

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**REVP No. 46 of 2015**

- Nilesh Kumar Pandey S/o Shri Dinesh Kumar Pandey Aged About 36 Years
R/o 27 Kholi, Bilaspur, Police Station-Civil Line, District-Bilaspur
Chhattisgarh in the writ petition.

---- Applicant**Versus**

1. State Of Chhattisgarh through : The Secretary, Labour Department,
Mantralaya New Raipur, P.S. - Rakhi, District-Raipur, Chhattisgrh
2. Chhattisgarh Public Service Commission, Through : The Secretary,
Chhattisgarh Public Service Commission Shankar Nagar Road, Raipur,
Chhattisgarh
3. Vinod Kumar Deshmukh S/o Shri Namodeo Deshmukh Aged About 35
Years O/o Shri P.S. Koshy, Advocate, Luthra Compound, Behind Luthra
Hospital, Nehru Nagar, Bilaspur C.G. At Present Address MIG C-24, near
Shankar Kirana Store, Nehru Nagar, Bilaspur, Chhattisgarh

---- Respondents

For applicant	: Mr. Anoop Majumdar, Advocate
For Respondent No. 1	: Mr. S.C. Khakhariya, Govt. Advocate
For Respondent No. 3	: Mr. Govind Dewangan, Advocate
For Respondent No. 2	: None.

Order On Board**30/10/2015**

1. Heard on admission/maintainability of the instant review petition.
2. Learned counsel for the petitioner submits that WP(S) No. 3100/2009 (Vinod Kumar Deshmukh -v- State of CG and others) and W.P.(S) No. 3101/2009 were filed before this Court and in both the writ petitions there was an order regarding interim stay dated 3-7-2009 to the effect that :-

"Considering the totality of the fact, the interim application filed by the petitioner is rejected. However, it is directed that the selection for the post of Presiding Officer, Labour Court would be subject to the decision of the present writ petition."
3. W.P.(S) No. 3100/2009 was dismissed for non-prosecution vide order dated 3-4-2014. There is no observation in the order regarding the effect of the interim order passed earlier and it was dismissed simplicitor. Petitioner had filed W.P. (S) No. 2912/2014 seeking appointment on the post of Presiding Officer, Labour Court. Relevant facts necessary for disposal of this review petition are mentioned in the order dated 24-4-2015 passed in W.P. (S)

2912/2014 in which in para sub-para (i) of para 2, it was submitted that :-

(i) as two writ petitions i.e. W.P.(S) Nos. 3100/09 and 3101/09 were filed before this Court by some of the unsuccessful candidates challenging the selection process and in those petitions, on 3-7-09 an order was passed by this Court that any selection to the post of Presiding Officer would be subject to decision of the writ petitions, the petitioner thought it proper to wait for the decision of the writ petitions;”

4. W.P.(S) No. 2912/14 was dismissed by this court on 24-4-2015. Challenging the same, the petitioner filed Writ Appeal No. 239/2015 which is still pending before the Division Bench of this Court.
5. Learned counsel for the applicant submitted that order passed in W.P.(S) No. 3100/09 dated 3-4-2014 be recalled and proper decision may be delivered with respect to selection and appointment on the post of Presiding Officer. Alternatively he submits that as per doctrine of merger, it may be observed or directed that the interim order merges with final order. It may also be observed that if the said the said observation would have been made in the order dated 3-7-2009, then the effect of the same would be keeping the term of select list in abeyance for the period during which W.P. (S) No. 3100/2009 was pending.
6. On the other hand, learned counsel for the respondents No. 1 and 3 submitted that the instant review petition is not maintainable and the prayer made by the applicant is a subject matter of WA no. 339/2015. Hence the instant review petition may be dismissed.
7. For the purpose of appreciation, documents and the main petition perused.
8. As present applicant was respondent No. 3 in W.P.(S) no. 3100/2009, which was filed by the present respondent no. 3 and as the present applicant was not represented on 3-4-2014 when the case was taken up for hearing, the court dismissed the petition for want of prosecution. Since the writ petition was dismissed for want of prosecution, there is no ground available to the present applicant under the law. The respondent No. 3 did not pray for restoration before the writ court. So far as the order of dismissal for want of prosecution is concerned, the order does not require for any interference at this stage. Hence prayer made by the applicant that that interim order merges with the final order is not liable to be allowed. Even otherwise as the learned counsel for the applicant fairly conceded that the writ appeal No. 339/15 is pending in which the prayer made in this review petition may also

be considered as the prayer for above was not allowed in the W.P.(S) No. 2912/14.

9. On due consideration in the opinion of this Court, the instant review petition is not maintainable under the law.
10. Consequently, the same is disposed of as not maintainable.
11. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge