

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5348 of 2019

Somesh Pathak S/o Shri Om Prakash Pathak Aged About 36 Years Presently Working As Lecturer (Panchayat) At Govt. Higher Secondary School, Mohgaon, Block Pandariya District Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mantralaya, Mahanandi Bhawan, Naya Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Chief Executive Officer Zila Panchayat Kabirdham District Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
3. District Education Officer Kabirdham District Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
4. Block Education Officer Pandariya District Kabirdham Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---Respondents

For Petitioner	:	Mr. C. Jayant K. Rao, Advocate
For State	:	Mr. Arvind Dubey, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy
Order on Board

23/07/2019

1. The grievance of the petitioner in the present writ petition is the refusal on the part of the respondents in not considering the case of the petitioner for absorption.
2. The reason for not considering the case of the petitioner is the order passed by the respondent No.2 holding the period between 19.09.2015 to 26.04.2017 as "No work no pay".
3. The admitted facts of the case is that the petitioner was appointed as a Lecturer Panchayat vide order dated 28.12.2010 and the petitioner immediately joined the services and is still working on the said post under the respondent No.2.

4. The contention of the petitioner is that, the petitioner was initially appointed as Lecturer Panchayat vide order dated 26.12.2010 and have joining immediately and since then the petitioner is working on the said post under the respondents.
5. According to the petitioner, now that the petitioner has completed 8 years of service, he is entitled to be absorbed in the Education Department in the light of the policy decision of the State Govt. dated 30.06.2018. He further submits that the department has not considered the petitioner or has deliberately left out the claim of the petitioner only on the ground that the petitioner was absent from duties between 19.09.2015 to 26.04.2017. The contention of the petitioner is that since the petitioner is suffering from Cancer, he was on medical leave during the said period and was under treatment. The further contention of the petitioner is that there is no order of **dies non** passed by the respondents, which could amount to break in service. According to the petitioner, an order of “No work no pay” cannot be presumed to be break in service period.
6. The only effect of the order of “No work no pay” is that the petitioner would not be entitled for the monetary benefits attached to the post during the said period of absence and except for the said benefit, for all other practical purposes the period has to be treated as continuous service.
7. It is a settled position of law that unless there is a specific order of **dies non** being passed for a specific period, for all practical purposes the entire period has to be treated as continuous. “No work no pay” can never be treated as **dies non** and “No work no pay” also cannot be treated as break in service.

8. Under the circumstances, the non-consideration of the petitioner for absorption inspite of having put in more than 8 years of service is bad in law. The respondents are directed to take a fresh decision on the claim of the petitioner for absorption in the Education Department in accordance with the circular of the State Government dated 30.06.2018 at the earliest preferably within a period of 3 months from the date of receipt of the copy of this order
9. It shall be the responsibility of the petitioner to apprise the respondents No.2 & 3, so far as the order passed by this Court is concerned.
10. With the aforesaid observations, the present writ petition stands disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved