

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 2535 of 2008

Smt. Sadhna Pandey, W/o O.P. Pandey, aged about 45 years,
Public Health Tutor, Modern District Hospital, Bilaspur, R/o M/12,
Yadu Nandan Nagar, Bilaspur.

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Department of Health & Family welfare, D.K.S. Bhawan, Mantralaya, Raipur Chhattisgarh.
2. Director, Directorate of Health Services, Chhattisgarh, Raipur Chhattisgarh.
3. Joint Director (Nursing), Directorate of Health Services Chhattisgarh, Raipur Chhattisgarh
4. Civil Surgeon-cum-Chief Hospital Superintendent, Modern District Hospital, Bilaspur Chhattisgarh

---Respondents

For Petitioner	: Mr. Ashish Shrivastava along with Mr. Vivek Sharma, Advocates.
For State	: Ms. Sunita Jain, Govt. Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/07/2019

1. The Challenge in the present writ petition is to the order Annexure P/25 dated 18.10.2007 and Annexure P/24 dated 23.04.2007 whereby the respondents have passed an order regulating the period of absence of the petitioner.
2. The facts of the case is that the petitioner was initially appointed as Lady Health Visitor and posted at Bilaspur under the respondents. While working on such post, the petitioner got promoted on the post of Public Health Tutor vide order dated 08.02.1995. On promotion the place of posting of the petitioner was changed from Bilaspur to Jagdalpur.

3. It appears that the petitioner has neither complied with the promotion order nor has she given her joining at Jagdalpur. There is also no order so far as permitting the petitioner to continue at Bilaspur even on promotion. The petitioner meanwhile made a representation seeking for a transfer by modifying the order of promotion to the extent that in place of Jagdalpur where she has been posted, she may be accommodated in Bilaspur itself as her spouse is working in Railway Mail Service at Bilaspur.
4. The respondent authorities finally vide order dated 10.07.1997 modified the order of posting to the extent ordering the petitioner to be posted at Bilaspur. However, when the petitioner reported for joining at Bilaspur, the respondent authorities vide their order dated 04.08.1997 Annexure (P/13) refused to grant joining on the ground that the petitioner was not able to provide documents to show that she had joined at Jagdalpur pursuant to the promotion order dated 08.02.1995 neither could the petitioner produce the no objection certificate and the relieving order from Jagdalpur. Later on, the petitioner preferred a petition before the State Administrative Tribunal where the case was registered as O.A. No. 18/1997 which on the abolition of the State Administrative Tribunal stood transferred to the High Court of Chhatisgarh where it was registered as WP No. 3486 of 2003. Meanwhile, the petitioner also preferred a fresh writ petition for the same relief directly in the High Court which got registered as WPS 2072 of 2005. Thereafter, the petitioner withdrew the earlier writ petition i.e. 3486 of 2003, and pressed WPS No. 2072 of 2005. The said writ petition finally stood disposed of on

08.03.2006 where this High Court had directed the respondents to permit the petitioner to join at Bilaspur pursuant to the order dated 10.07.1997.

5. So far as how the intervening period between 08.02.1995 till the date of joining has to be treated, the petitioner had submitted before the High Court in wps No. 2072 of 2005 that she be permitted to make a detailed representation to the competent authority who intun may consider and decide the same on its merits. Accepting the request of the petitioner, the writ petition i.e. 2072 of 2005 was disposed off.
6. Thereafter the petitioner is said to have made a representation given to the respondent which stood disposed of vide orders dated 18.10.2007 Annexure P/25 and Annexure P/24 dated 23.04.2007. Vide two impugned orders, the respondents have passed an order holding that the intervening period between 01.03.1995 to 08.06.1995 totalling 100 days shall be treated as Earned Leaves, the period between 09.06.1995 to 31.07.1995 totalling 53 days would be treated as half pay leave. At the same time, the respondents released the salary of the petitioner for the period between 01.02.1997 to 03.04.1997 and it was ordered that rest of the period between 04.04.1997 to 06.04.2006 would be treated as "No Work No Pay". It is this order to the extent of treating the period between 04.04.1997 to 06.04.2006 as No Work No Pay, which is under challenge in the present writ petition.
7. The contention of the petitioner is that the petitioner is not at fault for remaining absent during the intervening period. According to the

petitioner, once when the order of posting stood modified on 10.07.1997, the petitioner had immediately reported for duty but it was the respondent who refused to grant joining to the petitioner and finally at the instance of the High Court, the petitioner has been given the joining. Therefore, the petitioner should be paid the salary and all consequential benefits during the intervening period.

8. The State Counsel on the other side opposing the petition submits that since there was a deliberate non-compliance of the order of transfer on promotion by the petitioner, therefore the petitioner alone is responsible for her absence during this period.
9. According to the State Counsel, in compliance of the orders of transfer or posting, there are certain formalities which are to be done on the Administrative Side that is, the employee concerned has to produce no objection certificates as also the last pay certificate and the relieving order permitting her to join at present place. In the instant case, since all these facts were missing and the petitioner had not produced the same, she could not be granted joining at Bilaspur therefore the petitioner can not be said to be not at fault for the intervening period of absence and thus prayed for rejection of the writ petition.
10. Having heard the facts & circumstances of the case and the submission put forth on either side and on perusal of record, what is undisputed is that vide order dated 08.02.1995, the petitioner on promotion to the post of Public Health Tutor was sent to Jagdalpur from Bilaspur. This order was not complied with by the petitioner.

The petitioner kept on representing with the respondent for a change in present place of posting on account of her spouse being posted at Bilaspur. This repeated representation which the petitioner has made, is no ground for non-compliance of order of transfer. If the petitioner was voluntarily absent from the duty or does not comply with the order of transfer and keeps on making representation to the department seeking a change of posting by itself would not give any indefeasible right to the petitioner for claiming the benefits for the intervening period during which there was no order in favour of the petitioner.

11. Admittedly, the petitioner was never given any order to continue at Bilaspur after having been promoted and posted at Jagdalpur. As long as the order was not modified, the petitioner was supposed to report for duty at Jagdalpur.
12. Given the said facts, when the order of transfer stood modified on 10.07.1997, the respondent was justified in verifying from the petitioner so far as the relieving order from Jagdalpur as also any order permitting her to remain at Bilaspur to justify and to regulate intervening period between transfer on promotion and the joining.
13. Taking all these facts into consideration, if the respondent thereafter, in-compliance of the directions/directives given by this Court for deciding the representation that the petitioner shall make for regulating the intervening period, if they have passed an order regulating intervening period, firstly, by adjusting the leaves that were there in the credit of the petitioner against the absence period

and for the remaining period if they have passed an order treating it as “No Work No Pay”, the order as such can not be said to be in any manner bad in law or contrary to the rules and regulations. It also can not be said that the respondents authorities have in any manner acted malafidely or have passed the order with a vindictive approach against the petitioner.

14. The petitioner admittedly seems to have not been interested in giving joining at Jagdalpur in spite of having an order of promotion in her favour and she wanted a change of posting which she has got at a much later stage. Thus, for the intervening period, there was no any order in favour of the petitioner by which the period of absence could have been regulated in any other manner.

15. The writ petition therefore being devoid of merits deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

Jyotijha