

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4902 of 2012**

- Rajendra Prasad Giri S/o Shri Parsuram Giri, aged about 59 years, R/o Shankar Nagar, Tandon Dairy Farm, Behind Harishankar College, Raipur (CG) PS Civil Lines, Raipur.

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Department of Home, Government of Chhattisgarh, DKS Bhawan, Raipur (CG).
2. State of Chhattisgarh, Directorare, Sainik Kalyan, Chhattisgarh, Cutchery Campus, Raipur (CG).
3. The Superintendent, Chhattisgarh State Garage, DKS Bhawan, Mantralaya, Raipur (CG).

---- Respondents

For Petitioner	Shri Varun Sharma, Advocate.
For Respondent/State	Ms. Madhunisha Singh, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13/04/2016**

1. The petitioner (since retired from service pending the writ petition before this court) seeks quashment of order dated 02.04.2012 (Annexure P/10) whereby the claim of the petitioner for grant of salary for the period when he was initially denied joining by the State of Chhattisgarh upon his allocation to Chhattisgarh and for the salary and other benefits he was entitled for the period after accepting his joining on 08.09.2011.
2. Facts in brief necessary for disposal of this petition is that, the petitioner was

initially appointed on the post of Driver on 01.02.1995 by the Home Department (General) Govt. of Madhya Pradesh and was posted at District Sainik Kalyan Office, Raipur. At the time of reorganization, the petitioner though was serving in the territories of Chhattisgarh but he was allocated to the State of Madhya Pradesh and by order dated 30.09.2002 (Annexure P/2) he was relieved to report at Gwalior office by virtue of allocation.

3. The order of relieving on allocation dated 30.09.2002 was subjected to challenge in a writ petition WP No.2024 of 2003 before this court. The said writ petition was finally disposed of on 11.05.2005 with a direction to the petitioner to make a detailed representation to the respondent No.3/State of Chhattisgarh, who in turn, along with said representation shall forward it to the State of Madhya Pradesh with its comment within three months and further the State of Madhya Pradesh shall forward to the same to the Union of India for deciding the representation of the petitioner seeking allocation to the State of Chhattisgarh.
4. The petitioner, immediately thereafter on 03.06.2005 itself (Annexure P/4) made a representation to the State of Chhattisgarh and the Govt. of India finally took decision on the claim of the petitioner vide order dated 11.09.2007 allocating him to the State of Chhattisgarh. On the basis of the order dated 11.09.2007 on 18.02.2008 the petitioner gave his joining to the State of Chhattisgarh which was not accepted by the State of Chhattisgarh assigning reason of non-availability of the post.
5. Subsequently, the petitioner filed another Writ Petition (S) No.4761 of 2009 and the said writ petition was also disposed of on 05.07.2011 directing the State of Chhattisgarh to hold proper inquiry as to whether the petitioner had given his joining in the department under the State of Chhattisgarh and to pass appropriate orders. The High Court while disposing of the writ petition had also directed the State to allow the petitioner to join at Chhattisgarh immediately. Though the court's

order was passed on 05.07.2011, but the State did not allow him to join the service. Thereafter, the petitioner filed a Contempt Case (C) No.310 of 2012 which was decided on 23.08.2012 directing the State to decide the case of the petitioner within a period of eight weeks as in the writ petition no time limit was prescribed. Vide order impugned dated 02.04.2012, after an alleged enquiry, it was ordered by the State that the petitioner had not reported for duty for all these period, and therefore, the said period is to be treated as “No Work No Pay” and he has been granted joining w.e.f. 08.09.2011 onwards.

6. Learned counsel appearing for the petitioner referring to inquiry proceedings cumulatively filed along with the return of the State (Annexure R/3) submits that on a query put, the categorical answer of the department was that the petitioner did infact gave his joining report in the year, 2008 itself, but no positive action/steps were taken granting him joining. This specific averment of the department itself establishes the fact that from 18.02.2008 i.e. date on which the petitioner had given joining, he has been denied employment by the State of Chhattisgarh. It is not a case where the petitioner himself was unauthorizedly absent from duty or for that matter the petitioner had never taken any steps for giving his joining.
7. The petitioner has already crossed his age of superannuation and must have retired from service. The availability and non-availability of post could never be a ground for denying joining to the petitioner particularly when he has been finally allocated to the State of Chhattisgarh. The said allocation of the petitioner has not been questioned or challenged before any court of law after he has been allocated to the State of Chhattisgarh. There is evidence from the reply of the State itself that petitioner had given his joining on 18.02.2008.
8. That, since vide order dated 30.09.2002 the petitioner stood relieved to the State of Madhya Pradesh for all practical purpose he was an employee of the State of Madhya Pradesh till 11.09.2007 when he was allocated to the Chhattisgarh. There

was no employer-employee relationship between the petitioner and the State of Chhattisgarh and neither was any interim protection in favour of the petitioner.

9. For the foregoing reasons, the State of Chhattisgarh cannot be held liable to pay salary for the period from 30.09.2002 to 11.09.2007. But the fact that after 11.09.2007 since the petitioner has given his joining only on 18.02.2008, he would be entitled for all the benefits attached to the post on which the petitioner was working at the time of allocation to Madhya Pradesh from 18.02.2008 till his age of retirement.
10. Taking into consideration the facts and circumstances of the case, more particularly the State has not been able to prove the fact of the petitioner had not given joining nor is their case of any unauthorized absence, denial of monetary benefit to the petitioner w.e.f. 18.02.2008 is bad in law and arbitrary and the petitioner would be entitled for the salary which otherwise would have been given to him w.e.f. 18.02.2008 to September, 2011.
11. The petition is allowed to the above extent. Let the salary payable to the petitioner for these period be paid to him immediately. Taking into consideration the fact that petitioner has retired from service, it is expected that the State should take prompt decision preferably within a period of six months from today.

Sd/-
(P.Sam Koshy)
JUDGE