

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 661 of 2015

1. State of Chhattisgarh, through the Secretary, Irrigation Department, Mahanadi Bhawan, New Mantralaya, Raipur (CG)
2. The Engineer In Chief, Water Resources Department, Mahanadi Bhawan, New Mantralaya, Raipur (CG).
3. The Chief Engineer, Hasdeo Kachhar Water Resources Department, Bilaspur (CG)
4. The Superintending Engineer, Maniyari Hasdeo Division, Bilaspur (CG)
5. The Executive Engineer, Water Resources Division, Pendra Road. District Bilaspur (CG)

**---- Appellants
(Respondents)**

Versus

1. Naval Kishore Mishra S/o Shri Ambika Prasad Mishra, Aged About 67 Years R/o Village Harratola, Post Lalpur Tahsil Pendra Road, P. S. Pendra District Bilaspur (Chhattisgarh)

---- Respondent

For Appellants:	Shri A.S. Kachhawaha, Addl. Advocate General
For Respondent:	Shri Prakash Tiwari, Advocate.

Hon'ble Shri Justice Pritinker Diwaker
Hon'ble Shri Justice Inder Singh Uboweja

Order

19/02/2016

1. Heard on admission.
2. This writ appeal arises out of the order dated 17.4.2015 passed by the learned Single Judge in W.P. (S) No.1045/2014 setting aside the order dated 4.6.2013 whereby claim of the respondent herein for grant of pension has been refused on the ground that the respondent herein does

not have qualifying services of 10 years for the purpose of granting pension under the Pension Rules applicable to him, and directing the appellants herein to consider the case of the respondent and settled his pensionary benefits as expeditiously as possible within a period of four months from the date of order. Further, on account of fact that the delay has been deliberately caused by the appellants, it has been directed that the respondent herein shall be entitled for arrears with interest @ 6%. The State is also directed to pay cost of Rs.5,000/- to the respondent herein.

3. Brief facts of the case are that the respondent herein was appointed with the appellants on 23.4.1977 as a 'Time Keeper' on daily wages. On 29.1.1999 his services were regularized and thereafter he continued to serve the office till his age of retirement i.e. 31.5.2006. As such, the respondent has rendered regular services of more than six years & four months. Since the respondent has rendered more than 6 years of service as regular employee, he became entitled for pension, as per relevant provisions of the Chhattisgarh (Work Charged and Contingency Paid Employees) Pension Rules, 1979 (for short 'the Rules, 1979'), as amended upto date. However, the authority concerned vide order dated 4.6.2013 rejected the claim of respondent for pension against which he has preferred a writ petition bearing W.P. (S) No.1045/2014 before the writ Court and the same has been allowed by the learned Single Judge vide order dated 17.4.2015.
4. Counsel for the appellants submits that respondent did not fulfil the requirement of ten years qualifying service after grant of permanence in the year 1999 and before superannuation and therefore he is not entitled for pension under the Rules, 1979. He further submits that Rule 6 (3) of the Rules, 1979 would be applicable only to those employees who are appointed under the Work Charged and Contingency Paid (Recruitment and Conditions of Services) Rules, 1975 but are subsequently absorbed in

a regular pensionable service. In the present case the respondent was never absorbed in a regular pensionable service and therefore he is not entitled for the benefits available under the Rule 6 (3) of the Rules, 1979.

5. Counsel for the respondent submits that the controversy relating to eligibility for grant of pension to persons who have retired in the capacity of 'permanent' under the Rules, 1979 has already been set at rest by the a Division Bench of this Court in batch of writ petitions leading case of which was W.A. No.281/2013, and the employees have been held entitled to pension under the Rules, 1979. He further submits that despite an order in favour of the respondent, the appellants have not taken any steps to grant benefit of pension to him and therefore the respondent has filed contempt proceedings which is now fixed for framing of charge against the contemnors.
6. We have considered the submissions on behalf of the parties.
7. The documents on record undisputedly go to show that after his appointment on daily wages in the year 1977, the services of respondent came to be regularized in the year 1999 and subsequently in the year 2006 he retired from service on attaining the age of superannuation. The rule governing the service conditions of the respondent itself eloquently make it clear that irrespective of the fact that when the employee's services came to be regularized, he becomes entitled for receiving pension after completing atleast six years of service on regular basis. In this case also the respondent retired from service in the year 2006 i.e. after more than six years of having been regularized i.e. in the year 1999. The submission of the appellants-State that in view of Rule 2 (c) of the Rules, 1979 the respondent is not entitled for pension for the reason that he has not completed ten years of service as a regular employee, has no force at all because of the notification dated 2.3.2005 which lays down the minimum six years service making the employee entitled to receive

pension. It is relevant to note that keeping in mind that subsequent amendment in the Rules, 1979 the learned Single Judge has held the respondent employee to be entitled to receive pension. Similar view has also been taken by a Division Bench of this Court in the case of Writ Appeal No.281/2013. Since learned Single Judge has already dealt with all relevant aspects of the case including the rules governing the service conditions of the respondent employee, this Court does not deem it necessary to repeat the same exercise in futility. One interesting thing to be mentioned here is that before the writ Court counsel appearing for the State had made a concessional submission that action of the State Government is without proper application of mind and case of the respondent herein is squarely covered by the decision of this Court in W.P. (S) No.5328/2012 (Lakhanlal vs. State of C.G. & ors), and when it is so, it does not lie in its mouth to oppose its own stand at a later stage in appeal.

8. Accordingly, the appeal being without any merit is hereby dismissed at the admission stage itself and the order passed by the learned Single Judge is maintained.
9. The cost is quantified as Rs.10,000/- (Rupees Ten Thousand) to be paid to the respondent by the appellants herein.

Sd/-
(Pritinker Diwaker)
Judge

Sd/-
(I.S. Uboweja)
Judge