

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 4356 of 2015**

Smt. Hiradevi Wd/o Late Lakhan Lal Chandra, aged 70 years, R/o Village Beladula, Police Station Jaijaipur, Tahsil Jaijaipur, District Janjgir Champa, Chhattisgarh

---- **Petitioner**

Versus

1. State of Chhattisgarh through Secretary, Department of Health, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
2. Director, Medical and Health Services, Raipur, Chhattisgarh,
3. Joint Director, Health Service, Bilaspur, District Bilaspur Chhattisgarh
4. Chief Medical and Health Officer, Bilaspur, District Bilaspur, Chhattisgarh
5. Chief Medical and Health Officer, Janjgir Champa, District Janjgir Champa, Chhattisgarh

---- **Respondents**

For Petitioner	:	Shri Malay Shrivastava, Advocate
For Respondent/State	:	Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice P. Sam Koshy

Order On Board

01/05/2018

The grievance of the petitioner in the present writ petition is to the order dated 10.04.2015 Annexure P-1 by which the respondents have released pensionary benefits to the petitioner but the services of her husband between 19.01.1998 to 30.06.2005 have been treated as break in service and the said period has not been counted for the purpose of grant of pension and pensionary benefits.

2. Case of the petitioner in brief is that her husband was working as an

Accountant with the respondents who was implicated in a case under Prevention of Corruption Act and he was convicted vide judgment dated 19.01.1998. The judgment of conviction was put to challenge in an appeal before the High Court registered as Criminal Appeal No. 271/1998. The High Court finally vide order dated 30.07.2012 allowed the criminal appeal thereby acquitting the husband of the petitioner from the charges levelled against him under PC Act. However, during the pendency of the criminal appeal before the High Court, the husband of the petitioner had crossed the age of superannuation w.e.f. 30.06.2005 and he died on 01.08.2010. After the acquittal, the authorities concerned vide order dated 23.05.2014 recalled the order of termination and ordered for releasing the pensionary benefits to the petitioner. Subsequently, the impugned order Annexure P-1 was passed granting pensionary benefits to the petitioner but the intervening period i.e. from 19.01.1998 till the date of superannuation i.e. 30.06.2005 has been treated as break in service.

3. Counsel for the petitioner submits that this decision of the respondents is per se illegal as it is in contravention to the provisions of Fundamental Rule 54-A so also it is bad in law under Rule 25 of the Chhattisgarh Civil Services (Pension) Rules, 1976.

4. Counsel for the respondent State, however, opposing the petition submits that since there was an order of conviction against the husband of the petitioner during the relevant period and that he had not worked during the said period, therefore, the respondents have rightly treated the said period as dies non or as break in service. Thus, prayed for rejection of the writ petition.

5. Having heard the contentions put forth on either side and on perusal of the record, some of the admitted facts of the case are that the husband of the petitioner was an employee of the respondents working as an

Accountant. He was prosecuted for an offence under Prevention of Corruption Act and was convicted by the trial Court vide judgment dated 19.01.1998. The judgment of conviction was put to challenge in an appeal which stood allowed vide order dated 30.07.2012 and the husband of the petitioner was acquitted of the charges. Unfortunately, pending the appeal before the High Court, the husband of the petitioner crossed the age of superannuation on 30.06.2005 and before the judgment by the appellate Court, the husband of the petitioner died on 01.08.2010. Subsequently, the order of termination was set aside by the department and they have also ordered for grant of pension and other retiral dues to the petitioner. However, the respondents have ordered to treat the intervening period i.e. from the date of conviction till the date of retirement, as break in service. It is this action which is under challenge.

6. After the order of termination having been set aside by virtue of the judgment of acquittal, under the normal consequence, it is the provisions of the Fundamental Rule 54A which is applicable. In addition, it is Rule 25 of the Chhattisgarh Civil Services (Pension) Rules, 1976 which would also apply. 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.”

7. Once when there is a judgment of acquittal in favour of the husband of the petitioner, there was no further disqualification of any nature available for the respondents not to count the intervening period i.e. from the date of termination till the date of retirement, as period spent on duty. There is no such provision of law available in this regard and the action of the

respondents thus appears to be per se illegal. In the light of the judgment of acquittal and the order of termination being set aside by the authorities, as a natural consequence, invoking Rule 25 of the Pension Rule, the respondents should have notionally granted all the benefits to the husband of the petitioner as if he was in employment from the date of termination till the date of superannuation.

8. Given the aforesaid facts, the impugned order Annexure P-1 to the extent of treating the intervening period as break in service is not sustainable and the same is set aside/quashed. It is ordered that the intervening period would be treated as the period spent on duty. It is further ordered that for the intervening period i.e. from the date of termination till the date of superannuation, the deceased employee would not be entitled for any monetary benefits except for the notional fixation of pay, increment and benefit of revision of pay, if any. However, the petitioner shall be entitled for all monetary benefits so far as his retiral dues are concerned that would accrue to the petitioner after grant of all appropriate notional fixation of pay till his retirement and his retiral dues are accordingly calculated after treating the said intervening period as spent on duty and the same shall be paid to the petitioner forth with preferably within a period of 4 months from today. The arrears will also carry interest at the rate of 9% per annum.

9. The writ petition accordingly stands allowed.

Sd/-
(P. Sam Koshy)
Judge