

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 791 of 2017**

Smt. Radha Bai W/o. Harivansh, Aged About 59 Years R/o. Mannu Chowk, Tikra Para, Bilaspur, Police Station Tarbahar, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through : Principal Secretary, Health & Family Welfare Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, Civil And Revenue District Raipur (Chhattisgarh).
2. Commissioner, Health Services, Directorate, Chhattisgarh, Raipur, Police Station Civil Lines, Raipur, Head Post Office, Raipur, District Raipur Chhattisgarh.
3. Director, Health Services, Directorate, Chhattisgarh, Raipur, Police Station Civil Lines, Raipur, Head Post Office, Raipur, District Raipur (Chhattisgarh)
4. Chief Medical and Health Officer, Bilaspur, Police Station Tarbahar, Bilaspur, Post Office Bilaspur, District Bilaspur, Chhattisgarh.
5. Block Health Officer, Primary Health Center, Masturi, Police Station Masturi, District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Vikram Dixit, Advocate.
For Respondent/State	:	Shri Shashank Thakur, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****02/03/2017**

1. The petitioner seeks a direction to the respondents for grant of notional seniority and for fixation of pay scale treating the period of absence as on duty.
2. The relevant facts in brief is that, the petitioner was initially appointed as Ward Aya with the respondents as a contingency paid employee on 16.07.1978 and continued on the said post till 20.03.1990. Subsequently the services of the petitioner was attached to the Govt. Dispensary at

Bilaspur, but she did not assume the duties. She went on leave without any proper sanction from the authorities. Subsequently, she was again transferred from Government Dispensary, Bilaspur to Primary Health Centre, Sargaon on 14.05.1990.

3. The contention of the petitioner is that though she had made an attempt to assume the duty but the respondents did not permit her from doing so. She preferred an Original Application before the State Administrative Tribunal which was registered as OA No.97 of 1993 which subsequent on abolition of the SAT had been transferred to this High Court where it was registered as Writ Petition (S) No. 682 of 2005. The said writ petition was finally decided by this court on 17.06.2010. While deciding the petition, learned Single Judge has held as under :

“6.....Respondent No.2, the Chief Medical and Health Officer, shall, however hold an inquiry, after giving the petitioner an opportunity to find out as to whether petitioner reported at District Hospital pursuant to her order of attachment dated 20.03.1990 or reported to the Chief Medical and Health Officer, Bilaspur, in compliance of impugned order dated 11.12.1992. If in the said inquiry, it is found that petitioner had joined her duty at District Hospital, she would be entitled for her salary from the date of such joining. With the aforesaid direction, the petition is finally disposed off.”

4. Further, since the inquiry was not conducted by the respondents, a contempt petition was filed which was registered as Contempt Case (C) No.92 of 2012 which stood disposed of on 27.02.2012 whereby the respondents were directed to pass appropriate order at the earliest. Subsequently, an order was passed on 03.04.2012 holding that the petitioner is not entitled for any relief as she was unauthorizedly absent during the intervening period.

5. This order dated 03.04.2012 was subjected to challenge in Writ Petition (S) No. 5565 of 2012 which got dismissed on 07.01.2013. While dismissing the petition, the Single Judge has upheld the order of the competent authority. The order of Single Bench was subjected to challenge in Writ Appeal i.e. WA No.141 of 2013. The Division Bench of this High Court disposed of the appeal on 10.07.2014. The operative part of the said judgment reads as under :

“10. The Single Judge has upheld the finding of the CMO that the appellant never reported and as such, she was not entitled for salary. There is no illegality in the finding.

11. The services of the appellant have not been terminated. Considering this aspect as well as that sufficient time has elapsed, the court had requested the counsel for the respondents to inform at which place the appellant can join.

12. Shri Prafull N Bhart, Additional Advocate General has stated that the appellant can join at Primary Health Centre, Malhar, District Bilaspur. The appellant has also no objection in joining at this place. She is granted 15 days time to join. She would be entitled to salary from the date of joining.”

6. According to the petitioner, subsequent to the disposal of the writ appeal she has given her joining in July, 2014 and since then she is discharging her duties at Primary Health Centre, Malhar. The grievance of the petitioner is that, though she has been permitted to assume the duty in July, 2014, she has not been given benefit of fixation of pay for the intervening period. The petitioner has also been denied the notional seniority and benefit of increment that would accrue to her from 1990 to 2014.
7. Counsel for the petitioner submits that non granting of the same has put to the petitioner to substantial loss, inasmuch as, the petitioner is drawing the salary of only around Rs. 14,222/- as compared to salary of

Rs.35,000/- to the other persons who were appointed along with the petitioner and are continue in the department.

8. From the perusal of record it does not appear that the respondents have passed any order as to how the period from 1990 to 2014 i.e. period during which the petitioner was absent be treated. The Division Bench in WA No. 141 of 2013 has affirmed the order of Single Bench upholding the order dated 03.04.2012 passed by the Chief Medical and Health Officer, Bilaspur holding that the petitioner is not entitled for any monetary benefit during the said period. The only relief which the petitioner had got from the Division Bench was for a joining to be given to her at Malhar, District Bilaspur.
9. After the petitioner having assumed her duties, it was the responsibility of the respondents to pass an appropriate order as to how the intervening period i.e. from 1990 to 2014 would be treated.
10. Without any further discussion, this petition is disposed of with a direction to the respondent No.4 to pass an appropriate order deciding as to how the intervening period i.e. 1990 to 2014 during which the petitioner was absent from duty has to be treated. Let the said exercise be done within a period of 90 days from the date of receipt of certified copy of this order.
11. With the aforesaid observations, the writ petition stands disposed off.

Sd/-

(P.Sam Koshy)
Judge