

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 2567 of 2013**

Ayodhya Prasad Soni, aged about 61 years, S/o late Shri Itwari Ram Soni, retired from the post of Sub Inspector, Krishi Upaj Mandi Samiti, Lormi, R/o Tahsil Chowk, Lormi, Thana Lormi, District Mungeli (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Department of Cooperative Societies, Mantralaya, Mahanadi Bhawan, New Raipur (CG)
2. Managing Director, Chhattisgarh Agriculture Marketing Federation Board, Beej Bhawan, G.E. Road, Telibandha, Raipur, District Raipur (CG)
3. Joint Director, Chhattisgarh Agriculture Marketing Federation Board, Beej Bhawan, G.E. Road, Telibandha, Raipur, District Raipur (CG)
4. Krishi Upaj Mandi Samiti, Lormi, through its Secretary, Lormi, District Mungeli(CG)

---- Respondents

For Petitioner	:	Shri Vinay Pandey, Advocate
For Respondents/State	:	Ms. Sunita Jain, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/04/2018**

The grievance of the petitioner in the present writ petition is that the respondents have not considered the period between 22.10.1986 to 24.07.2000 as qualifying service for the purpose of quantification of pension and retiral dues payable to the petitioner.

2. Brief facts of the case are that the petitioner was working as Sub Inspector under respondent no.4 and on account of some alleged

misconduct his services were terminated on 22.10.1986. The order of termination was put to challenge in a writ petition before the High Court of Madhya Pradesh vide MP No. 236 of 1987. The said writ petition finally came up for hearing on 04.07.2000 and while allowing the writ petition, the High Court in the operative part of the judgment held as under:

“4.....The order of termination cannot, therefore, be sustained. However, since there is no material on record to show that the petitioner had not been gainfully employed during this period, the petitioner cannot be granted any back wages in a writ petition under Article 226 of the Constitution of India for which proper evidence could have been adduced by the parties had the petitioner raised an Industrial Dispute.

5. In the result, this petition is allowed. The order Annexure-P/7 dated 22.10.1986 is quashed and the respondent no.1 is directed to reinstate the petitioner, if otherwise not disentitled, on the post. The petitioner shall however, not be entitled to claim any back wages. Parties shall bear their own costs.”

3. Subsequent to the order of termination being set aside by the High Court, the petitioner was reinstated in service on 25.07.2000 and he continued to work till he attained the age of superannuation on 29.02.2012. Subsequent to his retirement, the petitioner's pension and other retiral dues were fixed. However, the intervening period i.e. from the date of termination till the date of reinstatement has not been counted for the purpose of quantifying pension payable to the petitioner as also for grant of other retiral dues.

4. Counsel for the petitioner submits that the intervening period, for all the practical purposes, has to be treated as if it was spent on duty. According to the counsel for the petitioner, the interpretation provided by the respondents of the High Court having not granted back wages for the intervening period should not be construed as the entire period would get wiped off for the purpose of quantifying the length of service of the petitioner for pensionary and retiral benefits. Counsel for the petitioner

submits that even the pension rules applicable in the State Government i.e. Rule 25 of the CG Civil Services (Pension) Rules, 1976 clearly stipulates the provision of the period being counted as spent on duty upon his reinstatement. For ready reference Rule 25 of the CG Civil Services (Pension) Rules, 1976 is reproduced hereinunder:

“25. Counting of past service on reinstatement- (1) A Government servant who is dismissed, removed or compulsorily retired from service, but is subsequently reinstated, is entitled to count his past service.”

5. A plain reading of the aforesaid provision of the Pension Rule clearly reveal that the said period for all practical purposes has to be counted as part of service. In the instant case, the petitioner was terminated from service vide order dated 22.10.1986. The High Court vide its order dated 04.07.2000 held that the order of termination was bad in law and was not sustainable and it was ordered that the petitioner has to be reinstated. The only relief which the High Court has not granted is that for the intervening period, the petitioner would not be entitled for back wages. This observation of the High Court does not mean that the said period would not be counted for the purpose of calculating his length of service for pension and retiral benefits. The decision of the respondents for treating the said period as dies non is per se illegal and is in contravention to Rule 25 of the Pension Rules 1976 applicable in the State of Chhattisgarh which is also applicable so far as the service of the petitioner is concerned.

6. In view of the same, the writ petition deserves to be and is accordingly allowed. The order Annexure P-1 dated 22.12.2012 so also the order of rejection of his representation vide order dated 28.05.2012 Annexure P-3, both are bad in law and are therefore set aside/quashed. It

is directed that respondent no.3 shall ensure that the pension of the petitioner should be forthwith refixed by treating the intervening period i.e. from 22.10.1986 to 24.07.2000 to be the period spent on duty. The petitioner's pension shall be accordingly fixed granting notional fixation for the intervening period and thereafter calculating the pension and pensionary benefits, actual monetary benefits shall however be paid to the petitioner so far as the difference in pension and other retiral dues are concerned. The respondents are directed to immediately calculate the difference of pay which would accrue by virtue of treating the said period as period spent on duty and the same shall be paid to the petitioner forthwith with interest @ 9% per annum from the date of retirement till the date of actual payment.

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