

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5533 of 2017

Puniram Shrivastava S/o Shri Nanhu Ram Shrivastava, Aged About 74 Years Watchman,
District Employment And Self Centre, Raigarh, Tahsil And District Raigarh
Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Human Resources
And Main Power, Mahanadi Bhavan, Mantralaya New Raipur, District Raipur
Chhattisgarh.
2. Director, Employment And Training Government Of Chhattisgarh At Raipur
Chhattisgarh.
3. Divisional Employment Officer, Office Of The District Employment, Korba,
District Korba Chhattisgarh.
4. District Employment Officer, Raigarh, District Raigarh Chhattisgarh.

---- Respondents

Shri K.S.Pawar and Shri S.K. Kushwaha, counsel for the petitioner/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

24/10/2017

The petitioner has prayed for issuance of direction to the respondents to pay pension by counting the period of services from the initial date of appointment as Daily Wage employee irrespective of the date of regularisation.

2. Learned counsel for the petitioner submits that the issue as to whether the period of service rendered by the contingency employee prior to his regular appointment is liable to be reckoned for the purposes of counting pension has been decided by the Division Bench of this Court in the case of Lakhanram Sahu and ors. v. State of Chhattisgarh and ors. in WA No.281/2013 and batch of petitions,

in which, it has been authoritatively held that those employees who have been appointed after promulgation of the Contingency Rules, 1975 would acquire a status of temporary employee after completion of five years of service. Further submission of learned counsel for the petitioner is that in view of the aforesaid decision, the entire period of service rendered by the petitioner after completion of initial five years of service, is liable to be reckoned for the purposes of considering his eligibility for pension.

3. On the other hand, learned counsel for the State opposes prayer made in the petition on the submission that the claim of the petitioner for counting the period of service prior to his date of retirement has been rejected by this Court in WPS No.4858/2010 decided vide order dated 23/01/2013. He submits that the said order having attained finality as between the petitioner and the State, it would be operated as *res judicata* and even subsequently, a different view has been taken in other cases, the petitioner is not entitled to any relief.

4. The petitioner had earlier filed a writ petition challenging an order dated 29/09/2009 by which, the petitioner was held not eligible for grant of pension. The issue which arose for consideration before this Court was whether the period of service rendered prior to his regularisation could be counted for the purposes of pension. It was held –

“7. On perusal of the impugned order dated 29/09/2009, it is clear that the petitioner has not completed 10 years of qualifying service to be eligible for grant of pension. The petitioner has completed only 7 years, 3 months and 22 days of regular service. The earlier period of his service, since it was temporary on daily wages with a break in service after every 89 days, the period of service rendered earlier temporarily, cannot be counted for the purpose of total length of regular service. Thus, the claim of the petitioner has rightly been rejected. There is no infirmity or illegality in the

impugned order, warranting interference by this Court.

8. Accordingly, this petition, being devoid of merit, is dismissed.”

The petitioner, thereafter filed a Review Petition No.33/2013 which was dismissed. Learned counsel for the petitioner fairly discloses before this Court that infact, the petitioner preferred a writ appeal also, which was also dismissed.

5. It would thus appear that as far as the claim of the petitioner is concerned, the same has attained finality. There is nothing on record to show that there is any appeal preferred by the petitioner or the matter was taken to the Supreme Court. Therefore, even if subsequently, a different view has been taken by the Division Bench of this Court in the case of Lakhanlal Sahu (supra) in W.A.No.281/2013 and batch of petitions decided on 26/02/2015, no relief can be granted to the petitioner. The petition, therefore, is barred by *res judicata* and is accordingly dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge