
(2009) 12 CHH CK 0022
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 5821 of 2009

Bhairav Prasad Mishra

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 07-12-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 153, 298, 355, 504

Citation : (2010) 3 MPJR 124

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks a writ/direction to the respondent-authorities to relieve the petitioner from the present place of posting to join the promoted post of Assistant Sub Inspector of Police and further to maintain the seniority of the petitioner from the date he was promoted on the post of Assistant Sub Inspector with all consequential benefits.

2. The indisputable facts, in nutshell, as projected by the petitioner, are that the petitioner while working as Head Constable in the Police Department was promoted to the post of Assistant Sub Inspector of Police on 2-1-2009 and posted at Raigarh on 3-1-2009 (Annexure-P/2). The petitioner was not relieved to join the promotional post of Assistant Sub Inspector at Raigarh, pursuant to the order dated 2-1-2009 & 3-1-2009. Thereafter, the petitioner made a representation on 19-1-2009 (Annexure-P/3) to the Inspector General of Police seeking a direction to relieve the petitioner from the post of Head constable to join the new place of posting as Assistant Sub Inspector.

3. Earlier the petitioner preferred a writ petition before this Court being W.P. (S) No.2541 of 2009 (Bhairav Prasad Mishra v. State of Chhattisgarh & Others). By order dated 15-5-2009 (Annexure-P/4) this Court directed the petitioner to make a fresh representation and the respondent No.4 was directed to decide the same,

in accordance with law, pursuant to the representation, the respondent No. 4 by order dated 28-5-2009 (Annexure-P/1) dismissed the representation of the petitioner on the ground that a case against the petitioner under the provisions of Sections 298, 153, 355 and 504 of the Indian Penal Code in crime No. 108/2002 has been registered. After investigation, an application was made for closing the case wherein it was directed to reinvestigate the matter. After reinvestigation again an application was made on 2-3-2009 before the Court of Chief Judicial Magistrate, Bilaspur, for closing the case. Since no order has been passed on the case, the petitioner was not relieved from the post of Head Constable to join the promotional post of assistant Sub Inspector of Police. Being aggrieved by the aforesaid action of the respondent authorities, the petitioner has preferred the present writ petition seeking afore-stated reliefs.

4. Shri Ahulwalia, learned counsel appearing for the petitioner, would submit that criminal proceeding with crime No. 108/2002 was registered against the petitioner at Police Station Lormi. After investigation a report was submitted to close the case on 24-9-2007. However, learned Judicial Magistrate directed to reinvestigate matter and after reinvestigation the case was again submitted for its closing. On 6-5-2009 the closure report was transferred to the Judicial Magistrate, Lormi. Learned counsel would further submit that under the provisions of the Chhattisgarh Public Services (Promotion) Rules, 2003 (for short "the Rules, 2003"), Pendency of criminal case has been defined that after the challan has been filed, the case may be held as pending before any Court of law. In the present case since no challan was filed and the case is that the stage of closure it may not be held as the criminal case if pending against the petitioner before any Court of Law.

5. Shri Ahulwalia would next submit that the inspector general of Police in his communication dated 19-1-2009 (Annexure - P/6), addressed to the Superintendent of Police, has mentioned that the Sub Divisional Officer (Police), Kota, has informed that the case was pending against the petitioner and accordingly, It was directed to the respondent No.4 to take appropriate steps. The respondent no.3 again by communication dated 1-5-2009 (Annexure -P/7) directed the respondent No.4 to submit the report in respect of the fact that when the other two co-accused persons have been promoted why the petitioner has not been relieved to join the promotional post i.e. Assistant Sub Inspector of Police. Learned counsel would submit that since no criminal proceeding is pending against the petitioner in any Court of law, there is no reason not to relieve the petitioner from the post of Head Constable to join the promotional post i.e. assistant Sub Inspector of Police. Thus, the petition may be allowed.

6. Per contra, Shri Bhaduri, learned Panel Lawyer appearing for the State, would submit that the respondent No.4 has already relieved the petitioner by order dated 3-11-2009 (Annexure - P/1) to join the promotional post of Assistant Sub inspector of police at Raigarh. Thus, the petition has become infructuous and the same may be dismissed as having become infructuous.

7. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

8. There is no provision in the Rules, 2003 to define pendency of criminal case, as is submitted by the petitioner. The petitioner has relied on a hand book wherein it was observed that a sealed cover process would be adopted in a case wherein charge sheet has been issued in a disciplinary proceeding or a criminal case is pending.

