

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**Writ Petition (S) No.4495 of 2009**

Dwas Ram Yadav S/o Late Shri Panch Ram Yadav, aged about 64 years,
Retired Clerk, R/o Purani Basti, Rautpara, Janjgir, Distt. Janjgir Champa
C.G.

----Petitioner**Versus**

1. State of Chhattisgarh through the secretary, Department of Panchayat & Rural Development D.K.S. Bhawan, Raipur, C.G.
2. Director, Directorate of Panchayat and Social Services, D.K.S. Bhawan Raipur C.G.
3. Jila Panchayat Janjgir Champa Through Chief Executive Officer, Jila Panchayat Janjgir Champa Janjgir District – Janjgir Champa, C.G.
4. Janpad Panchayat Balauda Through Chief Executive Officer, Janpad Panchayat Baluda Distt. Janjgir Champa C.G.
5. D.K. Kaushik Chief Executive Officer, Janpad Panchayat Balauda Distt. Janjgir Champa C.G.

---- Respondents

For Petitioner	:	None.
For Respondent No.4	:	Shri Pawan Shrivastava, Advocate.
For respondents-State	:	Ms. Sunita Jain, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order On Board****13.03.2018.**

1. The present writ petition has been filed by the petitioner seeking a direction to the respondents for releasing the salary for the period from February to April, 2003, with interest @ 10 percent per annum.
2. The brief facts of the case relevant for adjudication of the dispute is that the petitioner was working as Clerk Grade-I in the Janpad Panchayat, Balauda, Distt. Janjgir Champa. His date of birth as per service record was 26.04.1944. As per date of birth, the petitioner was to retire w.e.f. 30.04.2002. However, subsequently on the pretext of extension of one year which the petitioner might get, he continued

in service with the respondents and meanwhile he had also got his service records manipulated whereby it was shown that he would stand retired from service w.e.f. 30.04.2003. Meanwhile, the petitioner had also obtained salary for 10 months i.e. May, 2002 to January, 2003. This obtaining of salary by the petitioner was not with due sanction and permission of the higher authorities in the department. It was subsequently detected that the petitioner was to retire w.e.f. 30.04.2002 and thereafter he has been unauthorizedly or illegally continuing in employment. When this fact was detected by the employer, they immediately discontinued the services of the petitioner from January, 2003 onwards and he was paid the salary for the period that he had worked.

3. Now the contention of the petitioner was that since his date of birth as per service record was 30.04.2003, he was entitled to serve the respondents for a further period of three months, and therefore, he should be paid salary with interest for the said three months period i.e. for the month of February, March and April, 2003.
4. The present is a second round of litigation. The earlier round of litigation preferred by the petitioner was WPS No.631 of 2009 which stood disposed of on 02.02.2009 wherein the only relief which the petitioner obtained was to make a suitable representation with the respondents, who in turn, shall consider and decide the same within three weeks. It is on the disposal of the said writ petition that the impugned order dated 02.03.2009 was passed.
5. A perusal of impugned order would show that the service record of

the petition showed his date of birth to be that of 26.04.1944. As per date of birth of the petitioner, his retirement was due on 30.04.2002. Thereafter, for any reason, if the petitioner has continued in employment, it cannot be counted as service period for the petitioner as he has crossed the age of superannuation on 30.04.2002.

6. The contention of the petitioner that he was to retire w.e.f. 30.04.2003 also stands disapproved from the order of the Controlling Authority under the Payment of Gratuity Act i.e. Assistant Labour Commissioner (State), district Janjgir Champa, who in his order dated 01.03.2008 has accepted the contention of the respondents that the petitioner's age of retirement is 30.04.2002 and his date of birth is 26.04.1944.
7. In view of the finding of the Controlling Authority under the Payment of Gratuity Act and further there being no substantive material produced by the petitioner in the writ petition to establish that his date of birth was not 26.04.1944, this court finds it difficult to grant the relief which has been sought for by the petitioner.
8. Under the given facts and circumstances of the case, the petitioner would not be entitled for any salary firstly for the period which he has not worked and for any specific period post his retirement i.e. 30.04.2002 without there being any appropriate order passed in his favour by the competent authority.
9. With the aforesaid observations, the writ petition stands dismissed.

Sd/-

(P.Sam Koshy)
Judge