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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.4096 of 2015**

B. Vinayak Kumar Mudaliyar S/o Late Bhaskar Rao Mudaliyar, Aged About 61 Years R/o House No. I-1, Kalindi Kunj, Opposite Parijat Castle, Ring Road No.2, Bilaspur, (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Urban Administration And Environment, Mahanadi Bhawan, Mantralaya, Post & PS Mandir Hasaud, Raipur, (Chhattisgarh)
2. Commissioner and Joint Director, Town And Country Planning, New Raipur, (Chhattisgarh)

---- Respondents

For Petitioner	: Shri Sandeep Shrivastava, Advocate.
For Respondents/State	: Shri A.S. Kachhawaha, Additional Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****26/08/2016**

1. By means of this petition, the Petitioner has challenged the order dated 28.7.2015 passed by the Director, Town and Country Planning, terminating the services of the Petitioner on the ground that his initial appointment as Tracer was improper.
2. It is not disputed that Chhattisgarh Town & Country Planning (Class-III Ministerial and Non Ministerial) Service Recruitment Rules, 1972 provides that the candidate for the post of Tracer should be matriculate and possess Surveyor Certificate from ITI. It is not disputed that the Petitioner does not possess qualification of Surveyor Certificate from ITI.
3. On behalf of the Petitioner, it is urged that the Petitioner never misrepresented his qualifications. The Petitioner was appointed pursuant to a

regular selection. The Petitioner had applied and was appointment as Tracer on 23.9.1974. He was promoted as Senior Surveyor on 19.11.1976 and further promoted as Sub-Engineer on 23.7.1983. The Petitioner has been working with the department for more than 40 years. He was on the verge of retirement when the order of termination was passed. Notice in this regard was issued on 16.6.2015 and now the Petitioner has been retired.

4. It may be true that the Petitioner did not fulfill the essential qualification. In fact, the Petitioner was intermediate with the subject of Bio-Science. I do not know what procedure was followed by the Selection Committee for appointment of the Petitioner. The Petitioner has worked with the department for more than 40 years and during this period, the Petitioner has attained sufficient experience and has worked at three different levels. It is not a case of the State that the work done by the Petitioner has been found unsatisfactory. When he was initially appointed, he did not have the necessary qualification. The State could have taken action immediately after his appointment. It is not pointed that the Petitioner has either misstated the facts or furnished any false documents. He only produced the certificates, after verification of which, he was got selected and granted appointment. When he was about to retire and receive his gratuity and other pensionary benefits, the impugned order was passed depriving him from all pensionary benefits.

5. The Petitioner was not holding any high level post. He was appointed as Tracer and was promoted as Senior Surveyor and later on Sub-Engineer. If he could work as Sub-Engineer, he himself has got some experience and also gained sufficient knowledge about the work which was to be performed. In this view of the matter, I am clearly of the view that the action of the Respondents in terminating the services of the Petitioner is wholly arbitrary

and against equity, justice and good conscience.

6. In view of the fact that the Petitioner has served the Department for 41 years, I have no hesitation to set aside the impugned order. It is directed that he shall be deemed to be in service till his date of retirement. He will be paid his salary till the date of his retirement. He shall also be entitled to all pensionary benefits. The petitioner's salary and other pensionary benefits be paid to him latest by 31.12.2016, failing which the State shall be liable to be 12% interest, from the date of retirement till payment thereof.

7. With the aforesaid direction, the petition stands disposed of.

**Sd/-
(Deepak Gupta)
Chief Justice**