

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 2085 of 2011**

Dr. N. K. Goyal S/o Shri G.C. Goyal, R/o C/1 Medical College colony,
Devendra Nagar, Raipur, District Raipur, CG

---- Petitioner**Versus**

1. State Of Chhattisgarh Through the Secretary, Health Department, DKS Bhawan, Mantralaya, Raipur, CG
2. Director, Medical Education, Old Nursing Hospital, Mantralaya Campus, Raipur, CG
3. Dean, Medical College, Raipur, CG
4. Dr. Subir Mukharjee, Director, Medical Education, the then Dean of Medical College, Raipur, CG

---- Respondents

For Petitioner	:	Mr. Harshwardhan Parganiha, Advocate
For State	:	Mr. V. R. Tiwari, Addl. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****30.06.2020**

1. The dispute in the present writ petition pertains to the non-granting of non-practicing allowance (in short "NPA") to the petitioner on his coming back in service after being retired from service at the first instance on 30.06.2007.
2. The brief facts of the case are that, the petitioner was working on the post of Professor under the respondents and by virtue of his seniority,

in the year 2006-07, he was made In-charge Dean at Medical College Hospital, Raipur. On attaining the age of 62 i.e. the age of superannuation in Chhattisgarh State Govt., the petitioner stood retired from service on 30th June, 2007. In between, the State Govt. had enhanced the age of superannuation of the doctors from 62 to 65 years. By virtue of enhancement of the age of superannuation, the petitioner came back in service on 15.09.2007 and since then he continued to work till he attained the age of 65 years.

3. Upon the petitioner coming back in service, he was paid non-practicing allowance for a few months which was subsequently stopped and an order of recovery was issued for recovering the same. This action of the respondents has been challenged by the petitioner in the present writ petition and he has also claimed for the consequential benefits.
4. According to the petitioner, he was receiving the benefit of non-practicing allowance prior to his retirement in June, 2007 and therefore, after he had been taken back in service in September, 2007, he should have been continued with the non-practicing allowance.
5. The respondents opposing the writ petition have come up with a stand that before his retirement in June, 2007, the petitioner was getting NPA on account of the post that he was holding that of In-charge Dean. It is also the categorical stand of the respondent-state that all along while the petitioner was discharging the duties of a Professor, he had not exercised the option of grant of NPA and had preferred availing the benefit of a private practice. The petitioner was taken back in service, (on the enhancement of the age of superannuation) on the substantive post of Professor and not as in-charge Dean, therefore he was not

entitled for the benefit of NPA.

6. The contention of the State counsel is that since the petitioner had not availed the benefit of NPA before 2007 while discharging the duties of a Professor, coming back in service would not change the service condition in any manner as it stood prior to June, 2007 and therefore, the petitioner would not be entitled for NPA as claimed by him.
7. The stand taken by the State Govt. and the submission made by the Additional Advocate General sounds logical for the simple reason that the petitioner was promoted to the post of Professor and for the entire period during which he had discharged his duties as a Professor before June, 2007, he had not opted for grant of NPA nor was he paid the same and that the petitioner had never agitated or claimed the same at any point of time then. Later on, the petitioner was made in-charge Dean and by virtue of the responsibility attached to the post, he was granted NPA. The said benefit would be applicable only so far as the petitioner discharges his duties as an in-charge Dean and the moment the petitioner is brought back to his substantive post of Professor, he would not be entitled for NPA which he was not getting prior to that. The documents referred to by the petitioner claiming for NPA are all those documents which have been put forth by the petitioner at a much later date after he came back in service in September, 2007 or even of a period subsequent to his crossing the age of 65.
8. Once when the petitioner has not exercised his option at the first instance and unless there is another opportunity created by the State Govt., there could not have been a situation where the petitioner would have been entitled for exercising of a fresh option for grant of NPA only

because the age of retirement has been enhanced and he has been receiving the same immediately before his retirement in the year 2007. Coming back in service would be only to the original post or the substantive post that of Professor with the same condition of service and other benefits which the petitioner was availing then as a Professor. If the petitioner was not availing the benefit of NPA, he would not be entitled for the same at a later stage.

9. Thus, the claim and contention of the petitioner does not have any force to stand with. The writ petition thus being devoid of merits deserves to be and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**