

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5266 of 2011

Shakir Ali Siddiqui S/o Shri M.A. Siddiqui Aged about 50 years R/o ITI Colony, Koni Bilaspur (CG)

---- Petitioner

Versus

1. State Of Chhattisgarh Through the Secretary Panchayat & Rural Development Department, D.K.S. Bhawan, Raipur (C.G.)
2. Collector, Rajnandgaon, Chhattisgarh
3. Chief Executive Officer, Zila Panchayat, Rajnandgaon (C.G.)
4. Director, Employment And Training, Byron Bazar, Raipur (C.G.)
5. Principal, Model Industrial Training Institute, Koni District- Bilaspur (C.G.)

---- Respondents

For Petitioner	:	Ms. Ruchi Nagar, Advocate.
For State	:	Mr. Chandresh Shrivastava, Dy. AG

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/08/2019

1. The relief sought for by the petitioner in the present writ petition is as follows :-
 - (i) To kindly direct the respondents to consider the period of work done by the petitioner in the District Rural Development Agency (Now Zila Panchayat) as government service on continuation basis.
 - (ii) To kindly direct the respondents to consider the petitioner as eligible for deputation allowance/other benefits arising out of deputation for the period of work done in District Rural Development Agency (Now Zila Panchayat) from period 23/11/1981 till 17/06/1996.
 - (iii) To kindly direct the respondents to consider the petitioner as government servant for the purpose of granting pensionary benefits.

(iv) To kindly make any other order that may be deemed fit and just in the facts and circumstances of the case including awarding of the costs to the petitioner.

2. Facts of the case is that petitioner was initially appointed on 20.11.1981 on the post of Stenographer in the office of Gramin Vikas Adhikaran, Rajnandgaon. Subsequently, there was another order issued in favour of the petitioner reflecting the petitioner being sent on deputation to the District Gram Vikas Adhikaran. The petitioner continued to work on the said post till he tendered his resignation on 13.06.1996 which was duly accepted by the Collector on 17.06.2019. Before tendering resignation the petitioner had obtained NOC from the department for recruitment on the post of Training Officer in the Modal Industrial Training Institute, Bilaspur. The petitioner got duly selected in the said recruitment process and got an order of appointment issued on 22.05.1996. Since then the petitioner is working under the said institution. The petitioner has filed the present writ petition seeking for a direction to the respondents for counting his past services under the District Rural Development Agency (DRDA) for the purpose of pension and pensionary benefits.
3. The contention of the petitioner is that the services rendered under the DRDA was in fact on deputation and that in fact petitioner was substantively an employee of the State Government and that he was sent on deputation to the DRDA therefore for all practical purposes treating the services of the petitioner to be that under the State Government his past services should be counted for the purpose of pension and pensionary benefits. Counsel for the petitioner referred to the Annexure P-1 the order of appointment Annexure P-2, order of

deputation, Annexure P-3 the representation made by the petitioner along with similarly placed persons seeking deputation allowance and Annexure P-4 is the internal note-sheet showing the department forwarded the application made by the petitioner for grant of NOC. The petitioner also referred to the document Annexure P-9 dated 17.06.1996 which is a letter issued by the Collector, District Rajnandgaon accepting the resignation which petitioner has tendered on 13.06.1999 to show that petitioner was substantively an employee of the State Government and therefore invoking the proviso to Rule 26 of the Pension Rules, the petitioner's past services be counted for pensionary benefits.

4. State counsel on the other hand opposing the petition submits that the writ petition as such is not maintainable for more than one reasons. According to state counsel, the writ petition suffers from inordinate delay and same should be rejected on the ground of delay alone. State counsel took the ground that petitioner had worked under DRDA from 1981-1986 during the said period except for raising claim for deputation allowance only once vide Annexure P-3 there is no further pursuance made by the petitioner for the same which itself shows that petitioner had relinquished his claim at that point of time. It was further contention of the respondent that after tendering his resignation from DRDA in 1996 the writ petition was filed in the year 2011 that is after about 15 years and for those 15 years the petitioner never claimed for the continuity of the service under DRDA which also would show that petitioner in fact had acquiesced of his claim. The respondent counsel further submits that entire documents which have been produced by the petitioner in the writ petition does not reflect that petitioner having been appointed on

regular basis under the State Government service. He further submits that unless the petitioner is a regular appointee under the State Government service, he could never have been sent on deputation to a different department. State counsel further submits that the order Annexure P-1 is as an order of initial appointment of the petitioner which itself shown that petitioner has been appointed substantively under DRDA itself which is an independent agency and is an body constituted under the Provisions of Firms and Societies, Act which has its own independent identity and the petitioner therefore cannot be brought within the ambit of State employee for the purpose of getting benefit under the Proviso to Rule 26 of the Pension Rules.

5. State counsel further referring to Annexure P-11 submits that the claim of the petitioner already had been considered at an earlier occasion as is evident from the said document whereby it was categorically held that initial appointment of the petitioner was not under the State Government but was under the DRDA, therefore, he would not be entitled for the continuity in service for the purpose of pensionary benefits. According to the State counsel this order dated 14.02.2007 also has not been challenged by the petitioner at any point of time which further shows that petitioner was at that point of time convinced that he would not be entitled for the same. Thus, for all this prayed for the rejection of the writ petition.
6. Having heard the contentions put forth on either side and on perusal of records, it would be relevant at this juncture to first ascertain whether the first appointment of the petitioner wayback in the year 1981 was under the State Government that is the State Service or

not? The contents of Annexure P-1 dated 20.11.1981 itself would show that petitioner was appointed against the vacant post available in the office of the District Rural Development Agency, Rajnandgaon. Further it does not reflect that petitioner had been subjected to recruitment process initiated by the State Government at that point of time. Neither does it reflect that petitioner was under the State service immediately after the appointment orders were issued.

7. Pleading to the writ petition does not reveal any contribution made towards the pension or other benefits which are otherwise received by a government employee. There is no quarrel to the extent that services under the DRDA was non pensionable service. Annexure P-11 dated 14.02.2007 further reveals DRDA has since got merged with the Panchayat Department and Panchayat Department itself was not a pensionable service then.
8. So far as the resignation which the petitioner has tendered and which has been accepted by the Collector is concerned, the documents enclosed along with the writ petition would show that resignation tendered by the petitioner also is to the DRDA and acceptance by the Collector also is as Head of the DRDA and not as Officer of the State Government or accepting the petitioner to be an employee of the State Government. As far as the issue of petitioner having been sent on deputation to the DRDA is concerned, Annexure P-2 dated 22/23-3-82 what is apparent from the pleadings is that initial appointment of the petitioner itself was under the DRDA and as such there was no question of sending the petitioner on deputation to DRDA. Moreover, a person to be sent on deputation has to first show that the petitioner's initial appointment was that of under the

State Government. Unless and until a person is a regular employee of the State Government, he cannot be sent on deputation to a foreign agency. In the instant case, documents which have been filed by the petitioner along with the writ petition does not disclose the fact that petitioner was appointed on regular basis after due selection process under the State government.

9. Under the aforesaid circumstances and also taking note of the contents of the Annexure P-11 dated 14.02.2007 which shows that services took of the petitioner in fact has been maintained only under the DRDA and never under the State Government, this Court finds it difficult to accept the contentions and the claim of the petitioner of his being a regular government employee and was sent on deputation to DRDA.
10. For the aforesaid reasons, the relief sought for by the petitioner cannot be granted in the given circumstances. The writ petition fails and accordingly stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Rohit