

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1998 of 2012**

- Rajani Chauhan W/o Pappu Payarelal, aged 31 years, Shani Bajar, Bilaspur (CG)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Urban Administration and Development, D.K.S. Bhawan, Raipur (CG)
2. Municipal Corporation Through The Commissioner Bilaspur (CG)
3. Deputy Director Kshetriya Sthaniya Nidh Sampariksha Neharu Nagar Bilaspur (CG)

---- Respondent

For Petitioner : Shri Ajay Shrivastava, Advocate.
 For Respondent/State : Shri Shashank Thakur, Govt. Advocate.
 For Respondent No.2 : Shri Mateen Siddiqui, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****13/08/2015**

1. The petitioner's husband late Pappu Pyarelal was working as Safai Karmachari in the establishment of Municipal Corporation, Bilaspur since 1994. On 1.5.2009, he applied for voluntary retirement which was accepted and he was allowed to retire with effect from 13.5.2010 i.e. the date on which the impugned order (Annexure-P/1) has been passed. The said order has been passed in exercise of powers under

Rule 42 of the CG Civil Services (Pension) Rules, 1976 (henceforth 'the Rules') read with Rule 56 (3) of the Fundamental Rules.

2. Learned counsel for the petitioner would submit that the respondents are not considering the petitioner's case for grant of family pension and would further submit that the order (Annexure-P/1) is contrary to the provisions of the Rules inasmuch as the petitioner's husband could not have been retired before completion of 20 years of service.
3. Per contra, learned counsel for the Municipal Corporation would contend that as on the date of consideration of VRS, the husband of the petitioner was not attending duties for more than 7 years, therefore, in any case, he had not completed the required length of service for being eligible for voluntary retirement or for pension. He would further submit that the State Government by order dated 3.5.2011 (Annexure-R-2/2) has rejected the prayer for pension made by the petitioner's husband, therefore, no case for grant of pension to the petitioner is made out.
4. At this stage, Shri Shrivastava, learned counsel for the petitioner would refer to the Rule 3(1)(p) of the Rules to contend that there is no order by the Municipal Corporation to exclude the period of absence from duties for calculating the period of qualifying service of the deceased Government servant or for that matter the petitioner's entitlement to get the entire period from the date of joining of service till the date of

voluntary retirement as qualifying service for the purposes of grant of family pension to the petitioner.

5. The order (Annexures-P/1) traces the source of power to voluntarily retire the deceased Government servant under Rule 42 and FR 56 (3) to state that since the employee has completed 15 years of service, his prayer for compulsory retirement is accepted with immediate effect. However, a plain reading of Rule 42 of the Rules or Rule 56 (3) of the Fundamental Rules would make it abundantly clear that the Government servant can be permitted to retire voluntarily when he has rendered at least 20 years of regular service. Admittedly, the deceased employee had only completed 15 years of service, that too if the period of his absence is also counted to calculate the total length of service.
6. Learned counsel for the respondents would also submit that there is break in service.
7. In **Assistant General Manager, State Bank of India and Ors. Vs. Radhey Shyam Pandey and Ors.**¹ the Supreme Court has held that when the employee had not completed the specified number of years in service, he is not entitled to pension and that the period of break in service is not to be considered for computation of specified years of service.
8. In view of the above declaration by the Supreme Court, since the

¹ 2015 (3) SCALE 39

deceased Government servant had not completed 20 years of service on the date of acceptance of his application for voluntary retirement, the impugned order (Annexure-P/1) is not sustainable. It is accordingly quashed.

9. Perusal of the order Annexure-R-2/2 and R-2/4 would indicate that those orders were passed on 3.5.2011 and 14.10.2011 respectively, when the deceased Government servant was alive, whereas the present writ petition has been preferred in the year 2012. Thus, there was no occasion for the Municipal Corporation or for that matter the Directorate of Urban Administration to consider the petitioner's prayer for grant of family pension.

10. In the above view of the matter, the writ petition is disposed of with a direction that if the petitioner prefers an application for grant of family pension and/or gratuity within a period of one month from today, the Corporation or the State Government shall consider the application in accordance with law and decide the same within a period of 3 months from the date of submission of the application.

Sd/-
Judge
(Prashant Kumar Mishra)