

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 6434 of 2011**

Loknath Patel S/o Shri Narayan Prasad Patel, aged about 61 years,
 occupation – retired Assistant Grade II, R/o Shakuntala Sadan/ Chhaya
 Chudi Centre, Main Road Dabhra, District Janjgir-Champa (CG)

---- Petitioner**Versus**

1. State of Chhattisgarh through Secretary, Department of Irrigation,
 Mantralaya, DKS Bhawan, Raipur (CG)
2. Executive Engineer, Minimata Bango Canal, Division No.2, Champa,
 District Janjgir-Champa (CG)
3. Accountant General, Office of Accountant General Pandri, Raipur,
 District Raipur (CG)
4. Additional Director, Accounts and Pension, Bilaspur, District Bilaspur
 (CG)
5. Treasurer, Janjgir Champa, district Janjgir Champa (CG)

---- Respondents

For Petitioner : None

For Respondent/State: Shri Shashank Thakur, G.A. and Ms. Sunita Jain, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****25/04/2018**

The grievance of the petitioner is that he was initially appointed on 18.12.1978 and stood retired from service on 30.04.2010 on attaining the age of 60 years. However, the respondents have counted the total length of service of the petitioner as 29 years, 7 months and 8 days whereas it ought to have been 31 years 4 months and 3 days.

2. According to the petitioner, the quantification of the length of service by the respondents is erroneous as they have not counted the period between

18.12.1978 to 21.09.1980 during which the petitioner had in fact duly worked with the respondents and also performed to the utmost satisfaction of the authority. Thus, prayed for a direction to the respondents to calculate the pensionary/retiral benefits counting the length of service of the petitioner starting from 18.12.1978 to 30.04.2010.

3. State counsel opposing the petition submits that though the petitioner was admittedly appointed on 18.12.1978, at that point of time he had not passed Hindi typing examination and therefore a condition was put to the petitioner that he should clear Hindi typing examination within two years from the date of order of appointment. He submits that the petitioner subsequently passed Hindi typing examination on 21.09.1980 and therefore, the regular service of the petitioner has been counted from the date of his passing Hindi typing examination and the length of service also has been taken into consideration from 21.09.1980 and not from 18.12.1978. He further refers to the conditions attached along with the order of appointment wherein it has been said that a candidate would not make any claim for permanent appointment in the department unless he is fully qualified for the same.

4. The contention of the State counsel is not sustainable for the simple reason that for the purpose of grant of pension and retiral benefits it is the CG Civil Services (Pension) Rules of 1976 which would be applicable. Chapter III of the said Rules deals with qualifying service. Rule 12 deals with the commencement of qualifying service which for ready reference is reproduced hereinunder:

“12. Commencement of qualifying service -

(1) Except for compensation gratuity, a Government servant's service does not qualify till he has completed 18 years of age, provided that nothing contained in this clause shall apply in the case of persons who were in service on the date of commencement of these rules and in whose case a lower age limit has been prescribed.

(2) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes

charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity.”

5. A perusal of Sub Rule 2 of Rule 12 clearly envisages the fact that the qualifying service of a government servant shall commence from the initial date of his appointment in whatever capacity he worked. In the instant case, apparently the petitioner was granted an order of appointment on 18.12.1978, on the basis of which the petitioner had worked for two years within which he had also passed Hindi typing examination on 21.09.1980. As such, the condition put at the time of appointment stands fulfilled by the employee within the stipulated period and there is no reason why the services of the petitioner should not be counted from the initial date of his appointment.

6. The writ petition, for the aforesaid facts, deserves to be and is accordingly allowed. It is directed that the respondents shall forthwith consider the case of the petitioner for grant of retiral/pensionary benefits quantifying the total length of service as 31 years, 4 months and 3 days instead of 29 years 7 months and 8 days and the necessary benefits which shall accrue to the petitioner shall be paid him within a period of 4 months from the date of presentation of certified copy of this order.

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