

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 62 of 2017**

Dr. Gunesh Singh Choudhary, aged about 63 years, S/o. Late Shri D. P. Choudhary, Occupation – Asstt. Surgeon, Public Health Centre, Balod, R/o. 87, Mahesh Nagar, Rajnandgaon, District - Rajnandgaon (Chhattisgarh), (M) 094241 15907.

---Appellant

Petitioner

Versus

1. State of Chhattisgarh, through its Secretary, Public Health and Family Welfare Department, Mahanadi Bhawan, Naya Raipur (Chhattisgarh).
2. Director, Public Health and Family Welfare Department, Indravati Bhawan, District Raipur (Chhattisgarh).
3. Chief Medical and Health Officer, District Balod (Chhattisgarh).
4. Block Medical Officer, District Balod (Chhattisgarh).

---Respondents

For appellant : Dr. Jyoti Praveen Verma, Advocate.

For respondents/State : Mr. Y. S. Thakur, Addl. Advocate
General

Hon'ble Shri Pritinker Diwaker, Ag. Chief Justice**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****Sanjay K. Agrawal****07/03/2017**

1. The writ appellant filed a writ petition seeking a direction for joining on the post of Assistant Surgeon at Balod with effect from 17.09.1992. The writ appellant has also prayed for compensation to be awarded due to monetary loss suffered on account of non-

relieving and non-joining on the post on which he was promoted vide order dated 07.01.1997.

2. Learned Single Judge by its impugned order dismissed the writ petition holding that the writ appellant is no longer an employee of State of Chhattisgarh but upon reorganization he has been allocated to State of Madhya Pradesh, as such, no mandamus can be issued to the respondents to allow the writ appellant to join at Balod.

3. Feeling aggrieved against the order passed by learned Single Judge this writ appeal has been preferred by the writ appellant challenging the impugned order as bad and unsustainable in law.

4. Dr. Jyoti Praveen Verma, Advocate appearing on behalf of writ appellant would submit that the learned Single Judge has committed a legal error in dismissing the writ petition as the writ appellant is entitled to join on the post of Asstt. Surgeon. She would further submit that the writ appellant was never served with the order of allocation and therefore the order of learned Single Judge deserves to be set aside. She placed reliance upon the decision of the Supreme Court in the matter of **Dulu Devi v. State of Assam and others**¹.

5. We have heard learned counsel for the writ appellant.

6. The writ appellant had filed Writ Petition No. 463 of 2003 before this Court, that has been dismissed by this Court on 11.09.2014 and

¹ (2016) 1 SCC 622

in writ appeal that order has been confirmed. In that writ petition State of Madhya Pradesh had filed return and stated that the writ appellant has been allocated to the State of Madhya Pradesh and he is unauthorizedly absent from the duty. The writ appellant had not challenged the order of allocation to the State of Madhya Pradesh and that has become final. Once a government servant is allotted to the particular State under the provisions of the Re-organization Act, he is entitled for all the service benefits from the State to which he has been allocated.

7. In the matter of **R. R. Bhanot v. Union of India and others**² dealing with liability in case of reorganization of a State *i.e.* the Punjab Reorganization Act, 1966, Their Lordships of the Supreme Court have held in no uncertain terms that liability of pensionary benefits is of the State to which the employee is finally allocated with retrospective effect even though he has not worked in the Government of that State and observed in paragraph 9 as under:-

“9. We are of the view that the stand taken by the Punjab Government is wholly unjustified. As stated above the order dated March 20, 1969 prematurely retiring the appellant from service was quashed by the Himachal Bench of the Delhi High Court by its judgment dated September 29, 1969. As a consequence the appellant continued in service till December 31, 1970 when he attained the age of superannuation. It is not disputed that the appellant was finally allocated to the State of Punjab with effect from November 1, 1966. The net result would be that the appellant shall be deemed to be continuously serving the State of Punjab with effect from November 1, 1966. He had joined service in the erstwhile State of Punjab on September 30, 1937. On March 20, 1969 when he was

2 (1994) 2 SCC 406 : 1994 Lab.I.C. 804

prematurely retired by the State of Himachal he had already served the Government for about 32 years. He was undoubtedly entitled to the grant of pension and other post-retiral benefits. Simply because the appellant failed to submit joining report to the State of Punjab after the judgment of the Himachal Bench of Delhi High Court, he could not be denied his right to pension and other benefits to which he was entitled on his attaining superannuation. It was for the State of Himachal Pradesh to have reinstated the appellant in service after the High Court judgment and thereafter relieved him to join the State of Punjab. In any case the appellant, having been finally allocated to the State of Punjab, it is the State of Punjab which has to give pension and other retiral benefits to the appellant.”

8. In view of the above, we do not find any infirmity in the order of learned Single Judge and writ appeal deserves to be and is accordingly dismissed.

Sd/-
(Pritinker Diwaker)
Ag. Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge