

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2106 of 2021

1. Smt. Aarti Vishwakarma D/o Late Shri Kripashankr Vishwakarma Aged About 39 Years Now Married To Shri Ashish Vishwakarma Presently Posted As Shiksha Karmi Grade-I (Lecture Panchayat English) Government Higher Secondary School, Niyanar, Jagdalpur, Chhattisgarh, R/o LIG- 29, Punit Nagar, Adhartal, Jabalpur (Madhya Pradesh) 482004

---Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary, Department of Education, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur, Chhattisgarh.
2. Commissioner, Bastar Division, Jagdalpur, Chhattisgarh
3. Director (Panchayat), Department of Pachyat, Chhattisgarh, 36-C-III, Block II, Second Floor, Indrawati Bhawan, Nava Raipur, Chhattisgarh,
4. Collector, District Bastar, Jagdalpur, Chhattisgarh
5. Zila Panchayat, Jagdalpur,, Through the Chief Executive Officer, Zila Panchayat Jagdalpur, Chhattisgarh.
6. Principal, Government Higher Secondary School, Niyanar, Jagdalpur, District Batar, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Dhiraj K. Wankhede, Advocate.
For State	:	Shri Amrito Das, Addl. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

10.06.2021

1. The present writ petition has been filed questioning the impugned order dated 05.03.2020 passed by the Chief Executive Officer, Zila Panchayat, Jagdalpur. By the present petition the petitioner sought a direction to the respondent No.5 to give joining from the date the petitioner has first made her application for joining.
2. Perusal of record would show that the petitioner was initially appointed under the respondent No.5 on the post of Shiksha Karmi Grade-I vide order dated 14.06.2010. The petitioner joined the services and worked for a period around 5 years and from 26.11.2015 the petitioner is said to have

remained absent from duty for a considerable long period of time. In between the petitioner is said to have moved an application for grant of medical leave after about 7-8 months of absence and thereafter further remained absent and in between the petitioner has been moving certain applications for grant of medical leave for the period of absence. Subsequently, the petitioner allegedly reported for joining vide her application dated 07.01.2020 and subsequently on 22.01.2020. The authorities concerned have vide impugned order rejected the same on the ground that leave rules governing the field does not permit grant of joining in case where absence exceeds more than three years.

3. The contention of learned counsel appearing for the petitioner is that when the petitioner has gone on leave in November, 2015, The Chhattisgarh Civil Services (Leave Rules), 2010 (in short, the Rules, 2010) prescribed the maximum period of absence from duty to be five years which, however, stood amended w.e.f. 22.03.2018 where the maximum period has been reduced from five years to three years. The petitioner tries to canvass the ground that since the amendment has taken place subsequent to the petitioner having availed medical leave, for all practical purposes so far as petitioner is concerned, she should get the benefit of unamended Rules i.e. of maximum period of five years.
4. Per contra, the State counsel submits that none of the documents enclosed along with the writ petition justify the absence on medical ground on account of any serious ailment being suffered by the petitioner. Nor is there any cogent document to show that the petitioner was availing continuous medical treatment during the period of absence. It is also not a case where the petitioner seems to have been totally indisposed on account of which she could not attend her duties. Further, when the

petitioner for the first time is said to have tried to give joining on 07.01.2020, the rule already stood amended w.e.f. 22.03.2018. Therefore, it would be the rules which were applicable on the date the petitioner has given her joining which would be more relevant.

5. The State counsel further submits that in view of fact that rules stood amended and came into force from 22.03.2018, the deeming provision of Clause-2 of Rule 11 of Rules, 2010, whereby an employee shall be deemed to have been resigned from service would automatically come in play and the petitioner herein would, as an implication to Clause-2 of Rule 11 stand resigned automatically and the petitioner therefore would not have any right to report for duty beyond the period of three years of absence.
6. In the instant case the petitioner continuously remained absent from November, 2015 onwards though in between there seems to be couple of leave applications which the petitioner has filed but those were never accepted nor she was granted leave for the said period. Moreover, one cannot loose sight of the fact that the petitioner has put in only five years of service and there could not have been so much leave to her credit which she could have availed and leave application for the first time also was moved beyond a period of 7-8 months from the date she first remained absent from duty in November, 2015. By this time itself the petitioner must have definitely exhausted whatever leave that was otherwise also there to her credit though none of those leave were either availed or exhausted or granted by the authorities.
7. For all the aforesaid reasons, this court does not find any strong case made out by the petitioner calling for an interference with the impugned

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order. The writ petition therefore deserves to be and is accordingly rejected.

Sd/-
(P. Sam Koshy)
Judge

inder