

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5354 of 2019

Smt. Malti Bai Sinha W/o Late Shree Dhamiram Sinha Aged About 55 Years R/o Village Kalyanpur, Tahsil Dongargarh, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mantralaya, Mahanandi Bhawan, Naya Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Sub Divisional Officer Public Works Department, (B And R) Dongargarh, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh
3. Superintendent Engineer Public Works Department, Durg Division Durg District Durg Chhattisgarh, District : Durg, Chhattisgarh
4. Executive Engineer Public Works Department, Khairagarh, Division Khairagarh District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Parag Kotecha, Advocate.
For State	:	Shri Anshuman Shrivastava, PL

Hon'ble Shri Justice P. Sam Koshy

Order on Board

23.07.2019

1. The challenge in the present writ petition is to the order Annexure P-4 dated 01.07.2019 whereby the claim for pension of the petitioner has been rejected.
2. Facts of the case is that husband of the petitioner late Dhaniram Sinha was appointed as a Gangman on 10.05.1975 under the respondents under Contingency Establishment. Husband of the petitioner died on 01.08.2018. The husband of the petitioner had crossed the age of superannuation on 30.04.2001.

3. Counsel for the petitioner submits that in spite of the fact that husband of the petitioner had put in about 25/26 years of service but he has not been granted pension. Subsequently, the husband of the petitioner died on 01.08.2018. The claim now has been pursued by the widow i.e. the petitioner claiming family pension. According to the petitioner, the respondents have refused to grant pension to the petitioner vide Annexure P-4 dated 01.07.2019 which is under challenge in the present writ petition. According to the counsel for the petitioner, the grant of rejection is totally unsustainable. As per according to the petitioner the husband of the petitioner as well as the petitioner, they are entitled for pension under Chhattisgarh(Work Charge and Contingency Paid Employees) Pension Rules, 1979 (in short "Rules of 1979"). The petitioner further submitted that under the said rules of 1979 there was no requirement of an employee to be regularized in the service enabling him for pension. According to the rules, all that is required was whether the employee was a permanent employee or not and whether the employee has put in more than 15 years of service or not? In case, if the employee has both these characteristics, the employee would be entitled for pension.
4. State counsel however, opposing the petition submits that the impugned order Annexure P-4 suggests that since the husband of the petitioner was not regularized in service, the employee would not be entitled for pension as per the circular dated 13.06.2017.
5. Having heard the contentions put forth on either side and on perusal of the records what is undisputed is the fact that husband of the petitioner was a permanent Gangman with the respondents. He was appointed in May,1975 and crossed the age of superannuation on 30.04.2001. The husband of the petitioner has put in about 25/26

years of service in the contingency establishment governed by the contingency rules.

6. The pension payable to a contingency paid employee is governed by the rules of 1979(Supra). Rule 2(c) defines a permanent employee which for ready reference reproduced hereinunder :-

“2(c) “Permanent employee” means a contingency paid employee or a work-charged employee who has completed fifteen years of service or more on or after the 1st January, 1974 :

[Provided that in respect of contingency paid employee who has attained the age of superannuation on or after 1-4-1981, permanent employee means an employee who has completed ten years of service on or after the January 1, 1974.]”

7. Likewise, the commencement of the qualifying service is also envisages in Rule 6. The relevant portion of which also reproduced hereinunder :-

“6. Commencement of qualifying service- (1) Subject to the provisions of Chapter III of the Madhya Pradesh Civil Services (Pension) Rules, 1976 of section IV of Madhya Pradesh New Pension Rules, 1951, as the case may be, calculating qualifying service of a permanent employee who has retired as such, the service rendered with effect from the 1st January, 1959 onwards shall be counted.”

8. Given the aforesaid two provisions it would clearly reflect that in case if the employee is a permanent employee, under the contingency establishment and has put in about 15 years of service, the concerned employee becomes entitled for pension. Nowhere does the Rules of 1979 prescribed for the employee to be regularized first in the government employment enabling him to get the benefit of

pension. Another aspect which needs to be considered is that the employee in the instant case has crossed the age of superannuation in April, 2001. The circular which has been adopted by the respondents in refusing the pension seems to be one which was issued in June, 2017 which in any case cannot be made applicable upon the person who stood retired 17 years back in April, 2001.

9. For both these reasons this Court is of the firm view that Annexure P-4 is not sustainable and deserves to be and is accordingly set aside. The respondents are herein directed to consider the case of the petitioner for grant of pension in accordance with pension Rules of 1979 and also keeping in view the judgment of the Division Bench by this Court in WA No. 281/2013 in the case of **Lakhanram Sahu and Others Vs. State of Chhattisgarh & Others decided on 26.02.2015**. Let a fresh decision be taken by the respondents within a period of three months from the date of receipt of copy of this order.
10. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
(P. Sam Koshy)
Judge

Rohit