

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(S) No. 922 of 2015**

Devendra Shripande S/o Shri Neelam Chand Shripande, aged about 50 years, working as Junior Assistant (Daily Wager) in the Office of Chhattisgarh State Ware Housing Corporation, Vishrampur, P.S. Vishrampur, District Surguja, Civil and Revenue District Surguja (Chhattisgarh)

---- Petitioner

Versus

1. Chhattisgarh State Ware Housing Corporation through its Managing Director, Chhattisgarh State Ware Housing Corporation, Head Office N-3, Avanti Vihar, Telibandha, Raipur, District Raipur (Chhattisgarh)
2. Branch Manager, Chhattisgarh State Ware Housing Corporation, Vishrampur, P.S. Vishrampur, District Surguja, Civil and Revenue District Surguja (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Awadh Tripathi, Advocate
For Respondents	:	Shri B. D. Guru and Shri Rajendra Tripathi, Advocates

Hon'ble Shri Justice P. Sam Koshy**Order On Board****04.11.2015**

The challenge in the present writ petition is to the order dated 12.12.2014 Annexure P-1 passed by the Managing Director, Chhattisgarh State Ware Housing Corporation. By the said impugned order the claim of the petitioner for regularisation has been refused only on the ground that from the service record of the petitioner it is reflected that from 16.06.2000 to 18.08.2000 the petitioner was absent from duty on medical ground and therefore the said period was declared as 'no work no pay' treating this a break in service disentitling him for regularization .

2. Counsel for the petitioner submits that the said order dated 12.12.2014 issued by the State Government is bad in law, arbitrary and also illegal for the reason that the respondents themselves admit the fact that the petitioner was not well and he was on medical leave. According to the counsel for the petitioner, if the said period has been treated as a period without wages, that

would not amount to be a break in service as the continuity of service automatically got restored at the moment the petitioner was permitted to resume his duty on his submitting medical certificate. Therefore, according to the counsel for the petitioner, the case of the petitioner was liable to be considered for regularization in accordance with the circular of the State Govt. dated 05.03.2008 as has been done in the case of other similarly placed persons.

3. Per contra, counsel for the respondents opposing the petition submits that the petitioner admittedly was absent from duty from 16.06.2000 to 18.08.2000 on medical ground and subsequently on submitting a fitness certificate, he was permitted to resume his duty and the period of absent has been treated as 'no work no pay'. Therefore, according to the counsel for the respondents, the said period was rightly considered to be a break in service dis-entitling the petitioner for regularization as according to the Circular dated 05.03.2008, there should not be a break of more than one month in service in a year for consideration of regularization.

4. Considering the rival submissions put forth by the counsel appearing on either side and on perusal of the record itself it is evidently clear that the petitioner was absent from duty from 16.06.2000 to 18.08.2000 is not disputed by either side. The other admitted fact is that the said period has been treated as 'no work no pay' only to the extent that the petitioner would not be entitled for any wages during the said period. The respondents have not been able to show any document by which the said period has been treated as *dies non* or as break in service. For all practical purposes, once when the respondents themselves have admitted the fact that the petitioner was medically not fit to work and the same department subsequently on the petitioner's furnishing a fitness certificate permitted him to resume his duty, the continuity of his service automatically gets restored unless otherwise specifically ordered. In absence of any specific order for treating the said period as *dies non* or for that matter a break in service, the absence on duty on medical ground even if the petitioner was treated as no work no pay would not disqualify the petitioner from being considered for regularisation as per Circular dated 05.03.2008. The decision of the respondents in refusing the case of the petitioner for regularization only on account of the petitioner being absent from duty on medical ground is apparently arbitrary and illegal and is also not in accordance with the Circular dated 05.03.2008 of the State Government.

5. For the foregoing reasons, the impugned order dated 12.12.2014 Annexure P-1 is not sustainable and is accordingly set aside and quashed. The

respondents are directed to consider the case of the petitioner for regularization forthwith and pass an appropriate order at the earliest.

6. Accordingly, the wit petition stands allowed.

**Sd/-
P. Sam Koshy
Judge**

Bhola