

HIGH COURT OF CHHATTISGARH, BILASPUR**WRIT PETITION (S) NO.4452 OF 2005**

N.M. Pillai, aged 75 years, 13-A, Street 29, Sector-7, Bhilai Township,
District Durg, Chhattisgarh.

...Petitioner(s)

Versus

1. State of Madhya Pradesh through Principal Secretary, Commercial Tax Department, Sachivalaya, Vallabh Bhawan, Bhopal (MP).
2. Excise Commissioner, Govt. of Madhya Pradesh, Gwalior (MP).
3. Director of Pensions & Employees Welfare (For MP & Chhattisgarh) Z-21, Zone-I, MP Nagar, Bhopal (MP).
4. Steel Authority of India Ltd. Bhilai Steel Plant, Ispat Bhawan, Bhilai, District Durg (Chhattisgarh) through its Managing Director.

... Respondent(s)

For Petitioner	:	Shri Shantam Awasthi, Advocate.
For Respondents 1 to 3	:	Shri Sachin Singh Rajput, Advocate.
For Respondent No.4	:	Shri NK Vyas, Advocate.
For State of C.G.	:	Ms. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01.08.2019

1. Challenge in this writ petition is primarily to Annexure A/47 dated 07.06.2001 and Annexure A/48 dated 25.07.2001. In addition, the petitioner has also sought for a relief from the respondent-State seeking for a direction for discharging the liabilities which the State Govt. has accepted vide memo dated 12.04.1961, Annexure A./6.
2. Brief facts of the case is that, the petitioner was initially appointed as Upper Division Clerk under the Excise Department of the State of Madhya Pradesh in the year, 1948. The petitioner continued to work under the respondents till October, 1956 when the services of the petitioner, on public interest, was transferred along with other similarly placed persons to the Ministry of Iron and Steel, Govt. of India. Later on, the services of the petitioner was placed under the Project Division, Bhilai Steel Project, Durg, on deputation vide order dated 23.01.1959, Annexure A/3.

3. The State Govt. passed an order dated 06.11.1961, Annexure A/5, whereby they had accepted granting the benefit that have been envisaged in the State Govt.'s order dated 12.04.1961 in respect of those persons who have been, on public interest, sent to Hindustan Steel Project, Bhilai and Heavy Electrical Ltd. Bhopal and who have since been absorbed in the two respective department. For ready reference, the relevant portion of the decision of the State of MP dated 12.04.1961 is re-produced hereinunder:

“The State Government have had under consideration the question whether a Government Servant who is deputed or transferred to service under a body corporate owned or controlled by Central or any State Government in India, or whose services are lent to such a body, should, in the event of his permanent absorption in services under that body, be allowed any retirement benefits in respect of his previous pensionable service rendered under Government, and if so, to what extent and in what form. Government are pleased to decide, that in such a case, subject to the conditions stipulated in paragraphs 2 and 3 below, an amount equal to what Government would have contributed had the Government servant been on Contributory Provident Fund terms under Government together with simple interest thereon at two percent for the period of his pensionable service under Government may be credited to his Contributory Provident Fund Account with the autonomous body as an opening balance on the date of permanent absorption and Government's liability in respect of the Government servant's pensionable service under them treated as extinguished by this payment.”

4. The grievance of the petitioner is that the said benefit has not been extended to him and the State Govt. also has not made contribution that they were supposed to make on his service being absorbed with the Bhilai

Steel Plant (in short, BSP). The petitioner meanwhile stood retired from service w.e.f. 31.08.1985 from BSP.

5. The contention of the petitioner is that, even on his retirement, the petitioner has not been given the said benefits and meanwhile one identically placed person had approached the Central Administrative Tribunal (in short, CAT) for a similar benefit vide O.A. No.269 of 1998 in case of Narayan Pandurang Sangwai Vs. Union of India & Ors. The CAT, Jabalpur Bench, vide its order dated 10.12.1999, Annexure A/46, allowed the petition and had ordered for granting pro-rata pension for the service that the petitioner had rendered under the earlier employer. The said order of the CAT was subjected to challenge before the High Court of MP vide WP No.2397 of 2000. The Division Bench of the High Court of MP vide its order dated 12.07.2000 rejected the writ petition affirming the order of the Tribunal. The petitioner has filed the present writ petition claiming for a similar relief. The petitioner has also placed on record another judgment of Bombay High Court passed in WP No.2528 of 1998, decided on 02.09.1999 wherein also a petition for similar relief which was allowed by the Maharashtra Administrative Tribunal was challenged before the Bombay High Court and the High Court affirming the order of Tribunal dated 24.04.1998 rejected the petition. The petitioner now prays for a similar relief in parity and has also thereby challenged the two orders Annexures A/47 & A/48 whereby the State Govt. had rejected the claim of the petitioner.
6. Learned counsel for the respondents No.1 to 3/State of MP, however, opposing the petition submits that the present writ petition firstly suffers from delay and laches and secondly, according to him, the order of acceptance of resignation dated 11.02.1963 in the case of the petitioner had a specific clause whereby it was intimated to the petitioner that he

would not be eligible for any retirement benefits in terms of the memo dated 12.04.1961 for the past service that he has rendered in Excise Department. According to counsel for the State of MP, once when the State Govt. had specifically intimated the petitioner in this regard, the petitioner ought to have challenged the same. Having not challenged it all through his service period, the petitioner now cannot be permitted to challenge the same or claim for benefits after this considerable lapse of time.

7. The counsel for State of MP further took a contention that nowhere has the petitioner ever made a mention of the State Govt. not discharging the liabilities that was supposed to be discharged as per memo dated 12.04.1961, and therefore, at this stage it is difficult to presume that the State Govt. has not discharged its responsibilities/liabilities.
8. So far as counsel for the respondent No.4-BSP is concerned, it is the contention of BSP that the BSP is liable to the extent of the service rendered by the petitioner with BSP and in case if the State Govt. would have made necessary contribution in terms of the memo dated 12.04.1961, the petitioner would have got the advantage of the same. Since the State Govt. has not discharged its liabilities in terms of the said memo, the benefits could not be extended to the petitioner.
9. Having heard the contentions put forth on either side and on perusal of records, what is undisputed is the fact that the petitioner was initially appointed with the State of MP in the Excise Department way back in the year, 1948. The petitioner continued in service with the State Govt. till the year, 1956 when for the first time he was sent on transfer to Steel Plant. The petitioner subsequently was treated to have been sent on deputation to BSP in January, 1959. The petitioner has been treated to have been absorbed under BSP w.e.f. 16.06.1960 as is evident from the order dated

11.02.1963 (Annexure A/7). The petitioner as such having rendered the service under the respondents from 1948 to 16.06.1960 i.e. a considerable period of about 12 years of service. The services of the petitioner was initially placed under BSP on public interest and not on the option or request made by the petitioner. The State Govt. had taken a policy decision for protecting the interest of such employees who have been sent to the BSP on public interest by making certain contributions which the petitioner would have got had he remained in the State of MP for the relevant period. Thus, now what is to be seen is whether the State Govt. has discharged its liabilities so far as the memo dated 12.04.1961 is concerned.

10. So far as contention of the counsel for the State of MP that the matter suffers from delay and laches is concerned, this court is of the opinion that the Supreme Court has in a catena of decisions held that as far as the monetary claims are concerned, the same can never be held to suffer laches of delay as the monetary claims are always considered as recurring cause of action. Thus, the said contention of the counsel for the State of MP stands negated.
11. So far as contention of the counsel for the State of MP referring to clause-2 of the order dated 11.02.1963 is concerned, true it is that the employee has not challenged it at the appropriate time, but what cannot be lost sight of is that, the said clause which the State Govt. has been put is after taking a decision of acceptance of resignation. The State Govt. had never intimated the petitioner of its intention of not granting the benefits as per memo dated 12.04.1961 to the petitioner giving him an option to withdraw from the service that he was rendering under BSP and come back under the State Govt. A decision taken subsequent to the resignation of the petitioner being accepted and particularly when the State Govt. already

had issued a memo dated 12.04.1961, the insertion of such clause in Annexure A/7 is thus per se illegal.

12. The present writ petition was entertained by the State Administrative Tribunal (SAT) way back in the year, 2002 and the writ petition has been pending before this court for almost 17 years and therefore this court is of the opinion that it is difficult to consider the aspect of delay and laches at this juncture so far as Clause-2 of Annexure A/7 is concerned.
13. What is also evident from the pleadings of the writ petition is that, there are couple of decisions rendered by the MP High Court as well as by the Bombay High Court affirming the orders passed by the Administrative Tribunals in the two States under similar circumstances. There is no order brought on record by the respondents of the said orders of the two High Courts having been assailed before the Supreme Court. Thus, it is to be presumed that the concerned department has, in due course of time, complied with such directives given by the Tribunal.
14. Thus, this court is of the opinion that applying the principle of parity, the petitioner also cannot be denied of the benefits which have been extended to the identically placed persons. Moreover, once when it has been extended to similarly placed persons, there is no reason why it should not be principally accepted by the State Govt. in respect of all similarly placed persons who were sent to the BSP on public interest.
15. Given the said facts and circumstances of the case, the present writ petition deserves to be and is accordingly allowed. The two orders Annexure A/47, dated 07.06.2001 and Annexure A/48, dated 25.07.2001 are hereby set aside. The Respondents-State of MP is directed to verify the facts whether there has been any contribution made so far as petitioner is concerned in terms of memo dated 12.04.1961. If it has not been done, then appropriate steps be taken for discharging the said

liability and thereafter the respondent is also expected to ensure that the petitioner gets pro-rata pension for the period between 1948 to 16.06.1960 and which stood periodically revised.

16. It is expected that the BSP would also render full cooperation/assistance to the State of MP ensuring compliance of the order passed by this court is concerned. It is expected that the concerned State Govt. would comply with the directives after due verification of facts within an outer limit of four months from the date of receipt of copy of this order.
17. The writ petition accordingly stands allowed.

Sd/-

(P. Sam Koshy)
Judge