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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 7061 of 2007**

Karmuram Netam, son of Shri Chiniram alias Goverdhan Netam caste Scheduled Tribe, aged about 50 years, Head Constable No.213, Police Station Rengakhar, Distt. Kabirdham (C.G.)

---- PETITIONER**Versus**

1. State of Chhattisgarh, Through : Secretary, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur (C.G.)
2. Director General of Police, Head Quarter Raipur (C.G.)
3. Inspector General of Police, Raipur Range, Raipur (C.G.)
4. Deputy Inspector General of Police, Rajnandgaon (C.G.)

---- Respondents

For Petitioner : Mr.Suryakant Mishra, Advocate.

For respondents : Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****16/02/2017**

(1) The petitioner was appointed on the post of Constable on 04.08.1981. He was promoted on the post of Head Constable on 02.01.1999, after having successfully passed the Police Basic Training P.T.S., Raipur Mana (C.G.), in the year 1986. He was granted permission to appear in the Departmental Examination on 30.07.2002 and he appeared in the said examination and declared successful but he was not promoted on the post of Assistant Sub

Inspector on the ground that he has not completed three years of service on 1st January, 2002 on the post of Head Constable.

(2) Feeling aggrieved against his non promotion on the post of Assistant Sub Inspector, the petitioner has filed instant writ petition under Article 226/227 of the Constitution of India stating that as he has completed three years of service on the post of Head Constable on 1st January, 2002, he is entitled to be promoted to the post of Assistant Sub Inspector.

(3) Return has been filed by the State stating *inter alia* that since the petitioner did not complete three years of service on the post of Head Constable on 1.1.2002 as per Standard Operating Procedure (SOP) No. 24/2002 dated 13.03.2002, he is not eligible to be promoted for the post of Assistant Sub Inspector and, therefore, he has rightly not been promoted to the post of Assistant Sub Inspector.

(4) Learned counsel appearing for the petitioner would submit that the petitioner's non promotion on the post of Assistant Sub Inspector is wholly unjustified as he has completed three years of service on the post of Head Constable on 1.1.2002 and, therefore, the writ petition deserves to be allowed.

(5) Per contra, learned counsel for the State would submit that as SOP issued in this regard has not been complied with by the petitioner, he has rightly not been promoted to the post of

Assistant Sub Inspector and, therefore, the writ petition is liable to be dismissed.

(6) I have heard learned counsel appearing for the parties and considered their rival submissions made therein along with the material available on record with utmost circumspection.

(7) The short question involved in the writ petition is that whether the petitioner has completed three years on the post of Head Constable on 1.1.2002 as per Clause 3 (c) of SOP No.24/2002 dated 13.03.2002.

(8) In order to appreciate the dispute, it would be appropriate to notice clause 3 (c) of the SOP, which states as under:-

- “a) xxx xxx xxx
- b) xxx xxx xxx
- c)in case of matric passed Head Constable the candidate should have completed 3 years of service as Head Constable.

(9) It is not in dispute that the petitioner was appointed as Constable on 04.08.1981 and thereafter he was promoted to the post of Head Constable on 02.01.1999. As per the criteria of SOP dated 13.03.2002, examinations were held in the year 2002, therefore, as per schedule criteria, the petitioner being a matriculate candidate should have completed three years of service as Head Constable on 01.01.2002, the year in which the examinations were held.

(10) The petitioner's candidature has been rejected on the ground that he has not completed three years of service as per Clause 3(c) of the SOP dated 13.03.2002 on 1st January, 2002.

(11) Here, it would be appropriate to notice the definition of Year. According to the Chhattisgarh General Clauses Act : "Year" means a year reckoned according to the British calendar.

