

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 1323 of 2015

1. Smt. Vinita Tandi W/o Late Shri Pramod Kumar Tandi Aged About 48 Years Presently Posted As Staff Nurse, District Hospital, Raigarh, Distt. Raigarh, (Chhattistgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Public Health & Family Welfare, Mahanadi Bhawan, Mantralaya, Naya Raipur, Mandir Hasod, District Raipur, (Chhattistgarh)
2. Director, Directorate Of Health Services, 3rd Floor, Indravati Bhawan, Naya Raipur, District Raipur, (Chhattistgarh)
3. Commissioner, Directorate Of Health Services, 3rd Floor, Indravati Bhawan, Naya Raipur, District Raipur, (Chhattistgarh)
4. Chief Medical & Health Officer, Raigarh, Distt. Raigarh, (Chhattistgarh)
5. Civil Surgeon-Cum-Chief Hospital Superintendent, District Hospital, Raigarh, Distt. Raiagarh, (Chhattistgarh)

---- Respondent

For Petitioner	Shri Amrito Das, Advocate
For Respondent/State	Ms. Astha Sharma, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

09/10/2015

Heard learned counsel for the parties.

1. Petitioner has prayed for quashment of the order dated 10-10-2014 & 6-12-2014 by which the Directorate of Health Services has cancelled the promotion and refused to reconsider the same on the ground that

the petitioner has not joined at the promoted post within 15 days from the date of promotion.

2. The petitioner was working as Staff Nurse and was posted at District Hospital, Raigarh. On 26-11-2013 she was promoted, along with many other Staff Nurses, to the post of Nursing Sister and was posted at Mental Hospital, Sendri, Bilaspur. The petitioner made a representation on 20-1-2014 for change in place of posting after promotion. However, she was not relieved by the District Hospital, Raigarh and, therefore, she continued to serve in the said Hospital.
3. In **State of Madhya Pradesh and Others v. Ramanand Pandey**¹, the Supreme Court held that if an employee fails to join at the promoted place the State would be justified in canceling promotion, however, in the said case the concerned employee was relieved from his duty and was instructed to report at the promoted place. It has also been observed that the employee returned the promotion order to the employer, in original and in that circumstances the promotion order was cancelled, which was not interfered by the Supreme Court. Moreover, after cancellation of the promotion order, the employee did not challenge the same for a substantial length of time.
4. In the case at hand, the petitioner has never refused to join at the promoted place. True it is that initially she moved representation for change of posting, but it is equally true that the petitioner was not relieved from the District Hospital, Raigarh, so as to enable her to join at Mental Hospital, Sendri, Bilaspur.

1 (2014) 10 SCC 610

5. In the considered opinion of this Court, since the petitioner was never relieved for joining at Bilaspur, the peremptory nature of the promotion order cannot be acted upon and the promotion order should not have been cancelled.
6. It is also to be seen that in similar circumstances posting orders in relation to two promoted Nursing Sisters namely; Smt. Sudha Kumar & Smt. Rajni Rajlaxmi Singh have been amended after one year by allowing their representation and in this background the petitioner was also expecting consideration of her representation.
7. As a result, the writ petition is allowed and the impugned orders 10-10-2014 & 6-12-2014 are quashed. No order as to costs.

Sd/-

Judge

Prashant Kumar Mishra

Gowri