

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (S) NO. 2409 OF 2016

- Laxmi Narayan Sharma, S/o Ram Narayan Sharma, aged about 59 years, Head Warden, Central Jail, Bilaspur, P.S. Civil Line, Bilaspur, District Bilaspur (C.G.)

... Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Home Department (Jail), Mahanadi Bhawan, New Raipur, District Bilaspur (C.G.)
2. Under Secretary, Home Department (Jail), Mahanadi Bhawan, New Raipur, District Raipur (C.G.)
3. Superintendent of Jail, Central Jail, Bilaspur, District Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Nasimuddin Ansari, Advocate.
For Respondent-State	:	Mr. Satish Gupta, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/06/2017

1. This is the fourth time the Petitioner is approaching before this Court for redressal of his grievance which for one reason or the other is being denied by the Respondents.

2. The facts in brief relevant for the adjudication of the present dispute are that the Petitioner works as Head Warder at Central Jail, Bilaspur. He was transferred from the Central Jail, Bilaspur to Sub Jail, Sarangarh, District Raigarh vide order dated 15.7.2014. He had questioned the said order of transfer in Writ Petition (S) No. 3639 of 2014 which was disposed of on 28.7.2014 (Annexure P-1) with the following observation:

“Considering the aforesaid submission, it would be proper to allow the petitioner to prefer representation to the transferring authority. In case, any such representation is moved within a period of 10 days from today, the same shall be considered and decided by the competent authority within a period of four weeks from the date of receipt of representation. For a period of five weeks, no coercive steps shall be taken against the petitioner.

With the aforesaid observation, the petition is finally disposed off.”

3. As directed by the High Court, the Petitioner made a representation to the Respondents. However, the Respondents did not take any decision on the said representation. Meanwhile, the Petitioner preferred a contempt petition i.e. Contempt Case (C) No. 326 of 2014. Instead of deciding the representation in spite of the contempt petition being filed, the Respondents issued a show cause notice to the Petitioner on 22.10.2014 to explain as to why appropriate disciplinary action be not initiated against him for his unauthorised absence. However, as notices were issued to the Respondents in the said contempt case, the Respondents hurriedly decided the representation of the Petitioner on 26.11.2014 (Annexure P-5) and on account of which the said contempt case got dropped on 23.1.2015 (Annexure P-6).

4. Since the representation of the Petitioner was rejected, the Petitioner reported for joining at Sub Jail, Sarangarh, District Raigarh, but he was refused joining on the ground that there was no vacancy on the post at which the Petitioner was transferred, though nothing was given in writing to the Petitioner. Therefore, he sought for an information in this regard under the Right to Information Act and the Respondents vide Annexure P-7, dated 28.2.2015, informed that as per the set up there was no post of Head Warder vacant at the Sub Jail, Sarangarh.

5. The Petitioner thereafter filed another writ petition i.e. Writ Petition (S) No. 747 of 2015. For the reason of non-granting of joining to the Petitioner at Sub Jail, Sarangarh, on account of non-availability of vacant post, the High Court vide order dated 30.3.2015 (Annexure P-8) granted an interim protection to the Petitioner directing the Respondents to permit him to perform his duties as Head Warder at Central Jail, Bilaspur, till the next date of hearing. Thereafter, the Petitioner was granted joining at Bilaspur and he is still working at the Central Jail, Bilaspur.

6. Grievance of the Petitioner is that the Petitioner for the intervening period between July, 2014 to April, 2015 has not been granted salary. It is this non-releasing of salary between July, 2014 to April, 2015 which is the relief sought for in the present writ petition.

7. Learned Counsel for the Petitioner submits that the Petitioner in the instant case is in fact legally entitled for the salary for the intervening period. According to him, the High Court vide its order dated 28.7.2014 (Annexure P-1) while admitting the Writ Petition (S) No. 3639 of 2014, against the transfer order had passed an order in favour of the Petitioner directing the Respondents not to take any coercive steps against him. In the light of the aforesaid interim protection, the Respondents had not taken any coercive steps against the Petitioner.

8. It is further contended by the learned Counsel for the Petitioner that even otherwise since it has been established that at the Sub Jail, Sarangarh that there was no vacant post of Head Warder and thereafter the Petitioner could not be granted joining, which stands established from Annexure P-7, dated 28.2.2015, he was forced to file another writ petition i.e. Writ Petition (S) No. 747 of 2015. Considering the fact that the Petitioner has not been granted joining at Sarangarh and there was an interim protection of no coercive step be taken against him and the High Court had also granted a direction to the Respondents to permit him in the given factual background to assume his duties at Central Jail, Bilaspur, it cannot be said that he was unauthorizedly or illegally absent. In the light of the order dated 30.3.2015 (Annexure P-8) passed in Writ Petition (S) No. 747 of 2015, the Petitioner has been given the joining at Bilaspur and he still is continuing there. According to the Counsel for the Petitioner, the Petitioner is not to be blamed for the action on the part of the Respondents and hence he is duly entitled for the salary for the intervening period. It

was further contended that the Petitioner during the intervening period has faced great hardship both economically as well as mentally.

9. Per contra, learned Counsel for the State opposing the Writ Petition submits that it is a case where there was a deliberate lapse on the part of the Petitioner who in spite of there being an order of transfer did not comply with the same and therefore it is the Petitioner alone who is responsible for not getting the salary for the intervening period as he had not discharged his duties. Learned State Counsel thus prayed for the dismissal of the present Writ Petition.

10. So far as Annexure P-7, dated 28.2.2015, which is the information provided under the Right to Information Act, is concerned, learned State Counsel submits that the said information was provided in February, 2015 and therefore it cannot be presumed an information which was given in respect of the earlier position and therefore the Petitioner should not be permitted to take advantage of the said document.

11. Having considered the rival contentions put forth on behalf of either side and on perusal of the records, certain admitted positions as stand, are:

(a) The Petitioner was transferred from Bilaspur to Sarangarh on 15.7.2014. The said order was put to challenge in Writ Petition (S) No. 3639 of 2014. The said Writ Petition got disposed of on 28.7.2014 with a direction to the Respondents to decide the representation of the Petitioner, along with an interim protection of no coercive steps be taken in between.

(b) The Respondents did not decide the representation for a very long time. Meanwhile, the Petitioner filed a contempt petition and it is only thereafter that the representation of the Petitioner was decided as late as on 26.11.2014 and the contempt petition was

subsequently dropped. The Petitioner went to join at Sarangarh where he was not granted joining on account of non-availability of vacant post.

(c) The Petitioner again approached the High Court for appropriate direction vide Writ Petition (S) No. 747 of 2015. On 30.3.2015, the High Court directed the Respondents to permit the Petitioner to perform his duties at Bilaspur and since then he has been working at Bilaspur till date. The said Writ Petition subsequently got disposed of with a direction to the Respondents to consider the representation of the Petitioner, along with further interim protection of any coercive steps not to be taken against the Petitioner.

12. From the aforesaid admitted factual positions what is reflected is that the Respondents even during the second round of litigation, i.e., Writ Petition (S) No. 747 of 2015, did not come up with a stand that the contention of the Petitioner of there being no vacant post of Head Warder at Janjgir- Champa is incorrect. Rather, on the interim direction of this Court directing him to be permitted to resume his duties at Bilaspur, the respondent authorities have honoured that order by giving him joining at Bilaspur at which place even till date he is discharging his duties.

13. From the aforesaid conduct of the Respondents, there clearly reflects an admitted position of there being no vacant post of the Head Warder at Janjgir-Champa and their refusal to give him joining there. If we look into the overall factual matrix of the case, it would reveal that the Petitioner had an interim protection from the High Court of no coercive steps be taken in the intervening period, coupled with the fact that there was no vacant post of the Head Warder at Sarangarh on account of which he was not granted joining at Sarangarh. Thus, the Petitioner cannot be

blamed for his not getting salary for the intervening period between July, 2014 to April, 2015. Rather, it is a case where the Petitioner was willing to discharge his duties but was deprived to perform his duties on account of the acts attributable to the Respondents. The Petitioner cannot be put to loss for the acts attributable to the Respondents and therefore in the opinion of this Court it is a fit case where the Petitioner should be granted the relief of payment of salary between July, 2014 to April, 2015.

14. Accordingly, the Writ Petition is allowed. The Respondents are directed to consider the case of the Petitioner for processing his salary for the period from July, 2014 to April, 2015. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

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