

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 5412 of 2010

Suresh Dubey S/o Raghav Lal Dubey, aged about 67 years, Retired Panchayat and Social Education Organizer, R/o Jaijaipur, Block Jaijaipur, District Janjgir-Champa (C.G.).

---Petitioner

Versus

1. The State of Chhattisgarh, Through The Secretary, Department of Panchayat and Social Welfare, D.K.S. Bhawan, Raipur (C.G.).
2. The Director, Panchayat and Social Welfare Department, Raipur (C.G.).
3. The Collector, Janjgir-Champa, District Janjgir-Champa (C.G.).
4. The Collector, Korba, District Korba (C.G.).
5. Deputy Director, Panchayat and Social Welfare Department, Janjgir, District Janjgir-Champa (C.G.).
6. Deputy Director, Panchayat and Social Welfare Department, Korba, District Korba (C.G.).
7. Chief Executive Officer, Janpad Panchayat Jaijaipur, District Janjgir-Champa (C.G.).
8. Chief Executive Officer, Janpad Panchayat Korba, District Korba (C.G.).
9. Additional Secretary, State of Chhattisgarh, Department of General Administration (Member/Secretary Pension Committee), Raipur (C.G.).

---Respondents

For petitioner	:	Shri Manish Upadhyay, Advocate.
For State	:	Shri S.P.Kale, Dy.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

27/06/2018

1. The challenge in the present Writ Petition is to the order Annexure-P/13 dated 25/06/2009 passed by the High Power Committee constituted for settlement of the retiral dues.

2. The facts of the case in brief is that, the petitioner has retired from the post of Panchayat and Social Education Organizer with effect from 30/09/2004. After his retirement, the retiral dues and pensionary reliefs have not been settled or paid to the petitioner.
3. Subsequently, the petitioner had filed a Writ Petition i.e. WPS No.1384/2009 which was decided on 18/03/2009 referring the matter to the High Power Committee for redressal of the retiral dues of the petitioner.
4. On reference of the petitioner's case to the said High Powered Committee, the Committee vide the impugned order dated 25/06/2009 has issued an order for adjusting 35 months - period of his alleged absence, from the Earned Leave that was in his credit and the balance period if any shall be treated as dies-non. It is this order which is under challenge in the present Writ Petition.
5. The counsel for the petitioner submits that, the alleged 35 months period of absence is firstly between 29/06/1996 to 19/05/1998 when he was for the first time transferred from Block Jaijaipur, District Bilaspur to Block Bodla, District Rajnandgaon. He submits that, the said order of transfer was subjected to challenge in a Writ Petition in WP No. 2904/1996 which got disposed off on 02/08/1996 with an interim protection of not to be relieved until communication of decision on his representation. Thus, for all practical purposes by virtue of the order of the Madhya Pradesh High Court in WP No. 2904/1996, the petitioner had to be treated as in service between

29/06/1996 to 19/05/1998 i.e. the date on which the earlier order of transfer was cancelled.

6. He further submits that, even otherwise, the effect of cancellation of the transfer order would be that, for all practical purposes, the petitioner would have to be treated as if he was discharging his duties at Jaijaipur, District Bilaspur and for which he would be entitled for salary.

7. The second contention of the counsel for the petitioner is that, subsequently, the petitioner was again subjected to transfer on 24/08/1998 from Jaijaipur to Korba by an officer who was not the competent officer i.e. the Chief Executive Officer. The petitioner protested against the same by way of an objection, subsequently a fresh order of transfer was issued by the Commissioner on 08/07/1999 transferring the petitioner from Jaijaipur to Korba that means the petitioner's earlier order of transfer dated 24/08/1998 gets automatically nullified after issuance of order of the Commissioner on 08/07/1999.

8. Pursuant to the order of the Commissioner on 08/07/1999, the petitioner stood relieved only after about a year i.e. on 11/07/2000 which the petitioner duly complied with and joined at Korba. Thus, for the intervening period between 24/08/1998 to 11/07/2000 i.e. the date of his relieving from Jaijaipur also he has to be treated as in service and for all practical purposes it has to be treated as if the petitioner was not absent during the said period.

9. He further submits that, if for any reason the respondent/State wanted to treat the said period as an unauthorized absent period, they ought to have

initiated a prompt action against the petitioner at the relevant point of time and could not have waited till 7 years from the date of retirement and thus the impugned order is bad in law.

10. He further submits that, even otherwise, the report of the High Power Committee also is a non-speaking order. The Committee ought to have taken into consideration the entire factual matrix of the case particularly the order of transfer being made and the interim protection from the High Court or for that matter the order of Commissioner so far as the two transfer orders are concerned. There is no discussion in respect of any of these factual matrix of the case.

11. Moreover, the order of dies-non has been passed by the Committee constituted for redressal of dispute pertaining to payment of retiral dues of the retired employees in the State of Chhattisgarh. The said Committee cannot substitute itself as a disciplinary authority and pass orders like considering a particular period as dies-non as this was not the power which has been conferred upon the said Committee. The said Committee only has to recommend as to what are the retiral dues which the petitioner is actually entitled for, what has been paid to him and what is the balance amount payable to him as per rules governing the service condition of retired employees.

12. Least that was expected from the Committee was to discuss and deliberate and also consider the actual grievance of the petitioner.

13. Perusal of the record would show that, infact the actual grievance of the petitioner was in respect of the non-payment of salary and other emoluments which the petitioner was due for 35 months which was not paid to him on account of the alleged transfer and the non-joining of the petitioner at the transferred place on two occasions.

14. The Committee concerned was supposed to deal with these issues and should have discussed the order of transfer and the subsequent development till it was recalled and the issuance of a fresh order of transfer which again was not issued by the Competent Authority which was acted upon by the petitioner.

15. The impugned order does not find the discussion so far as this issues are concerned and on this ground also the impugned order is not sustainable.

16. The impugned order so far as treating the period as dies-non, treating the period as an unauthorized absence and also for adjusting 35 months of the alleged absence, from the Earned Leave in the credit of the petitioner at the time of his retirement also is not sustainable.

17. For all the aforesaid reasons, the impugned order is not sustainable and the same deserve to be and is accordingly set aside.

18. It is ordered that the petitioner shall be entitled for salary of 35 months period during which it is alleged that the petitioner had remained unauthorizedly absent. The said 35 months period for all practical purposes have to be treated as a period spent on duty and the same shall also be

counted for the purpose of grant of retiral dues if the same has not been already counted.

19. The Writ Petition accordingly stands allowed and disposed off.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit