

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 327 of 2016

Smt. Hemlata Mishra W/o Sudhindra Nath Mishra, Aged About 53 Years
Post Mahila Swasthya Karyakarta, A N M Auxiliary Nurse Midwife, District
Hospital Durg District Durg Chhattisgarh., Chhattisgarh

---- Petitioner

Versus

1. State Govt. Of Chhattisgarh Through The Secretary, Health Services Department Ministry, Mahanadi Bhawan, New Raipur, P. S. Rakhi Raipur Chhattisgarh.
2. Director Of Health Services, Indravati Bhavan, 3rd Floor, New Raipur, P. S. Rakhi, Raipur Chhattisgarh.
3. Chief Medical And Health Officer, District, Durg, P. S. Durg Chhattisgarh.
4. Civil Surgeon, Durg P. S. Durg Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Ajay Shrivastava, Advocate
For State	:	Mr. Anshuman Shrivastava, P.L.

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

12/04/2019

1. The present writ petition has been filed seeking for a direction to the respondents to permit the petitioner to join the duties under the respondents as a Female Health Worker. The further relief sought for is for a direction to the respondents to release the salary to the petitioner w.e.f. 18.08.2015 onwards with interest.
2. The facts relevant for adjudication of the present case is that the petitioner was initially appointed as a Female Health Worker in the year 1986. The petitioner continued to work on the said post uninterruptedly till 20.04.2015. On 20.04.2015, the petitioner for the first time submitted an application for voluntary retirement with immediate effect. Subsequently, it is said that the petitioner was informed by the respondents that since the application for voluntary retirement dated 20.04.2015 which the petitioner has tendered

was not in the proper format. The petitioner was directed to submit the application in the format and the petitioner also would require to deposit the salary for the period of notice since the petitioner intended to pay on the voluntary retirement with immediate effect.

3. In compliance to the said oral instructions, the petitioner is said to have tendered her resignation in the format on 11.05.2015 and along with the said application the petitioner is said to have produced a challan (Annexure P/7) depositing one month's of salary amounting to Rs.32,122/-. However, subsequently, the petitioner is said to have moved an application seeking withdrawal of the application for voluntary retirement on 29.07.2015 (Annexure P/5), which was received by the office of Chief Medical and Health Officer, District Durg on the same date i.e. on 29.07.2015. Thereafter, the Chief Medical and Health Officer vide its order dated 14.08.2015 accepted the application for withdrawal of the voluntary retirement and directed the petitioner to submit an application for taking a decision for the intervening period and at the same time directed the petitioner to report before the Civil Surgeon-cum-Chief Medical Superintendent, Durg for further compliance. Though the order was passed by the Chief Medical and Health Officer on 14.08.2015 and the petitioner reported for joining on 18.08.2015 vide Annexure P/2, the petitioner has not been given any joining till date, which has led to the filing of the present writ petition.
4. The State counsel opposing the petition submits that there is no scope of interference by this Court in the present factual backgrounds for the reason that the petitioner with wide open eyes has tendered her first voluntary retirement application on 20.04.2015. Subsequently, she had reiterated her application on 11.05.2015 by tendering the same in a proper format as is required under the Rules, and the petitioner had also submitted one month's

of salary in lieu of notice therefore the effect of voluntary retirement came into force immediately and as such the services of the petitioner stood discontinued from the rolls of respondents and she could not claim for reinstatement or joining subsequently at a later stage.

5. The State counsel further opposed the petition on the ground that the application for withdrawal also has been tendered after more than 90 days from the date of first application that the petitioner had moved i.e. on 20.04.2015 and on this ground also the authorities could not have accepted her withdrawal application. The State counsel further submits that the petitioner should not be permitted to take an advantage of her own wrong that she has done in the past by allowing her to withdraw the application at her own sweet will and claiming for reinstatement and other consequential benefits.
6. Having heard the contentions put forth on either side and on perusal of record, what is relevant at this juncture to be taken note of is the Rule provisions so far as the retirement is concerned. The service conditions of the petitioner, since she was a regular government employee was governed by the **“Chhattisgarh Civil Services (Pension) Rules, 1976”**. Rule 42 deals with the retirement on completion of the qualifying service. The petitioner was appointed in the year 1986 and continued to work till 2015, as such the petitioner had put in about 28 years, 5 months and 4 days of service up till 20.04.2015. For ready reference, Rule 42 is being reproduced herein under:

“42. Retirement on completion of 20 years qualifying service. -

(1) (a) A Government servant may retire at any time after completing 20 years qualifying service, by giving a notice in Form 28, to the appointing authority at least three months before the date on which he wishes to retire or on payment by him of pay and allowances for the period of three months or for the period by which the notice actually given by him falls short of three months:

Provided that where the Government servant giving such notice is under suspension, he shall not be allowed to retire from service without the prior permission in writing of the appointing authority."

