

(2022) 07 CHH CK 0020
In the Chhattisgarh High Court
Case No : Writ Appeal No. 483 Of 2020

Sunder Lal Kashyap

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 14-07-2022

Acts Referred:

Chhattisgarh Civil Services (Pension) Rules, 1976 — Rule 42

Citation : (2022) 07 CHH CK 0020

Hon'ble Judges : Arup Kumar Goswami, CJ; Parth Prateem Sahu , J

Bench : Division Bench

Advocate : R. S. Patel, H.S. Ahluwalia

Final Decision : Dismissed

Judgement

1. Heard Mr. R.S. Patel, learned counsel for the appellant. Also heard Mr. H.S. Ahluwalia, learned Deputy Advocate General, appearing for the respondents.
2. Challenge in this appeal is to an order dated 01.12.2020 passed by the learned Single Judge in WPS No. 3359 of 2020, dismissing the writ petition.
3. In the writ petition, challenge was made to an order dated 13.10.2008, whereby the services of the petitioner had been terminated by the respondents after holding an enquiry.
4. The petitioner was an Assistant Teacher and admitted position is that, he had remained absent from duty from 20.12.1993 onwards. Disciplinary proceeding was initiated by issuance of charge-sheet dated 04.02.2003. Though the learned Single Judge had noted in the order that the petitioner did not respond or participate in the disciplinary proceeding, the said observation is not correct. The petitioner had participated in the enquiry proceedings. An enquiry report was submitted to the Disciplinary Authority on 23.08.2004 and based on the enquiry report, finally, the order of termination was issued on 13.10.2008.
5. It appears that the petitioner had filed a writ petition for grant of pension,

being WPS No. 2172 of 2012 (Annexure-P/11). Perusal of the order dated 26.03.2018 goes to show that a contention was advanced that the petitioner, while being absent from duty, had filed an application for grant of voluntary retirement on 20.04.2022. The petitioner in the said writ petition, as it appears, had not challenged the order of termination dated 13.10.2008 and in that circumstance, the writ petition was dismissed, giving liberty to the petitioner to challenge the order of termination.

6. After dismissal of the said writ petition by the order dated 26.03.2018, the writ petition, out of which this appeal arises, was filed on 05.08.2020. The learned Single Judge observed that the petitioner could not establish that his long period of absence was for reasons beyond his control and, accordingly, dismissed the writ petition.

7. Mr. Patel submits that the petitioner has submitted an application for voluntary retirement on 20.04.2002, and therefore, by virtue of Section 42 of the Chhattisgarh Civil Services (Pension) Rules, 1976, no decision having been taken by the appointing authority with regard to his application for voluntary retirement and no disciplinary proceeding having been initiated during the period of six months, the petitioner would be deemed to have retired from service after expiry of six months from the date of submission of the application for voluntary retirement.

8. Much water has flown in the meantime. Though the petitioner had raised the factum of his filing an application for voluntary retirement in WPS No. 2172 of 2012, it appears that the same was not pursued and no appeal was preferred against the order dated 26.03.2018, whereby the writ petition was dismissed on the ground that termination order dated 13.10.2008 had attained finality and therefore, we cannot re-open the chapter of voluntary retirement.

9. A perusal of the enquiry report goes to show that no justification was provided by the petitioner for remaining absent for such a long period of time. It also goes to show that the petitioner had expressed disinclination to continue with the service and wanted to go on retirement.

10. Having regard to the materials on record, we are of the opinion that there is no merit in this appeal and, accordingly, the writ appeal is dismissed.