

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 806 of 2018**

Manharan Lal Sahu S/o Late Megnnath Sahu Aged About 67 Years Occupation- Retired Supervisor, Grade Ii, City Division No. 1, Torwa, Bilaspur, R/o Lane No.3 Bangalipara, Sarkanda, District And Tahsil Bilaspur, Chhattisgarh.

---- Appellant**Versus**

1. Chairman Chhattisgarh State Power Distribution Company Limited Danganiyan, Raipur, Chhattisgarh.
2. Secretary Deptt Of Energy And Power, State Of Chhattisgarh, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh.
3. Managind Director Chhattisgarh State Power Distribution Company Limited, Danganiyan, Raipur, Chhattisgarh.
4. Chief Engineer Chhattisgarh State Power Distribution Company Limited, Region- Tifra, Bilaspur, Chhattisgarh.
5. Superitending Engineer (O/m) Bilaspur Circle, Chhattisgarh State Power Distribution Company Limited, Tifra, Bilaspur, Chhattisgarh.
6. Addl. Suptgd. Engineer (Operation And Maintenance) Division, Chhattisgarh State Power Districbution Company Limited, Tifra, Bilaspur, Chhattisgarh.
7. Addl. Executive Engineeer (Distribution) Chhattisgarh State Power Distribution Company Limited, Kargi Road Kota, Division- Pendra, Bilaspur, Chhattisgarh.

---- Respondents

For Appellant : Shri Faiz Kazi, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**09/01/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the Appellant.
2. Writ application of the Appellant had been dismissed by the learned Single Judge refusing to interfere with the order dated 10.08.2007 by virtue of which, the Respondents treated the illegal unauthorised absence of 202 days from duty to be *dies non*.

3. Both before the learned Single Judge as well as before us, the common refrain is that despite the order of transfer dated 13.07.2004 which was issued after his reinstatement, he was not relieved for which, he kept trying with the authorities and in absence of issuance of a relieving order, he cannot be punished by non-payment of salary treating the period of his waiting for such order to be issued as 'no work-no pay'.

4. We have perused not only the records of the writ application but have also gone through the order of the learned Single Judge in relation to the explanation or defence put up by the Appellant. To quote the words of the learned Single Judge and the finding given therein, the following are reproduced hereinbelow:-

“7. The said writ petition i.e. WP No.2893 of 2003 thereafter again was pending before the High Court for another period of about 5 months after which ultimately it was disposed of on 31.01.2005 holding the petition to have become infructuous. During these intervening period of 5 months after the management had brought the relieving order to the notice of the petitioner and to the court, the petitioner does not seem to have taken any steps for ensuring that he has provided joining at Kota. Neither is there any plea in this regard. Moreover, what also has been informed by the counsel for the respondents is that without any relieving order being issued to him, he has assumed his duties at Kota w.e.f. 03.02.2005 which again shows that there was no insistence from the authorities for the relieving order for reporting to duties at Kota.

8. The fact that the petitioner has given his joining on 03.02.2005 would reveal that it was after repeat petition which he had filed i.e. WP No.2893 of 2003, which got disposed of on 31.01.2005. Further, from perusal of record it appears that the petitioner has been litigating against the disciplinary proceedings initiated against him at the first instance from the very beginning and he was well aware of all the development that have taken place in between and was also aware of the orders which were passed by the respondent management from time to time and never has the petitioner before filing of the present petition ever raised this grievance of not being provided joining at Kota in the absence of any relieving order. Moreover, from the proceedings it reveals that the respondents had taken steps for ensuring that the relieving order or order dated 13.07.2004 is duly served upon the petitioner and in the process a messenger also

was sent to the residence of the petitioner and this order was brought to the notice of the family members who had, for some reasons, refused to accept the same and which later was also affixed on the doorsteps of the petitioner's residence.

9. So far as the contention of the petitioner that there is non compliance of the rule position so far as the service of the relieving order is concerned, the same may not be applicable in the instant case for the reason that it is not a case where the petitioner was not aware of the order dated 13.07.2004 which was passed. Rather it is a case where he was aware of his posting and, if not, he was informed about it by the respondents in the litigation which was already pending in the High Court at the first instance itself as is evident from Annexure R/2 which is enclosed along with the return.”

5. Given the above factual position and the finding which has emerged, we are of the opinion that the letter writing is nothing but part of a ploy of Appellant to cover up his willful absence because there were enough occasion when the said order was made available to the Appellant even in a judicial proceeding by being brought on record by way of an affidavit, but he chose not to utilise the same as knowledge. He cannot be rewarded by payment of salary for the period he has not worked.

6. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE