

HIGH COURT OF CHHATTISGARH AT BILASPURWPS No. 6779 of 2018

Girjashankar Johar S/o Late Shri Basani Ram Johar, aged about 46 years, Inspector, R/o Geetanjali City, Phase-2, House No.34, Bahtarai Road, Sarkanda, Bilaspur, District Bilaspur (C.G.).

---Petitioner

Versus

1. State of Chhattisgarh, through the Secretary, Department of Home, Mahanadi, Mantralaya, Naya Raipur, Post Office & Police Station Naya Raipur, District Raipur (C.G.).
2. Director General of Police, Police Head Quarters, Chhattisgarh, Raipur (C.G.).
3. Deputy Inspector General of Police (Admn.), Police Head Quarters, Chhattisgarh, Raipur (C.G.).
4. Inspector General of Police, Bilaspur Range, Bilaspur (C.G.).
5. Superintendent of Police, Raigarh (C.G.).

---Respondents

CONT No. 1058 of 2018

Girjashankar Johar S/o Late Shri Basani Ram Johar, aged about 46 years, Inspector, R/o Geetanjali City, Phase-2, House No.34, Bahtarai Road, Sarkanda, Bilaspur, District Bilaspur (C.G.).

---Petitioner

Versus

Shri A.N.Upadhyay, Director General of Police, Chhattisgarh, Police Head Quarters, Raipur (C.G.).

---Respondent

For petitioner	:	Shri Vivek Shrivastava, Advocate.
For State	:	Shri Praful N.Bharat, Addl.A.G.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10/10/2018

1. Since the matter involved in both the cases were similar, these two cases have been clubbed and heard analogously.

2. As per the order of this Court dated 06/10/2018 passed in contempt petition No. 1058/2018, the Director General of Police, State of Chhattisgarh is present before this Court today.
3. The dispute revolves around the application for voluntary retirement submitted by the petitioner on 01/05/2018.
4. When the said application was not been considered, a Writ Petition (S) No. 5835/2018 was filed by the petitioner and which stood disposed off on 06/09/2018 with a direction to the respondent No.2 to take an appropriate decision at the earliest.
5. Subsequently, when the decision was not taken, the contempt petition was filed.
6. Lateron, the petitioner has now filed the present Writ Petition also seeking for an appropriate direction to the respondents to take an appropriate decision on the application submitted by him for voluntary retirement on 01/05/2018 and to relieve the petitioner at the earliest.
7. The matter is taken up for hearing.
8. The learned State counsel drew the attention of this Court to the order dated 27/09/2018 passed in pursuant to the earlier Writ Petition being disposed off whereby the application of the petitioner stood rejected.
9. The reason for rejection was that, subsequent to the submission of the application for voluntary retirement it is said that the petitioner has not reported for duties at his transferred place i.e. at District Sukma.

10. The learned State counsel also contended that, the requirement of Rule 42 of the Pension Rules is of giving 3 months notice or giving salary in lieu of 3 months notice. That in the instant case, since the petitioner has not discharged his duties during the intervening period of 3 months therefore the authorities concerned i.e. the respondent No.2 have passed the order on 27/09/2018 rejecting his application.

11. At this juncture, the counsel for the petitioner submits that, the petitioner has never been issued with the transfer order dated 31/03/2018 and it is only after he had submitted his application for voluntary retirement on 01/05/2018 and which was also forwarded to the Higher Authorities that in the forenoon he was issued with a relieving order intimating him of being transferred on 31/03/2018 to Sukma.

12. Be that as it may, undisputedly, there appears to be an order of transfer against the petitioner dated 31/03/2018. It is also not in dispute that the petitioner was issued with a relieving order on 01/05/2018.

13. The requirement thereafter would be for reporting for duties at the transferred place as for 3 months notice period the employee concerned is required to perform his duties.

14. The counsel for the petitioner submits that the petitioner had also applied for medical leave during the intervening period, though there is no document to substantiate the same.

15. So far as Rule 42 of the Pension Rules is concerned it clearly reflect that the only requirement is giving of notice of 3 months or depositing of

salary of 3 months in lieu of notice period. The Rule do not prescribed any decision to be taken by the authorities on the application for voluntary retirement.

16. In the proviso clause, there is a requirement for order from the appointing authority, but that is only in the circumstances envisaged therein and not as a matter of routine.

17. Once when an employee submits his application giving 3 months notice and if there is no disability or disqualification like being under suspension or pending departmental enquiry, etc., the notice of retirement would automatically come into play on the completion of 3 months.

18. In the given facts, in case if the petitioner has not discharged his duties during the intervening period, the authorities concerned can take an appropriate decision adjusting the said period with the leave that is available to his credit.

19. Ofcourse, the petitioner would have to submit a suitable application in this regard and which is not so fatal a fact which requires rejection of the application for voluntary retirement.

20. In the given facts, this Court is of the opinion that, the entire matter itself can be resolved if the petitioner is directed to complete the requisite formalities required by moving an appropriate application for adjustment of leave that he has in his credit for the intervening period and also for reporting for duty at transferred place at Sukma i.e. for completion of the requisite formalities of settling of his post retiral benefits, thereafter the

respondent No.2 would take a decision within a fortnight from the date the petitioner completes the formalities.

21. With the aforesaid observation, present Writ Petition as well as contempt petition stands disposed off.

22. Certified copy today.

Sd/-

(P. Sam Koshy)
JUDGE

Sumit