

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 7275 of 2009**

Shyam Sunder Prasad, Son of Shri Munsu Mohanlal, aged about 58 years, resident of Pathalgaon, District Jashpur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through the Principal Secretary, Department of Urban Administration, DKS Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh
2. Municipal Council Pathalgaon, through the Chief Municipal Officer, Pathalgaon, Tehsil Pathalgaon, District Jashpur, Chhattisgarh
3. Collector Jashpur, Jashpurnagar, District Jashpur, Chhattisgarh
4. Commissioner, Bilaspur Division, Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri Amrito Das, Advocate
For Respondent/State	:	Shri Lav Sharma, Advocate
For Respondent No.2	:	Ms. Shriya Mishra, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****16/03/2018**

The challenge in the present writ petition is to the resolution Annexures P-1 & P-2 whereby the petitioner has been absorbed on the post of Moharir in the pay scale of 3050-75-3950-80-4500.

2. Brief facts of the case relevant for disposal of the present writ petition are that the petitioner was initially appointed as Secretary in the Municipal Corporation, Pathalgaon in the year 1969. Later on, he was absorbed vide Annexure P-3 on 28th of November, 1980 on the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector. While discharging duties on the said post, his services were terminated on 12.04.1985. The said order of termination was put to challenge before the Collector who allowed the appeal

on 19.06.1985 remitting the matter to the Authority concerned for passing an order after enquiry. The Department, after an enquiry, passed a fresh order of termination on 01.04.1986. This order of termination dated 01.04.1986 was again challenged before the Collector where the appeal stood rejected and thereafter the second appeal to the Commissioner also stood rejected leading to the filing of a writ petition before the Madhya Pradesh High Court where the case was registered as MP 79/88. The Madhya Pradesh High Court finally allowed the said writ petition on 23.07.1998 and after setting aside the order of termination, directed for reinstatement in service with all consequential benefits. The petitioner was though reinstated in service but was not granted the consequential benefits. The petitioner ultimately had to file a contempt petition which was registered as Contempt Petition No. 126/2003. The contempt petition got disposed of on 09.10.2007 in the light of the impugned order Annexure P-2 having been passed and the contempt petition stood withdrawn with liberty to challenge the same by way of a writ petition. The present writ petition has subsequently been filed.

3. The grievance of the petitioner is that by issuance of Annexure P-1 & P-2, the status of the petitioner would stand demoted to a lower post both by virtue of status as also from the point of emoluments which the petitioner was drawing on the post that he was holding before termination. According to the counsel for the petitioner, after resolution Annexure P-1 was issued, no formal order has been passed for demoting the petitioner. Since the said resolution has not been acted upon, the same cannot be taken into account by the respondents for demoting him to a lower post. He submits that the order Annexure P-2 also is bad in law for the reason that the same has been issued on the ground that the petitioner was not having requisite qualification for holding the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector whereas the petitioner in fact did have all the requisite qualifications for the post of a Head Clerk as is established from Annexure P-5 issued from

Jagjivan College, Gaya which is a certificate of Pre Arts and is equivalent to a higher secondary certificate.

4. In due course of time the petitioner now has crossed the age of superannuation on 30.06.2009. The petitioner continued to discharge his duties that of a Moharir from 23.11.2000 till the date of superannuation and has got all the retiral benefits that of a Moharir.

5. The first issue which needs to be adjudicated is as to what are the consequential benefits which the petitioner would be entitled from the date of termination of his services till Annexure P-2 dated 23.11.2000 was passed. The second issue is whether the order Annexure P-2 is justified or not.

6. Counsel for the respondents opposing the petition submit that since the petitioner did not have the minimum eligibility criteria and qualification for the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector, the petitioner's services were absorbed on the post of Moharir vide order dated 23.11.2000, therefore, the petitioner would be entitled only for benefits of that post and not for any other post since he did not fulfill the requisite eligibility criteria. They submit that it is a case where the principles of useless theory would come into play since the petitioner all along was not eligible for holding the said post and therefore, he cannot be taken back on the post which he was not otherwise competent and eligible to hold.

7. Having heard the contentions put forth on either side and on perusal of the record so far as the first part of dispute as to the consequential relief is concerned, there cannot be any doubt that once when the order of termination dated 01.04.1986 has been set aside by the High Court of MP, the position would stand as if the order of termination was never in existence. By all means, the petitioner has to be brought back on the same place that he was holding on the date of termination i.e. prior to 01.04.1986 which undisputedly was a post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector. Moreover, since the High Court on 23.07.1988 in MP 79/88 had specifically

ordered for reinstatement in service with consequential benefits, it implies that the petitioner would have to be brought back to the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector and he would be entitled for all the wages and other benefits that he was drawing prior to his termination. Even if Annexure P-2 is taken into consideration, it does not reflect that it has a retrospective effect. The reference in the decision on the basis of which Annexure P-2 has been passed also is a decision that of the year 2000 itself. Thus, till Annexure P-2 was passed on 23.11.2000, there cannot be any dispute whatsoever that the petitioner would be entitled for all the benefits that he was drawing on the date of termination i.e. on the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector.

8. We need not go into the veracity of Annexure P-1 since it was never acted upon nor any formal order was passed demoting the petitioner based on Annexure P-1 at any point of time. Thus, the same now is of no consequence.

9. So far as the contention of the counsel for the petitioner that Annexure P-2 is not sustainable for the reason that the petitioner in fact had all the requisite qualifications for the post of a Head Clerk which is established from Annexure P-5 issued from Jagjeevan College, Gaya which is a certificate of Pre Arts and is equivalent to a higher secondary certificate is concerned, the same cannot be accepted. Moreover, it is beyond the scope of judicial review in the present writ petition for deciding the equivalence of a particular course. Admittedly, the petitioner has not shown any proof of his having a higher secondary certificate with which he could have said that he fulfills the eligibility criteria so far as the post of Head Clerk is concerned. Given the said facts, this Court finds it difficult to interfere with Annexure P-2 at this juncture and the prayer for quashment of Annexure P-2 thus stands rejected.

10. As a consequence, the petition is allowed to the extent that the petitioner shall be entitled for all consequential benefits of the post of Head Clerk-cum-Accountant-cum-Deputy Revenue Inspector from 01.04.1986 to 23.11.2000 i.e. the date on which the services of the petitioner got absorbed as a Moharir. Thus, relief no.1 stands allowed and relief No.2 stands rejected.

11. Consequently, the writ petition is allowed in part. Let necessary consequential steps be initiated by the respondents and the grievance of the petitioner be redressed as expeditiously as possible considering the age of the petitioner preferably, within a period of 90 days from today.

Sd/-
(P. Sam Koshy)
JUDGE