditiously as possible.

The writ petition stands disposed of.

Sd/- M. Karpaga Vinayagam, C.J.
Sd/- M.Y. Eqbal, J.

26/9/06
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The 4th - Ashwin, 1928
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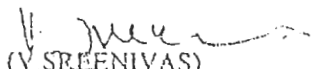
Annexure-4

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Points of discussion with Shri M.B.Jha, president, Shri P.N.Ray and Sri Ramayan Singh of Coal Mines Provident Fund Pensioners Association, Dhanbad.

I am directed to convey you the points of discussion with CMPFC on 3.12.2005

- 1 The association expressed their anguish for non payment of pension and criticized the indifferent attitude for IDBI Bank which at times even mis-behaved with the pensioners. The senior citizens are being starving for non receipt of pension.
 - * The Commissioner assured by within 2 months all the difficulties of payment to pensioners will be redressed
- 2 The Association desired there shall be payment of interest for delayed payments.
 - * The Commissioners was non Committal but assured he will look into the matter and as per the agreement with IDBI, he will explore realisation of interest.
- 3 The association made the following demands.
 - A counting of pensionable service (period prior to 1989) in full
 - B Linking DA with pension.
 - C Enhancement of pension.
 - * The CMPF Commissioner assured he will take up the matter with actuary once actuarial valuation is complete and surplus is arrived yet and the actuary will be requested for accommodation for these demands positively.
- 4 Regarding last 10 months notional salary the association was convinced with the clarification provided during the meeting.


(V.SREENIVAS)
REGIONAL COMMISSIONER