

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 7326 OF 2009**

Smt. D. Usha Rao, aged 59 years, W/o Shri D.S. Prakash Rao,
Head Mistress, Govt. Middle School Bhainsbod, Block Dondi, Distt.
Durg (CG).

...Petitioner(s)

Versus

1. The State of Chhattisgarh through the Secretary, Tribal Welfare Department, DKS Bhawan, Mantralaya, Raipur (CG).
2. The Commissioner Tribal Welfare, Department, Ravishankar University Premises, Raipur (CG).
3. Assistant Commissioner Tribal Welfare, Durg (CG).
4. Principal Govt.(AJK) Higher Secondary School, Bhainsbod, Distt.-Durg (CG).

... Respondent(s)

For Petitioner	:	Shri Ajay Shrivastava, Advocate.
For Respondent-State	:	Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

20.06.2018

1. The challenge in the present writ petition is to the order dated 25.09.2009 (Annexure P/1) whereby the petitioner has been granted voluntary retirement w.e.f. 30.09.2009.
2. The counsel for the petitioner submits that the petitioner had moved an application for grant of voluntary retirement on 17.08.2009 as per Form-28 required under Rule 42 (1)(a) of the Chhattisgarh Civil Services (Pension) Rules, 1976 (in short, the Pension Rules). As per the said application, the petitioner had sought for voluntary retirement w.e.f. 01.12.2009, but the respondents have allowed the application and have retired her w.e.f. 30.09.2009 and in the process the petitioner has lost the salary and other benefits for the months of October and November, 2009 which otherwise she was entitled for if

the respondents would have acted as per her application for retirement. The petitioner for all practical purposes should have been granted retirement w.e.f. 01.12.2009 and not from 30.09.2009 as she had given three months notice on 17.08.2009 which is the mandatory requirement as per the Pension Rules also.

3. He further submits that the respondents have decided the date of retirement of 30.09.2009 without any basis whatsoever neither giving opportunity to the petitioner whether she intends to go on retirement w.e.f. 30.09.2009 or from 01.12.2009. The requirement under the Pension Rules is of giving three months clear notice for voluntary retirement which according to the petitioner she had moved on 17.08.2009 and three months time concludes on 01.12.2009 from which date she has sought for retirement. However, abruptly the respondents have allowed her application and have sent the petitioner on retirement w.e.f. 30.09.2009. This according to the petitioner is bad in law as the petitioner has been deprived of the benefits of a regular employee which she was entitled for during the intervening period for the months of October and November, 2009. Thus, prayed that the order of retirement be modified to the extent of treating the petitioner to have been retired w.e.f. 01.12.2009 and she be paid salary and allowances for the month of October and November, 2009.
4. The State counsel referring to Annexure R/1 submits that the petitioner had infact on 24.09.2009 applied for voluntary retirement w.e.f. 01.08.2009. That the respondents have acted upon the said application and have retired her w.e.f. 30.09.2009. Therefore the

petitioner cannot have any grievance. He further submits that the petitioner, in any case, intended retirement and the petitioner's claim has been allowed and therefore she should not have any grievance of having retired w.e.f. 30.09.2009.

5. Having heard the contentions put forth on either side and on perusal of records what is relevant to be taken note of is that Rule 42 of the Pension Rules clearly envisages that a government servant may retire at any time after completing 20 years qualifying service, by giving a notice in Form-28 to the appointing authority atleast three months before the date on which he/she wishes to retire. In the instant case if we see Annexure R/1 which is an admitted document by the petitioner as well it would reveal that it was moved on 24.09.2009 in which she prayed for her voluntary retirement to be 01.08.2009. However, the petitioner was not sent on retirement w.e.f. 01.08.2009 but her retirement was accepted from 30.09.2009 i.e. after about two months from the date on which she had proposed.
6. So far as application dated 17.08.2009 in prescribed Form is concerned, there does not appear to be any proof on the part of the petitioner of having submitted such a Form before the respondents at any point of time. The counsel for the petitioner also makes a statement that he had not withdrawn the earlier application dated 24.04.2009 at any point of time. It is also not a case that the respondents had prior to 01.08.2009 acted upon the said letter or had ever refused to grant retirement to the petitioner w.e.f. 01.08.2009 as per her claim dated 24.04.2009. Merely because the

petitioner has not submitted her application as per Form-28 as is required under the Pension Rules is of no consequence as she wanted retirement in any case. The petitioner wanted retirement w.e.f. 01.08.2009 as per her application dated 24.04.2009 and which has been acted upon by the respondents vide impugned order dated 25.09.2009 retiring her w.e.f. 30.09.2009.

7. The another aspect which cannot be lost sight of is that the petitioner has not been sent on retirement before the date she has sought for vide application dated 24.04.2009, but has been sent on retirement only after the said date. As such, the petitioner has not been put to any loss. For want of sufficient proof as regards submission of her Form-28 on 17.08.2009, this court is not inclined to grant the petitioner relief of her being treated to be retired w.e.f. 01.12.2009 instead of 30.09.2009. Thus, this court does not find any merit on the contention so raised by the petitioner.
8. The petition thus deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge