

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 7001 of 2007

- Chandrashekhar Soni, S/o Late Ram Kumar Soni, aged about 42 years, Presently working as Patwari, P.H. No.5, Ra. Ni.M. - Bhilai-3, Tehsil Patan, District Durg (C.G.)

---- Petitioner

Versus

1. State Of Chhattisgarh, through its Secretary, Department of Revenue, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur (C.G.)
2. Collector, Land Revenue Branch, District Durg (C.G.)
3. Sub Divisional Officer, Tehsil - Patan, District - Durg (C.G.)
4. The Tehsildar, Tehsil - Gunderdehi, District - Durg (C.G.)
5. Auditor General, Pagaria Complex, Near Bus Stand, Raipur, District Raipur Cg

---- Respondents

For Petitioner	Ms. Fouzia Mirza, Advocate
For Respondent-State	Shri S. Majid Ali, PL

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

26/07/2016

1. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction to the respondents for giving all the dues for the period 14.12.1998 till 13.06.2005 along with interest @ 18% per annum with all other consequential benefits.

2. Facts of the case, briefly stated, are that the petitioner was appointed as Patwari in the year 1988-89. While he was posted at P.C. No.27, Tahsil Gunderdehi, District Durg, a criminal case was registered against him for commission of offence punishable under Section 456 of IPC, in which charge sheet was filed before the Judicial Magistrate First Class, Durg and the petitioner was eventually convicted and sentenced to undergo Rigorous Imprisonment for 6 months and fine of Rs.500/-. On 14.12.1998, the petitioner was terminated on account of his conviction. The Sessions Judge, Durg affirmed the conviction, against which the petitioner preferred a criminal revision before the High Court of Madhya Pradesh, which was allowed vide order dated 21.04.1999. The petitioner thereafter approached the Sub Divisional Officer (Revenue), Patan [henceforth 'the SDO (R)'] for his reinstatement, which was rejected and thereafter his appeal was also rejected by the Collector, Durg on the ground that the petitioner's acquittal was on account of compromise between him and the complainant, therefore, the misconduct has been proved under the Chhattisgarh Civil Services (Conduct) Rules, 1965.
3. The petitioner preferred WP No.1673/2002, wherein vide order dated 02.05.2005, the orders passed by the SDO (R), Patan and the Collector, Durg were set aside and he was directed to be reinstated in the services. Consequently, the petitioner was reinstated by the SDO (R), Patan on 13.06.2005.

4. After his reinstatement, the petitioner moved an application before the SDO (R), Patan for grant of back wages and other consequential benefits w.e.f. 14.12.1998 till 13.06.2005. The petitioner also prayed for interest for the same period on the amount deposited in his GPF account as per Rule 14 (3) (4) and Rules 29 & 30 of the GPF Rules, 1955 (henceforth 'the Rules, 1955').
5. It is argued on behalf of the petitioner that once the petitioner was acquitted of the criminal charge by the order passed by the M. P. High Court on 21.04.1999 in Criminal Revision No.1220/1998, the order of suspension based on initiation of criminal case comes to an end and thereafter the petitioner having been reinstated on 13.06.2005, the petitioner is entitled for salary with interest for the period 14.12.1998 (the date of suspension) to 13.06.2005 (the date of reinstatement). Similarly, the petitioner is entitled for interest on GPF amount as per the Rules, 1955.
6. Per contra, the learned State counsel would submit that the petitioner is only entitled for salary from the date of reinstatement and not for any prior period. It is also argued that in earlier writ petition bearing WP No.1673/2002, the petitioner had prayed for entire back wages from the date of termination till the date of joining, but no order was passed on the said relief, meaning thereby the petitioner had either not pressed the relief or the same was impliedly denied, therefore, fresh writ petition for the same relief is not maintainable.

7. In petitioner's earlier writ petition bearing WP No.1673/2002, the following reliefs were claimed:-

- I. The order of the SDO (R), Patan, Durg passed on 14.12.1998 be set aside.
- II. The petitioner may kindly be reinstated in service along with back wages from the date of termination to the date of joining in the service.
- III. The petitioner may kindly be awarded compensation for the period of his illegal termination along with cost of proceedings.

8. When the above writ petition was decided on 02.05.2005 by an order dictated on board, the writ petition was allowed, the impugned orders were quashed and the respondents were directed to reinstate the petitioner in service, however, no order in respect of back wages was passed.

9. In the present writ petition, the same relief concerning arrears of salary from 14.12.1998 (the date of termination) till 13.06.2005 (the date of reinstatement) along with interest @ 18% per annum and other consequential benefits have been prayed. In such a situation, the question arises as to whether fresh writ petition claiming the same relief is maintainable.

10. In the matter of **Roshan Lal Ahuja v. Dr. S. C. Jain and others**¹, the Supreme Court has held thus:-

“We do not think that any interference is called for by us at the instance of the petitioner. As mentioned by us the order reducing him in rank was questioned by him repeatedly before the present writ petition was filed and on every occasion he lost. We do not see any justification for permitting him to challenge the order once again in the present writ petition. In view of the dismissal of the earlier writ petitions we cannot also entertain his claim for arrears of salary and other benefits. In fact, we notice that one of the interim orders of this Court expressly stipulates that he may be reinstated in service as a fresh entrant. The order is in the following terms:

Defence Ministry will expedite consideration and as far as possible absorb this small draftsman back into service subject to such conditions as it seeks to impose. The appointment will be a *de novo* appointment.

It was pursuant to this order the petitioner was reinstated in service and he cannot, therefore, claim to be entitled to any arrears of salary.”

11. In the matter of **Poonam Lata v. M. L. Wadhawan and another**², it has been held that if the party or his counsel raises number of points and submissions in his pleadings but confines his findings to one or more points at the time of hearing of the case and Court decides the case on that point, it would be improper for the counsel to allege in a fresh writ petition that the Court did not accept the point argued earlier or the counsel had failed to argue on the other points. The Court is expected to decide only those questions, which are pressed by the parties to the proceedings at the time of hearing of the matter. It is also held that Court is not supposed to express that no other point was urged.

1 (1987) 1 SCC 48

2 (1987) 4 SCC 48

12. In the matter of **The VIth Income-Tax Officer, City Circle II, Bangalore v. K. Y. Pillaiah and Sons**³, the Supreme Court has held thus in para 6 :-

“6. It must also be remembered that the respondents had under an order of the Commissioner obtained a reference on the first question set out hereinbefore. That question was not pressed before the High Court, and it must be deemed to have been answered against the respondents. That question could not thereafter be re-agitated by the respondents in a petition for the issue of a writ under Art.226 of the Constitution.”

13. The principle is thus well settled that when a relief is claimed but not pressed at the time of hearing, a relief is either abandoned or deemed to be refused by the Court, therefore, fresh writ petition for the same relief, which was prayed in the earlier writ petition, is not maintainable.
14. For the foregoing, the writ petition deserves to be and is hereby dismissed.

Sd/-

JUDGE
PRASHANT KUMAR MISHRA

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³ AIR 1968 SCC 260