7. The plain reading of the aforesaid Rule provisions would make it clear that the requirement for retirement is tendering 3 months notice or salary of 3 months or for the period by which the notice actually given by the employee fall short of 3 months. In the instant case, the petitioner admittedly did not give 3 months notice. The petitioner for the first time tendered application for retirement on 20.04.2015, which was neither in a format, nor was it supported with any notice period or salary in lieu of notice. It is said that the petitioner was verbally intimated of the requirement under Rule 42. The petitioner thereafter reiterated her claim by moving another application on 11.05.2015 and reiterating the fact that the petitioner has gone on voluntary retirement w.e.f. 20.04.2015. The petitioner however instead of paying 3 months salary has paid only one month's salary vide Annexure P/7 by way of a challan.
8. From the aforesaid admitted factual position, what clearly reflects is that the petitioner firstly has not given the 3 months notice period as is required under Rule 42, neither has the petitioner given the 3 months salary or has paid the salary for the period by which the notice actually falls short of 3 months. Both these facts would clearly show that there was a clear non-compliance of the requirement of under Rule 42 for the retirement of the petitioner to come into effect.
9. What is also evident from the record is that the respondent/State or the authorities concerned have not passed an order accepting the voluntary retirement of the petitioner and treating the petitioner as a retired employee at any point of time. At the same time, it is also clear that till date the petitioner's retiral dues or whatever dues that the petitioner would have been

entitled for on retirement or on voluntary retirement has not been released to the petitioner. Further what is also reflected from the records is that the respondent No.3 has in due course of time accepted the application for withdrawal of the voluntary retirement vide a speaking order dated 14.08.2015 and had directed the petitioner to report for duty before the Civil Surgeon-cum-Chief Medical Superintendent, Durg.

10. The State counsel has brought on record an affidavit of the Civil Surgeon-cum-Chief Medical Superintendent, Durg dated 08.02.2016. The Civil Surgeon-cum-Chief Medical Superintendent has given an affidavit stating that the Civil Surgeon-cum-Chief Medical Superintendent at the first instance had sought for a guidance from the State Government vide his correspondence dated 05.02.2016 so far as the withdrawal of the voluntary retirement application, which the petitioner has tendered. The Civil Surgeon-cum-Chief Medical Superintendent in his affidavit submits that there was a correspondence received from the office of the Joint Director, Health Services, Raipur, dated 18.06.2015, which intimates that on an application for withdrawal of the voluntary retirement of a staff working in the district headquarter, it is the Chief Medical and Health Officer who is the competent authority to take a decision. The Civil Surgeon-cum-Chief Medical Superintendent in his affidavit has also accepted the fact that the respondent No.3 i.e. Chief Medical and Health Officer has in fact accepted the application for withdrawal of the voluntary retirement application on 14.08.2015.
11. All these facts, which is reflected from the pleadings and the materials available on record, what is undisputed is that the petitioner had though tendered voluntary retirement, but the same was not in accordance with the requirement under Rule 42. It is also not in dispute that the respondent

authorities have also not passed a formal order treating the petitioner to have stood retired w.e.f. either 20.04.2015 or 11.05.2015. It is also not in dispute that the petitioner has till date not been given the dues that the petitioner would be entitled for on her voluntary retirement from service.

12. To add with the aforesaid admitted position there is an order dated 14.08.2015, passed by the Chief Medical and Health Officer allowing the application for withdrawal of the voluntary retirement moved by the petitioner. The said order of the Chief Medical and Health Officer Annexure P/1 dated 14.08.2015 also till date stands good and it has not been cancelled, recalled or set-aside/quashed by any of the higher authorities in the Department. All these facts would force this Court to hold that the petitioner's application for withdrawal of the voluntary retirement stood allowed and for all practical purposes, the petitioner has to be treated as an employee of the respondents.
13. The writ petition to that extent therefore deserves to be and is allowed and it is held that the petitioner has to be treated as an employee in service on the acceptance of the application for withdrawal of the voluntary retirement. As a consequence, the respondents are directed to immediately permit the petitioner to resume her duties at the disposal of the respondents No.3 & 4.
14. Given the aforesaid factual matrix of the case, this Court is of the opinion that the intervening period i.e. the period from 20.04.2015 till the respondents now permit the petitioner to resume her duties in compliance of the order passed by this Court the same has to be treated as period spent on duty and the petitioner has to be given all the benefits, that she would have otherwise been entitled for. However, the benefits for the said period would be extended to the petitioner only notionally and the actual benefits of

the salary and other benefits would be given to the petitioner only from the date she assumes her duties after the respondents No.3 & 4 give a proper joining.

15. The amount of salary, which the petitioner has deposited as one month's salary in lieu of notice would also be refunded back to the petitioner forthwith preferably within a period of 4 months from the date of receipt of the copy of this order.
16. With the aforesaid observations, the writ petition stands allowed and disposed off.

Sd/-
(P. Sam Koshy)
Judge

Ved