

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 4175 of 2011**

Smt. Mustari Begum Wd/o late Asagar Ali Ansari, aged about 62 years, R/o Mominpara (Parradand) near Usman Thekedar, Ambikapur, District Surguja (CG)

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Social Welfare Department, D. K. S. Bhawan, Raipur, District Raipur (CG)
2. State of Chhattisgarh through Secretary, Panchayat and Rural Development Department, D. K. S. Bhawan, Raipur, District Raipur (CG)
3. State of Chhattisgarh through Secretary, General Administration Department, D. K. S. Bhawan, Raipur, District Raipur (CG)
4. Joint Director Treasury, Account & Pension, Bilaspur Division, District Bilaspur (CG)
5. Collector, Baikunthpur, District Korea (CG)
6. Chief Executive Officer, District Rural Development Agency (DRDA), Ambikapur, District Surguja (CG)

---- Respondents

For Petitioner	:	Shri Manoj Paranjpe, Advocate
For Respondent/State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order On Board

23/04/2018

The grievance of the petitioner is that her husband late Asagar Ali Ansari who was working as an accountant with the respondents stood retired from service on 29.02.1996. Her husband was initially appointed on 27.03.1961 as an Accountant Clerk with the Social Welfare Department. Subsequently, the said department was closed by the respondents and the employees working therein stood transferred to the District Rural Development Agency w.e.f. 29.06.1981. The order to this effect was

passed on 16.07.1986. However, when the husband of the petitioner stood retired, he was initially granted pension counting his services from 1961 onwards but subsequently the same was reduced and the pension was counted from the date his services were absorbed in the department of Rural Development Agency i.e. from 1986 onwards whereas the petitioner's claim was that her husband was entitled for pension counting the service from 1961 onwards i.e. the date of initial appointment. The petitioner in this regard had made a representation to the respondents but to no avail therefore she was forced to file a writ petition which was registered as WPS No. 2634/2009 which ultimately stood disposed of on 28.07.2009 directing the petitioner to approach the High Power Pension Committee constituted by the State Government seeking redressal of dispute pertaining to retiral dues. The High Power Committee also vide its order dated 09.11.2009 Annexure P-1 rejected the claim of the petitioner stating that the services of her husband could be counted only from the date his services were absorbed in the Rural Development Agency and the services rendered earlier in the Social Welfare Department cannot be taken into account for quantifying the length of service.

2. Contention of the counsel for the petitioner is that the said decision of the respondents more particularly the High Power Committee is contrary to the Chhattisgarh Civil Services Pension Rules, 1976 so also the same is in contravention to the decision of the Division Bench of Madhya Pradesh High Court in the case of State of Madhya Pradesh Vs. Champa Soni reported in 2001 (2) MPLJ 333. Thus, prayed for an appropriate direction to the respondents to consider granting of pension to the petitioner from his initial date of appointment i.e. from 27.03.1961.

3. State counsel, however, opposing the petition submits that it is only from the date of absorption in the Rural Development Agency of the State

Government, would the services of the husband of the petitioner fall under pensionable service as prior to that his services were under an autonomous agency and therefore, the petitioner would not be entitled for the relief sought for. The contention of the respondents is that the service of the husband of the petitioner in the Social Welfare Department not being a pensionable service would not fall within the definition of qualifying service under the Pension Rules.

4. At this juncture, it would be relevant to refer to the Rule position as it stands. Chapter III of the MP Civil Services (Pension) Rules, 1976 deals with the qualifying service of a person. Rule 13 envisages the conditions subject to which service qualifies which for ready reference is reproduced hereunder:

“13. Conditions subject to which service qualifies-

(1) The service of a Government servant shall not qualify unless his duties and pay are regulated by the Government, or under conditions determined by the Government.

(2) For the purposes of sub-rule (1), the expression “service” means service against a post under the Government and paid by the Government from the consolidated Fund of the State which has not been declared as non-pensionable.”

5. Next we may deal with the amended provision which was incorporated under the Rule w.e.f. 1981 onwards i.e. Rule 17-A which for ready reference is again reproduced hereunder:

“17-A. Notwithstanding anything contained in rule 17, service which does not forfeit under sub-rule (1) (e) of rule 27 on account of interruption due to abolition of office or loss of appointment owing to reduction of establishment or due to transfer to non-qualifying service in an establishment under Government control under the orders of the competent authority, shall count for pension along with the period of break including spells of occasional service rendered during it or the period of non-qualifying service, as the case may be provided the Government servant has not received any retirement benefit for the previous service.”

6. Now we may come to the provision of Rule 27 which envisages the effect of interruption in service and the situations where the break in service

or absence in service would not amount to interruption in service. For ready reference Rule 27 is reproduced hereunder:

“27. Effect of interruption in service -

(1) An interruption in the service of a Government servant entails forfeiture of his past service, except in the following cases-

- (a) authorised leave of absence;
- (b) unauthorised absence in continuation of authorised leave of absence so long as the post of absentee is not filled;
- (c) suspension, where it is followed by reinstatement, whether in the same or a different post, or where the Government servant dies or is permitted to retire or is retired while under suspension;
- (d) dismissal or removal from service followed by reinstatement in pensionable service;
- (e) abolition of office or loss of appointment owing to reduction of establishment or due to transfer to non-qualifying service in an establishment under Government control under the orders of the competent authority;
- (f) joining time while on transfer from one post to another.

(2) Notwithstanding anything contained in sub-rule (1), the pension sanctioning authority may, be order, commute retrospectively the periods of absence without leave as extraordinary leave. The period of such extraordinary leave shall qualify for pension subject to the condition under rule 21.”

7. Keeping in view the aforesaid rules and statutory provisions, if we look into the facts of the present case, what clearly reflects is that the husband of the petitioner undoubtedly was appointed in the Social Welfare Department which though may be an autonomous body but the same was under the control of the State Government and was also funded from the finance provided by the State Government. The husband of the petitioner was initially appointed in the Social Welfare Department on 27.03.1961 and he continued to discharge his duties there till the Department itself was closed as a policy decision of the State Govt. The employees of the Social Welfare Department were accommodated and adjusted in the Rural Development Agency of the State Government where the services of the husband of the petitioner were absorbed w.e.f. 29.06.1981 vide order dated 16.07.1986.

8. The Hon'ble Supreme Court in the case of **Union of India and others vs. Parul Debnath and others** reported in **(2009) 14 SCC 173**, in paragraphs-41 & 42 has in very categorical terms held that the term absorption by itself does not mean for fresh appointment. For ready reference the aforesaid paragraphs are reproduced hereunder:

“41. As has been very rightly pointed out in the judgment under appeal, it was the intention, both of the Tribunal and the High Court, as well as this Court, that the respondent Home Guards were to be absorbed in the regular establishment of the Andaman & Nicobar Islands and no new appointment was required to be made. It was, therefore, the further intention of the Tribunal as well as the Courts that the absorption of the eligible respondents were to be at one go and not in phases, as has been sought to be suggested in the proposed Scheme. In fact, such a procedure had neither been directed by the Tribunal nor the High Court, nor this Court in Pantha Chatterjee's case (supra). As a result, the question of 100% reservation would not arise since the absorption of the respondents did not amount to new appointments which could have given rise to the question of reservation.

42. In our view, the Division Bench has very correctly observed that the intention of the Tribunal and the Courts was that the benefits to be given to the writ petitioners (respondents herein) should be extended to all of them uniformly and without making any discrimination. The very fact that some of the respondents would be regularized, while the others would have to wait till the next vacancies arose or the possibility that some of the candidates who were otherwise eligible, might not even be absorbed, was never the intention when the directions were given to frame a Scheme for absorption of the respondents. In our view, such a course of action appears to have been adopted to negate the effect of the earlier orders so that the respondents as a whole were deprived of the benefit of absorption and the further benefit of 'equal pay for equal work', as was indicated in Pantha Chatterjee's case (supra).”

9. At this juncture it would be relevant to refer to the judgment of the Division Bench of Madhya Pradesh High Court in the case of Champa Soni (supra) wherein the factual situation was identical so also the two departments involved in the dispute. The Division Bench of Madhya Pradesh High Court, in paragraphs-5 & 6 of the said judgment, dealing with the factual matrix of the case, held as under:

“5. Having considered the matter carefully, we are unable to appreciate the contentions raised by the learned counsel for the State. The respondent no.1 was employed in the

Integrated Women and child Development Project. It is an important Project established by the State, looked after and funded by it. After its abolition, employees are absorbed in the Department of Panchayat and Social Welfare of the State of Madhya Pradesh. The contention that service of the respondent no.1 in the previous Department was not governed by any rules cannot be accepted. It can not be said that appointment of employees in this Department was illegal and without jurisdiction. If that be so, why the Department was allowed to continue and function by the State which, as said, supervised it and funded it from time to time. It is not understandable why the employees of this Department were asked to become employees in the Panchayat and Social Welfare Department from the date of joining. Further, the conditions on which they were made to join were never shown to them. No option was given to them whether they would join the Department on these conditions. There is no material before us to ascertain that the employees were apprised by these conditions and they accepted them. Even otherwise, they are arbitrary, unreasonable, inequitable and amount to bargaining by a strong employer against the weak employees. 6. We are in agreement with the order of the Tribunal that the respondent no.1 is entitled to count her past service for pension with effect from 28.07.1962 till the date of retirement. There is no merit in this petition which is consequently dismissed.”

10. Given the aforesaid legal as well as statutory provisions, this Court has no hesitation in applying the ratio/principle laid down by the Hon'ble Division Bench of the Madhya Pradesh High Court in the case of Champa Soni (supra) to the facts of the present case and holding that the husband of the petitioner would be entitled for pension after counting his services rendered with the Social Welfare Department i.e. from the date of his initial appointment i.e. 27.03.61 till the date on which he was absorbed in the Rural Development Agency i.e. 29.06.1981 also being treated as qualifying service for pension and other retiral benefits payable to the husband of the petitioner which shall now be payable to the present petitioner in the capacity of the widow of the deceased employee.

11. The writ petition thus stands allowed and disposed of. It is expected that the respondents shall take prompt steps to comply with this order at the earliest preferably within a period of 4 months from the date of receipt of

certified copy, particularly ⁷ considering the age of the petitioner a widow who is now aged around 70 years.

**Sd/-
(P. Sam Koshy)
JUDGE**

Bhola