9. The next question asto whether the petitioner is entitled to arrears of wages and other benefits from the date of promotion or from the date of joining. It is well settled principle of law that an employee is entitled to wages for actual performance on the post. Thus, from 3-1-2009 to 3-11-2009 till he was relieved, the petitioner has not worked as assistant Sub Inspector. Therefore, the petitioner is not entitled to any wages or allowances of the said period. In so far as seniority of the petitioner's concerned, he may be entitled for seniority from the dated of promotion order on notional basis, as he was not relieved from the post to join in the promotional post.

10. In Union of India Vs. K.V. Jankiraman, etc. etc., the supreme Court observed as under:

6....On the first question, viz, as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a chargememo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to he employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the chargememo charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point.....

11. The Supreme Court in the The Commissioner, Karnataka Housing Board Vs. C. Muddaiah, , observed as under:

32....We are conscious and mindful that even in absence of statutory provision, normal rule is "no work no pay" In appropriate cases, however, a Court of Law may, nay must, take into account all the facts in their entirety and pass an appropriate order in consonance with law. The Court, in given case, may hold that the person was willing to work but was illegally and unlawfully not allowed to do so. The Court may in the circumstances, direct the authority to grant him all benefits considering "as if he had worked". It, therefore, cannot be contended as an absolute proposition of law that no direction of payment of consequential benefits can be granted by a court of law and if such directions are issued by a court, the authority can ignore them even if they had been finally confirmed by the Apex Court of the country (as has been done in the present case). The bald contention of the appellant-Board, therefore, has no substance and must be

rejected.

12. In Calcutta Iron merchants Association and another Vs. Commissioner of Commercial Taxes and another, , the Supreme Court observed that consequently, the payment of arrears of salary does not arise since, admittedly the respondents had not worked during that period.

13. The Supreme Court in A.K. Soumini Vs. State Bank of Travancore and Another, , observed as under:

8. In State Haryana v. O.P. Gupta this Court had occasion to deal with a claim for arrears in a case where in adjudicating a dispute relating to seniority. This Court directed the department concerned to prepare a fresh seniority list strictly in accordance with the rules ignoring inconsistent administrative instructions and compliance thereof a fresh seniority list came to be prepared and eligible persons were even given notional promotion by the department from a deemed date. When such promotees claimed for payment of arrears of salary as well, this Court rejected the claim applying principle of "no work, no pay" and set aside the orders of the High Court, countenancing such claims to be illegal for the reason that the promotees did not work for the period in the promoted capacities. In coming to such conclusions this court followed the earlier decisions reported in Paluru Ramkrishnaiah v. Union of India and Virender Kumar, G.M.N. Rlys, v. Avinash Chandra Chadha.

14. The Supreme Court in Union of India (UOI) Vs. B.M. Jha, observed as under:

5. We have heard learned counsel for the parties. It was argued by learned counsel for the respondent that when a retrospective promotion is given to an incumbent, normally he is entitled to all benefits flowing therefrom. However, this Court in State of Haryana v. O.P. Gupta and followed in A.K. Soumini v. State Bank of Travancore has taken the view that even in case of a notional promotion from retrospective date, it cannot entitle the employee to arrears of salary as the incumbent has not worked in the promotional post. These decisions relied on the principle of "no work no pay" learned Division Bench in the impugned judgment has placed reliance on State of A.P v. K.V.L. Varasimha Rao. In our view, the High Court did not examine that case in detail. In fact, in the said judgment the view taken by the High Court of grant of salary was set aside by this Court. Therefore, we are of the view that in the light of the consistent view taken by this court in the abovementioned cases, arrears of salary cannot be granted to the respondent in view of the principle of "no Work no pay " in case of retrospective promotion.....

15. The Supreme Court in Babu Lal Vs. Haryana State Agricultural Mkt. Board, , reiterated the aforesaid view.

16. Applying the well settled principles of law to the facts of the present case, it is apparent that challan was not filed and, as such, no case was pending before the Judicial Magistrate wherein closure report was filed. Reinvestigation was

directed on submission of the closure report. After reinvestigation, closure report was again filed on which no order was passed. In the meantime, the petitioner was relieved from the post of Head constable to join the promotional post of Assistant Sub Inspector. The petitioner has not actually worked on the promotional post for the period from 3-1-2009 to 3-11-2009.

17. In view of foregoing, the petitioner is not entitled to any wages or allowances for the period from 3-1-2009 to 3-11-2009. In so far as seniority of the petitioner is concerned, he is entitled to seniority on notional basis from the date of promotion order, as for no fault of the petitioner, he was not relieved from the post of Head Constable to join the promotional post of Assistant Sub Inspector of Police.

18. In the result, the writ petition is allowed to the extent indicated above. No order as to costs.