

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (S) No. 1801 of 2012**

G. N. Tiwari S/o late Shri Sunder Lal Tiwari, aged about 61 years,
R/o Janpad Quarter in front of Police Station main road Kondagaon,
District Kondagaon (CG)

---- Petitioner**Versus**

1. Chhattisgarh State Ware Housing Corporation, through Chairman,
SQ-22 Anand Nagar, Mahasamund Road (CG)
2. Managing Director, Chhattisgarh State Ware Housing Corporation,
SQ-22 Anand Nagar, Mahasamund Road (CG)
3. M. P. State Ware Housing & Logistic Corporation, through Chairman,
Office Complex Block A, Goutam Nagar, Bhopal

---- Respondents

For Petitioner	:	Shri Rahul Jha, Advocate
For Respondents 1 & 2	:	Shri B. D. Guru, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****23/07/2018**

Challenge in the present writ petition is to Annexure P-12 dated
04.06.2010.

2. The limited contention which counsel for the petitioner at this juncture raises is that the disposal of the appeal by the respondents is erroneous in the light of Section 83 of the Madhya Pradesh Reorganisation Act, 2000 and the same deserves to be set aside/quashed.

3. The facts of the case are that the petitioner was appointed as a Junior Assistant with respondent no.3 way back in 1989 and his services

were discontinued on the ground of being unsatisfactory vide order dated 13.07.1995. The petitioner preferred a departmental appeal wherein the order of discontinuance stood modified and he was reinstated in service vide order dated 13.07.1998. The petitioner resumed his duty and was in service till 12.04.2002 when his services were again discontinued vide order dated 12.04.2002. The petitioner again preferred a departmental appeal on 27.05.2002 before the appellate Authority i.e. the Chairman of respondent no.3 Corporation. Meanwhile, on account of bifurcation of the State, Chhattisgarh State Ware Housing Corporation was created on 02.05.2002. Since the petitioner's appeal was not decided, the petitioner on an earlier occasion had filed a writ petition i.e. WPS No. 3932/2008 which finally came up for hearing on 26.03.2010 and the matter was disposed of at the instance of the counsel for the respondent who made a statement before the Court that the appeal of the petitioner would be decided on merits. Pursuant to the disposal of the said writ petition, the authorities concerned have passed the impugned order dated 04.06.2010 rejecting the appeal of the petitioner only on the ground that he was never an employee under respondents 1 & 2 and that his employer was in fact respondent no.3 and the respondents 1 & 2 are not the competent authorities to decide the appeal of the petitioner.

4. It is relevant at this juncture to refer to some of the provisions of the Madhya Pradesh Reorganization Act, 2000 (for short "the Act of 2000"). For ready reference it would be relevant to refer to Section 58 of the Act of 2000:

"58. Provisions as to Madhya Pradesh Electricity Board, State Road Transport Corporation and State Warehousing Corporation, etc.—(1) The

following bodies corporate constituted for the existing State of Madhya Pradesh, namely:—

- (a) the State Electricity Board constituted under the Electricity Supply Act, 1948 (54 of 1948);
- (b) the State Road Transport Corporation established under the Road Transport Corporations Act, 1950 (64 of 1950); and
- (c) the State Warehousing Corporation established under the Warehousing Corporations Act, 1962 (58 of 1962),

shall, on and from the appointed day, continue to function in those areas in respect of which they were functioning immediately before that day, subject to the provisions of this section and arrangements for the functioning of such body corporates as may be mutually agreed upon between the successor States failing which to such directions as may, from time to time, be issued by the Central Government.

(2) Any directions issued by the Central Government under sub - section (1) in respect of the Board or the Corporation shall include a direction that the Act under which the Board or the Corporation was constituted shall, in its application to that Board or Corporation, have effect subject to such exceptions and modifications as the Central Government thinks fit.

(3) The Board or the Corporation referred to in sub-section (1) shall cease to function as from, and shall be deemed to be dissolved on such date as the Central Government may, by order, appoint; and upon such dissolution, its assets, rights and liabilities shall be apportioned between the successor States of Madhya Pradesh and Chhattisgarh in such manner as may be agreed upon between them within one year of the dissolution of the Board or the Corporation, as the case may be, or if no agreement is reached, in such manner as the Central Government may, by order, determine:

Provided that any liabilities of the said Board relating to the unpaid dues of the coal supplied to the Board by any public sector coal company shall be provisionally apportioned between the successor organisations constituted respectively in the successor States of the existing State of Madhya Pradesh or after the date appointed for the dissolution of the Board under this sub-section in such manner as may be agreed upon between the

Governments of the successor States within one month of such dissolution or if no agreement is reached, in such manner as the Central Government may, by order, determine subject to reconciliation and finalisation of the liabilities which shall be completed within three months from the date of such dissolution by the mutual agreement between the successor States or failing such agreement by the direction of the Central Government :

Provided further that an interest at the rate of two per cent higher than the Cash Credit interest shall be paid on outstanding unpaid dues of the coal supplied to the Board by the public sector coal company till the liquidation of such dues by the concerned successor organisations constituted in the successor States on or after the date appointed for the dissolution of the Board under this sub-section.

(4) Nothing in the preceding provisions of this section shall be construed as preventing the Government of the State of Madhya Pradesh or, as the case may be, the Government of the State of Chhattisgarh from constituting, at any time on or after the appointed day, a State Electricity Board or a State Road Transport Corporation or a State Warehousing Corporation for the State under the provisions of the Act relating to such Board or Corporation; and if such a Board or Corporation is so constituted in either of the States before the dissolution of the Board or the Corporation referred to in sub-section (1),—

(a) provision may be made by order of the Central Government enabling the new Board or the new Corporation to take over from the existing Board or Corporation all or any of its undertakings, assets, rights and liabilities in that State, and

(b) upon the dissolution of existing Board or Corporation,—

(i) any assets, rights and liabilities which would otherwise have passed to that State by or under the provisions of sub-section (3) shall pass to the new Board or the new Corporation instead of to that State;

(ii) any employee who would otherwise have been transferred to or re-employed by that State under sub-section (3), read with clause (i) of sub-section (5), shall be transferred to or re-employed by the new Board or the new Corporation instead of to or by that State.

(5) An agreement entered into between the successor States under sub-section (3) and an order made by the Central Government under that sub-section or under clause (a) of sub-section (4) may provide for the transfer or re-employment of any employee of the Board or the Corporation referred to in sub-section (1),—

(i) to or by the successor States, in the case of an agreement under sub-section (4) or an order made under that sub-section;

(ii) to or by the new Board or the new Corporation constituted, under sub-section (4), in the case of an order made under clause(a) of that sub-section,

and subject to the provisions of section 64, also for the terms and conditions of service applicable to such employees after such transfer or re-employment.

5. Further it is also relevant to refer to Section 83 of the Act of 2000:

“83. Transfer of pending proceedings.-(1) Every proceeding pending immediately before the appointed day before a Court (including High Court), Tribunal, Authority or Officer in any area which on that day falls within the State of Madhya Pradesh shall, if it is a proceeding relating exclusively to the territory, which as from that day are the territories of Chhattisgarh State, stand transferred to the corresponding Court, Tribunal, Authority or Officer of the State of Chhattisgarh.

(2) If any question arises as to whether any proceeding should stand transferred under sub-section (1), it shall be referred to the High Court of Madhya Pradesh and the decision of that High Court shall be final.

(3) In this Section-

(a) “Proceeding” includes any suit, case or appeal; and

(b) “corresponding Court, Tribunal, Authority or Officer” in the State of Chhattisgarh means-

(i) The Court, Tribunal, Authority or Officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such Court, Tribunal, Authority or Officer in the State of Chhattisgarh, as may be determined after the appointed day by the Government of that State or the Central

Government, as the case may be, or before the appointed day by the Government of the existing State of Madhya Pradesh to be the corresponding Court, Tribunal, Authority or Officer.”

6. After referring to the aforesaid statutory provision as it stands it would be necessary to come to the facts of the present case also. After 02.05.2002 the respondents 1 & 2 have come into existence. The petitioner all along right from 1989 to 2002 was posted within the territories which fell within the geographical area of the State of Chhattisgarh. The discontinuance of service was on 12.04.2002 i.e. less than a month before the respondent no.1 Corporation was created. Against the impugned order of discontinuance of service or cancellation of the appointment on probation, the petitioner preferred an appeal on 30.04.2002 that again is a period just 2 weeks before the respondent no.1 Corporation was created.

7. In the light of Section 83 of the Madhya Pradesh Reorganization Act every proceeding which was pending immediately before the appointed dated which in the instant case was 02.05.2002 shall stand automatically transferred to the corresponding authority or officer of the State of Chhattisgarh. In the instant case, since respondents 1 & 2 came in existence on 02.05.2002, for all practical purposes the appellate authority of the petitioner who was otherwise working within the territories of the State of CG in 2002 got automatically transferred to respondent no.1 & 2. In the light of the provisions of Section 83, respondents 1 & 2 cannot take a stand that since the action of the petitioner was that of respondent no.3, respondents 1 & 2 cannot take a decision. Under the provisions of Section 58 so also under Section 83 of the Act of 2000, the claim of the petitioner stood transferred to respondents 1 & 2 and any liability which falls or any

right which is created in favour of the petitioner it would be the respondents 1 & 2 to bear the liability.

8. Given the facts and circumstances of the case, this Court is of the opinion that the decision on the part of the respondents 1 & 2 in disowning the claim of the petitioner on the ground that he was not an employee of respondents 1 & 2 Corporation is not sustainable and the same deserves to be and is accordingly set aside remitting the matter back to the appellate authority i.e. respondents 1 & 2 to take a decision in the case of the petitioner on merits.

9. Considering the fact that the petitioner's discontinuance from service is of the year 2002, it is expected that respondents 1 & 2 shall take a decision in the case of the petitioner within a period of 60 days from the date of communication of the order passed by this Court.

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