

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3488 of 2017

- Chain Singh Thakur S/o Late Shri T. S. Thakur, Aged About 48 Years, Posted as Assistant Grade -II, District Hospital, Dantewada, District Dantewada (Chhattisgarh).

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Health & Family Welfare, Mahanadi Bhawan, Mantralaya, New Raipur (Chhattisgarh)
2. The Divisional Joint Director, Health Services, Bastar Division, Jagdalpur, District Bastar (Chhattisgarh)
3. The Civil Surgeon-cum-Chief Hospital Superintendent, District Hospital, Dantewada (Chhattisgarh).

---- Respondents

For Petitioner	Shri D. N. Prajapati, Advocate
For Respondent-State	Ms. K. T. Rao, PL

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

06/11/2017

1. On 02.06.2017, the petitioner was promoted from the post of Assistant Grade - II to the post of Accountant/Junior Auditor and was posted from Dantewada to Sukma, however, the petitioner could not join the promotion post, as according to him, he was on leave during this period.
2. By virtue of Clause 2 of the promotion order stating that if the employee fails to join on the promotion post within 15 days, the

order shall stand cancelled automatically and he shall be denied promotion for further period of 3 years, the present impugned order dated 13.07.2017 has been passed by the Divisional Joint Director, Health Services, Bastar Division, Jagdalpur.

3. On perusal of the document (Annexure-P-2), it appears that the Civil Surgeon-cum-Chief Hospital Superintendent, District Hospital, Dantewada has sanctioned earned leave to the petitioner for a period of 30 days from 01.06.2017 to 30.06.2017. The order of promotion was passed on 02.06.2017 (Annexure-P-3) i.e. during the period when the petitioner was on leave, therefore, it was impossible for him to join the promotion post within 15 days from 02.06.2017, as the said period was falling in the midst of his sanctioned earned leave.
4. In the peculiar facts and circumstances of the case, it appears, the petitioner should not be made to suffer for the mistake or the situation which was beyond his control during the period of operation of the promotion order. Even if the promotion order clearly stipulated that in the event of non joining on the promotion post, the same shall stand cancelled automatically and the concerned employee shall be denied promotion for a further period of 3 years, the implementation of the said clause has to be in such cases where the concerned employee was negligent or has behaved arrogantly in not joining on the promotion post despite he being working on the feeder post during the period. It is never intended to operate against such employee who was not attending the duties during the relevant period on account of several causes including personal difficulties or ailments. It is in

such a situation that Article 14 of the Constitution of India would come into play to protect the right of an individual to obtain the benefit for which he is entitled in law.

5. Considering the entire facts situation of the case, it appears, the writ petition deserves to be and is hereby disposed of with direction that if the petitioner submits joining on the promotion post within a period of 3 weeks from today, the competent authority, who is obliged to allow the petitioner's joining, shall allow him to join the promotion post of Accountant/Junior Auditor. The said Officer shall inform the Divisional Joint Director, Health Services, Bastar Division, Jagdalpur about the petitioner's joining under order passed by this Court. If the petitioner fails to join the promotion post within 3 weeks from today, the order passed herein shall lose its efficacy and the impugned order (Annexure-P-1) shall stand revived.

Sd/-

Judge

Prashant Kumar Mishra

Nirala