

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO. 5026 OF 2014**

Bhairav Prasad Mishra S/o Late Bhanu Prasad Mishra Aged About 62 Years R/o Village Pouna Tehsil Akaltara, P.S. Mulmulla Distt. Janjgir Champa, Chhattisgarh.

...Petitioner(s)

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Public Health Department, New Mantralaya, Mahanadi Bhawan, Mandir Hasaud, P.S. Mandir Hasaud, Raipur, Chhattisgarh.
2. The Executive Engineer Public Health Engineering Division Korba Civil And Revenue Distt. Korba, Chhattisgarh.

... Respondent(s)

For Petitioner	:	Shri HS Ahluwalia, Advocate.
For Respondent-State	:	Shri Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17.05.2018

1. The relief sought for by the petitioner in the instant petition is for a direction to the respondent authorities to grant pension and gratuity taking into consideration the entire length of service which the petitioner has rendered under the respondents.
2. The brief facts of the case is that the petitioner was initially appointed as Pump Operation on daily wage basis in the year 1982 and on which post he continued to work till 31.12.1988 and thereafter by general order of the State Govt. the service of all daily wage workers were discontinued including that of the petitioner. The petitioner raised industrial dispute before the Labour Court at Bilaspur under the Industrial Disputes Act which was registered as case No.105/IDAct/90/Ref. which ultimately stood allowed on 01.05.1996. The order of Labour Court was that discontinuance of

service of the petitioner was illegal and bad in law and therefore the petitioner shall be entitled for full back wages and consequential benefits.

3. The said order of Labour Court was challenged by the State in a writ petition vide WP No.3500 of 1996 which stood allowed on 23.04.2008 and the order of Labour Court stood quashed. However, the petitioner thereafter preferred a Review Petition before the High Court which was registered as Review Petition No.54 of 2009. The High Court later on allowed the review petition on 22.02.2011 and reviewed its earlier order dated 23.04.2008 and modified the same to the extent that order of Labour Court to the extent of reinstatement with consequential benefits was upheld, however, the benefits of back wages was denied. Meanwhile, in consequence of the order of Labour Court the petitioner was reinstated in service w.e.f. 06.06.1996 and in due course of time he was also regularized on 01.09.2008 and stood retired from service w.e.f. 30.03.2013.
4. Though, initially the respondents had processed pension papers of the petitioner counting his service from the date of reinstatement i.e. 06.06.1996 however subsequently did not finalize the pension payable to the petitioner and held that since the petitioner was regularized in the year, 2008, and by that time since New Pension Scheme had already been floated in the year, 2004, the petitioner at best would be entitled for pension under the Contributory Pension Scheme. It is this action which is under challenge in the present petition.

5. Meanwhile, the dispute of gratuity stands redressed as the gratuity amount of petitioner has subsequently been released.
6. Now the issue left is whether the petitioner would be entitled for the pension as per New Contributory Pension Scheme or under the Pension Scheme of 1976?
7. A perusal of record would show that indisputably the petitioner was working with the respondents since 01.09.1987. This fact has been affirmed by the Labour Court and which has been put to test before the High Court also and thereby the finding of the Labour Court of the petitioner being in service from 01.09.1987 stands affirmed. The petitioner thereafter was abruptly terminated from service in the year, 1988, but by virtue of the order of the Labour Court he stands reinstated and the order of discontinuance was held to be illegal termination. Therefore, as a consequence, for all practical purposes the said period be treated as if he was never terminated since 1987 onwards and the said intervening period i.e. from the date of termination till reinstatement would also have to be treated as spent on duty. This view of the court stands fortified from the Division Bench decision of this Court in WPS No. 1703 of 2015 decided on 16.05.2017 (Tukaram Vs. State of Chhattisgarh & Ors.).
8. So far as whether the petitioner would be entitled for the pension under Pension Rules, 1976 or under the New Contributory Pension Scheme, 2004, it would be relevant at this juncture to refer to Division Bench decision of Madras High Court (Madurai Bench) in Writ Appeal No.760 of 2013, decided on 09.09.2015 (The Director, Local Fund Audit & Ors. Vs. A.R.D. Nayagam) whereby in an

identical set of facts, the Division Bench has affirmed the order of the Single Bench by holding as such :