(12) According to Black's Law Dictionary, 8th Edition; Year means :-

1. Twelve calendar months beginning January 1 and ending December 31.- Also termed *calendar year*. **2.** A consecutive 365-day period beginning at any point; a span of twelve months

(13) Thus, in accordance with definition of year, if the petitioner's three years' service as Head Constable is to be counted, it would be reckoned (i) that from 2.1.1999 to 1.1.2000 would be one year, (ii) from 2.1.2000 to 1.1.2001 would be another one year and (iii) from 2.1.2001 to 1.1.2002. would be another consecutive year. Thus, the petitioner has completed consecutive three years of services on the post of Head Constable as on 1.1.2002 and requirement was that he must have completed three years of service on 1.1.2002, in which the departmental examinations were held, which the petitioner has completed well within the time. Accordingly, it is held that petitioner was fully eligible to be considered for the post of Assistant Sub Inspector as he has completed three years of service as Head Constable on 1.1.2002

and he has also passed departmental examination, which is held on 30.08.2002, which is apparent from the document (Annexure P-1) of Departmental Promotion Committee . Therefore, it is held that non promotion of the petitioner on the post of Assistant Sub Inspector is absolutely unjustified. Since the petitioner has been denied promotion on arbitrary and irrational grounds, it is directed that the petitioner shall be considered and promoted on the post of Assistant Sub Inspector and he will be given the benefit of promotion from the date on which the other similarly situated employees were considered and promoted to the post of Assistant Sub Inspector.

(14) Petitioner has claimed the consequential service benefits. The other similarly situated candidates were considered for promotion and were promoted by the order dated 07.11.2002. However, the petitioner was not promoted and claiming promotion he filed writ petition only on 23.11.2007 and by this order he has been held entitled for promotion on the post of Assistant Sub-Inspector w.e.f. 07.11.2002. The question for consideration would be from which date the petitioner would be entitled for back wages.

(15) In the matter of **State of Kerala and others Vs. E.K. Bhaskaran Pillai**¹, their Lordships have considered the issue and held as under :-

“4.....We have considered the decisions cited on behalf of both the sides. So far as the situation with

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regard to monetary benefits with retrospective promotion is concerned, that depends upon case to case. There are various facets which have to be considered. Sometimes in a case of departmental enquiry or in criminal case it depends on the authorities to grant full back wages or 50 percent of back wages looking to the nature of delinquency involved in the matter or in criminal cases where the incumbent has been acquitted by giving benefit of doubt or full acquittal. Sometimes in the matter when the person is superseded and he has challenged the same before court or tribunal and he succeeds in that and direction is given from reconsideration of his case from the date persons junior to him were appointed, in that case the court may grant sometimes full benefits with retrospective effect and sometimes it may not. Particularly when the administrator has wrongly denied his due then in that case he should be given full benefits including monetary benefit subject to there being any change in law or some other supervening factors. However, it is very difficult to set down any hard-and-fast rule. The principle "no work no pay" cannot be accepted as a rule of thumb. There are exceptions where courts have granted monetary benefits also.

5. However, so far as present case is concerned, as per directions given by the Court, the petitioner's case was considered and it was found that persons junior to him were appointed and he was wrongly denied. Therefore, the petitioner was promoted from retrospective effect i.e. 15-9-1961 but he was not paid the benefit of promotion in terms of arrears of salary. Therefore, he approached the Court and learned

Single Judge did not give him the monetary benefits of the promotional post from retrospective effect in terms of arrears of salary. In the review application, the benefit was given from the date he filed OP No.585 of 1975 i.e. 15-6-1972. This appears to be reasonable. The petitioner did not approach the Court for the back wages from 15-9-1961 but he filed a petition dated 15-6-1972. The incumbent in the meanwhile has retired on 31-7-1980. Therefore, looking to the facts and circumstances of the case, the view taken by the High Court appears to be justified and there is no ground to interfere in it.”

(16) In the present case petitioner was denied promotion w.e.f. 07.11.2002 when juniors to the petitioner were promoted on the post of Assistant Sub-Inspector, but the petitioner herein filed the instant writ petition on 23.01.2007 therefore following the law laid down in **E.K. Bhaskaran Pillai** (supra) the petitioner will be entitled for the back wages of the promoted post w.e.f. date of filing the writ petition i.e. 23.01.2007 and he will not be entitled for the back wages from 07.11.2002 to 22.01.2007 as he did not take steps to challenge his non promotion during this period and he cannot be allowed to take advantage of his own wrong by burdening the public exchequer.

(17) Thus, it is directed that the petitioner be granted promotion on the post of Assistant Sub-Inspector w.e.f. 07.11.2002 and he will be entitled for all service benefits from that day except back wages which he will be entitled from 23.01.2007 the date on which he filed the writ petition till the date of actual payment.

(18) Accordingly, the writ petition is allowed to the extent indicated above.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

