

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2681 of 2013**

M.P.Rathor S/o Rupnarayan Aged About 61 Years Retired Revenue Inspector R/o Luxmipur, P.S. City Kotwali Raigarh P.O. and Distt. Raigarh C.G.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary, Department of Revenue Naya Raipur Mahanadi Bhawan, P.S. Raipur, Mahanadi Bhawan, P.S. Naya Raipur Distt. Raipur, Chhattisgarh.
2. The Collector Collectorate, P.S. City Kotwali Distt. Raigarh, Chhattisgarh.

---- Respondents

For Petitioner	:	Shri Neelkanth Malviya, Advocate.
For State	:	Ms. Sunita Jain, Panel Lawyer.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****30/04/2018**

1. The challenge in the present writ petition is to the order dated 07.09.2012 (Annexure P/1) whereby the Joint Collector has passed an order that for the period during which the petitioner was placed under suspension i.e. between 28.05.2004 to 25.06.2009, the petitioner would not be entitled for anything except for the subsistence allowance which has been paid to the petitioner.
2. The counsel for the petitioner during the course of hearing confines his relief to the extent that the petitioner may not be granted any actual monetary benefit other than the subsistence allowance which

has been paid during 28.05.2004 to 25.06.2009, but the said intervening period be treated as period spent on duty and he be granted benefit of revision of pay that has occurred in between and also grant notional fixation of pay granting increments that he was otherwise entitled and for re-fixation of pension and retiral dues thereafter.

3. A perusal of records would reveal that the petitioner has a chequered history inasmuch as initially an order of compulsory retirement was passed on 26.09.2005 as a punishment after a departmental enquiry was conducted. This order was put to challenge in departmental appeal before the Commissioner which stood allowed vide order dated 25.06.2009. Subsequently, the petitioner was permitted to resume his duties on 07.07.2009. Meanwhile, the order of Commissioner setting aside the order of compulsory retirement was sought to be reviewed in a revision by the Collector before the Secretary and the said review/revision preferred by the Collector stood allowed vide order dated 04.05.2010 and the order of compulsory retirement stood further restored.
4. This order of Secretary was subjected to challenge by way of a writ petition vide WPS No.2933 of 2010. The said writ petition finally stood allowed vide order dated 24.04.2012 (Annexure P/8) setting aside the order of compulsory retirement and the petitioner was reinstated in service on which he continued to work till he attains the age of superannuation i.e. on 30.04.2012.
5. After the order passed by the High Court in the said writ petition, the

Collector has finally regularized the intervening period by passing the impugned order on 07.09.2012 (Annexure P/1). However, the respondents in between have not granted the benefit of increments which he was entitled for during the period of suspension neither has he been granted the benefit of revision of pay that has occurred in between.

6. From the factual matrix of the case as narrated in the preceding paragraphs what is primarily to be taken note of is the fact that between 28.05.2004 to 25.06.2009 the petitioner was either under suspension or his services were placed under compulsory retirement which ultimately stood set aside by the authority on 25.06.2009 and he resumed his duties on 07.07.2009. The authorities concerned vide Annexure P/1 has now issued an order regularizing the said intervening period as treating it to be one under suspension. Though the said period would be treated as period under suspension, but it has to be treated as qualifying service for the purpose of pension and other retiral benefits and the said period also has to be counted while quantifying the total length of service of the petitioner.
7. Further, since there was no order of punishment imposed upon the petitioner and that his writ petition challenging the order of compulsory retirement finally stood allowed in his favour and the order of writ court has also attained finality, the period under suspension have to be regularized in accordance with provisions of FR-54 and FR-54(A). The authority concerned have passed an order treated it to be period spent on duty and that the petitioner would not

be entitled for any monetary benefits except for the subsistence allowance that he has received during the intervening period. However, since that period has to be treated as spent on duty, the petitioner has to be granted notional fixation of pay including the benefit of revision of pay, if any, that has occurred in between notionally.

8. The petitioner would also be entitled for grant of annual increments which has to be granted to him by notional fixation. The petitioner however would be entitled for the actual arrears of pension as also arrears of retiral dues which would arise on account of grant of notional fixation of the revision of pay and the notional grant of increments of the period of being out of service and the calculation being made on the said revised fixation. The same would have to be computed after granting the petitioner benefit of increments and notional fixation of pay and also the benefit of revision of pay scale.
9. The writ petition is accordingly allowed to the extent indicated hereinabove.

Sd/-
(P. Sam Koshy)
Judge