“9.The pension papers of the first respondent were returned on the premise that there is a bar in considering the claim for pension in terms of G.O.No.256, Finance (Pension) Department dated 06.08.2003 and G.O.No.430, Finance (Pension) Department, dated 06.08.2004. The learned Judge after considering the relevant Government orders, has clearly held that the Government orders are in relation to contributory pension scheme, applicable to the newly appointed employees after 01.04.2003. The respondent having been appointed in the year, 1980 and regularized on 23.06.2006, would not fall within the parameters of newly appointed employees after 01.04.2003. The government order cannot be made applicable to the respondent. As rightly found by the learned Single Judge, as the new scheme applicable to newly appointed employees on or after 01.04.2003, the appointment of the respondent is not a new recruitment and it is a case of regularisation after putting 30 years of service. In this regard, it is relevant to extract paragraphs 7 and 8 of the order of the learned Single Judge-

7.When the very G.O. says that the new pension scheme, namely contributory pension scheme is applicable to persons, who are newly recruited after 01.04.2003, I fail to understand as to how the respondents are entitled to treat the petitioner as newly recruited person after 01.04.2003, merely because, his service was regularised on 23.06.2006. The respondents are not disputing the fact that the petitioner was originally appointed as Water Supply attender as early as on 27.02.1980. Certainly, the words 'newly recruited' cannot be construed to mean that it applies only to persons, whose services were regularised before 01.04.2003. New recruitment and regularisation are two different aspects and stages and therefore, the respondents are not entitled to put both together in the same boat and deny the benefit of pension under the general scheme to the petitioner.

8.The learned Government Advocate wants to emphasize also on the other G.O. viz., G.O.Ms.No.430, dated 06.08.2004. No doubt under the said G.O., it is contemplated that only 50% of the service rendered in the consolidated pay shall be counted for pension along with the regular service of the employees on or before 31.03.2003. But the reason adduced in the impugned order is that the petitioner was regularised after 01.04.2003 and therefore, he is not entitled to the regular pension scheme. As I have already pointed out that G.O.Ms.No.259 does not contemplate any such situation and it purely applies only to persons, who

were newly recruited on or after 01.04.2003, the petitioner cannot be denied on the ground that his appointment was regularised after 01.04.2003.?

10. We, therefore, find no merit in this Writ Appeal and the impugned order of the learned Single Judge, dated 14.12.2012, passed in W.P.(MD)No.11221 of 2010, warrants no interference. The impugned order only refers to two Government Orders and not any rule or provision. Hence, the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.”

9. A perusal of above order of the Division Bench would reveal that the factual matrix of the present case is identical to the facts of that case.
10. In view of the aforesaid decision, as also the factual matrix of the case as has been narrated in the preceding paragraphs, when it has been held that the petitioner would be treated as if he was continuously in employment since 01.09.1987 onwards and that the intervening period between the date of termination till reinstatement also would be treated as spent on duty. It has to be presumed that the petitioner was one who was appointed much prior to the New Pension Scheme coming into force. Infact it is a case where the petitioner was already in employment of the respondents way back from 1987 onwards, therefore, while quantifying the length of service, the same has to be counted from September 1987 onwards as has been held by the Labour Court and which stands affirmed by the High Court as well.
11. The writ petition therefore deserves to be and is accordingly allowed. It is ordered that the petitioner shall be entitled for pension and pensionary benefits as per Pension Rules, 1976. Considering the

fact that this is an old case, it is expected that the respondent authorities shall process and settle the pension payable to the petitioner at the earliest preferably within a period of four months.

Sd/-
(P. Sam Koshy)
Judge

inder