

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 50 of 2014**

Smt. Swapna Pateriya W/o Shri Suresh Pateriya, aged about 50 years, Occupation Service, Lecturer (English) Govt. Higher Secondary School Tilkeja, PS Rampur, Distt Korba, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh through the Secretary, Scheduled Caste and Scheduled Tribe Development Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh
2. The Commissioner, Scheduled Caste and Scheduled Tribe Development, Chhattisgarh, Raipur (CG)
3. The Assistant Commissioner, Tribal Development, District Korba, Chhattisgarh
4. The Collector, District Korba, Chhattisgarh
5. The Principal, Govt. Higher Secondary School, Tilkeja, District Korba, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Arvind Kumar Shukla, Advocate
For Respondent/State	:	Shri Chandresh Shrivastava, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****19/07/2018**

The present writ petition has been filed seeking for the following two reliefs:

- i) To aside/quash the impugned order dated 25.02.2013 and to direct the respondent authorities to treat the petitioner as on duty.

ii) To direct the respondent authorities to accept the VRS of the petitioner with all consequential benefits in accordance with law.

2. The facts in brief are that the petitioner was working as a Lecturer (English) in the Govt. Higher Secondary School, Tilkeja under PS Rampur, District Korba (CG). The petitioner is said to have submitted her resignation on 12.07.2001 which according to the petitioner was not accepted by the respondents. Finally, the impugned order dated 25.02.2013 Annexure P-12 was passed whereby the resignation of the petitioner has been accepted from a back date w.e.f. 12.07.2001.

3. Contention of the petitioner is that the acceptance of resignation cannot be from a retrospective date and for all practical purposes, the intervening period from 2001 to 2013 has to be treated as spent on duty. In addition, the petitioner has also prayed for grant of consequential benefits on the acceptance of voluntary retirement including pensionary and other benefits which would be payable to the petitioner.

4. Perusal of the record would show that the petitioner had been absenting from duty for long on some reason or the other. Annexure P-3 dated 02.09.1999 is a letter from the office of the Assistant Commissioner whereby the request for permitting the petitioner to resume duty on her submission of medical certificate has been accepted. On 12.07.2001, the petitioner again went on leave without any sanction or authority and continued up till 22.11.2007, as such the said period amounts to unauthorized absence from duty. The petitioner for the first time applied for VRS w.e.f. 22.11.2007 vide application dated 24.05.2010. Subsequently, the Principal of the School vide Annexure P-9 dated 11.07.2012 asked the petitioner to tender her resignation with effect from the date from which she

had been on unauthorized absence i.e. from 12.07.2001 and also to submit one month's salary in lieu of notice to which the petitioner finally vide her letter dated 03.07.2012 Annexure P-10 tendered her resignation w.e.f. 12.07.2001 and also deposited the salary of one month in lieu of notice. This application was acted upon by the respondents while passing the impugned order Annexure P-12 dated 25.02.2013.

5. Contention of the counsel for the petitioner is that the respondents have not initiated any action against the petitioner so far as the intervening period from 2001 to 2013 is concerned and she has not been inflicted with any punishment for the period of absence. Further contention of the counsel for petitioner is that the resignation also cannot be from a back date and it can only be from a prospective date particularly when the petitioner had paid one month's salary in the year 2012 in lieu of notice.

6. However, perusal of the record would clearly show that since 12.07.2001 the petitioner has been absent from duty without any reason whatsoever and without there being any sanction from the competent authority in this regard. Further it also reflects that the petitioner has never tried to resume her duty beyond 12.07.2001 at any point of time or that she was ever refused joining or she was not permitted to perform her duties during the said period.

7. As per the request of the petitioner herself vide Annexure P-9 wherein she has stated that she be permitted to resign from service w.e.f. 12.07.2001 that the impugned order Annexure P-12 dated 25.02.2013 was passed. Considering the fact that the petitioner has never reported for duty beyond 12.07.2001 nor has she ever made a correspondence permitting her to discharge her duty after 12.07.2001 at any point of time nor is there

any allegation of the petitioner having tried to resume her duty but was not permitted by the authorities in the department, this Court finds it difficult to accept the relief sought for by the petitioner firstly treating the intervening period as spent on duty and also in holding that the petitioner retired only w.e.f. 25.02.2013.

8. Now coming to the question as to what was the total length of service as on 2001, it would reveal that the petitioner had put in only about 13-14 years of service till 2001, it was not sufficient for the purpose of making service of the petitioner as pensionable service. Under the said circumstances, the petitioner would not be entitled for any relief as has been sought for in the present writ petition.

9. The writ petition thus being devoid of merit deserves to be and is accordingly dismissed.

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