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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.6779 of 2014**

Kullu Prasad Upadhyay S/o Shri Dhannu Prasad Upadhyay Aged About 44 Years Constable, Present Posted as Constable at Police Station Kunda, Distt. Kabirdham And Attached As Constable At S.P. Office Mungeli, Tehsil and Revenue District Mungeli, Chhattisgarh.

---- Petitioner**Versus**

1. State of Chhattisgarh Through The Secretary Home Department (Police) Mantralaya, Raipur PS Civil Lines Tah. And Distt. Civil And Rev. Distt. Raipur (CG).
2. The Director General Of Police Head Quarter Raipur, PS Civil Lines Raipur Tah. And Distt. Civil And Rev. Distt. Raipur (CG).
3. Superintendent Of Police Kabirdham Police Station Tah. And Distt. Civil And Rev. Kabirdham (CG).
4. The Director General Of Police Bhopal Madhya Pradesh, Mantralaya, Vallabh Bhawan Police Station, Tehsil, Civil and Revenue District Bhopal (MP).
5. Superintendent of Police Ujjain, M.P. Police Station, Tehsil, Civil and Revenue District Uttrain (MP).

---- Respondents

For Petitioner	:	Shri Vijay K Deshmukh, Advocate.
For State	:	Shri Shashank Thakur, G.A.
For respondent 4&5	:	Shri S.S. Rajput, Advocate.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****27/04/2018**

1. The grievance of the petitioner is that, the respondents though have vide order dated 23.07.2001, Annexure P/1, granted fresh appointment to the petitioner while ordering that his past service

would be counted for the purpose of quantification of pensionable service, but he has not been provided fixation of pay considering his past service and the salary that he was drawing at the time of submission of resignation on 17.03.1998.

2. The facts of the case is that the petitioner was working as Constable (General Duty). His appointment was of the year, 1990. He continues worked on the said post till 17.03.1998. Abruptly the petitioner submitted his resignation on account of some personal reasons which was accepted by the department on 17.03.1998 and for all the practical purposes the petitioner stood resigned from service from the said date. Subsequently, the petitioner moved a representation before the higher authorities in the department seeking for reconsideration of his resignation and prayed for permitting him to withdraw the resignation letter which has been accepted vide order dated 23.07.2001.
3. The authority concerned, after considering the claim of the petitioner has passed the order Annexure P/1 directing grant of fresh appointment to the petitioner, however, it was ordered that his past service would be counted only for the purpose of pensionary benefits. It is this order which is under challenge.
4. Learned counsel for the petitioner submits that the respondents have erred in counting the past service rendered by the petitioner only for the purpose of pensionary benefits. He was liable to be given proper fixation of pay taking into consideration his last pay structure that he was drawing on the date of acceptance of his resignation i.e. on

17.03.1998 and which would substantially increase the pension and retiral dues payable to the petitioner.

5. The State counsel opposing the petition submits that it is a case where the petitioner does not have any right in his favour for seeking said relief. According to respondents, it is a case where the petitioner had voluntarily resigned from service and which was also accepted by the department. That, his service stood terminated from the department from the said date by virtue of his resignation being accepted w.e.f.17.03.1998. The State counsel further submits that once when the order of acceptance of resignation has come into force, thereafter the petitioner does not have any relationship whatsoever with the department and the petitioner could not have prayed for the benefit that he has sought for. Further, the department has shown mercy to the petitioner by accepting his representation and has also taken a lenient view by granting him fresh appointment counting his past service only for pension purpose.
6. Considering the fact that the impugned order dated 23.07.2001 is as explicit as it could be that the petitioner is being granted fresh appointment and his past service would be counted for pension purpose, this court is of the opinion that nothing further could be granted to the petitioner under the Rules as it was only a mercy petition preferred by the petitioner which has been accepted by the respondents and which itself was a discretionary power exercised by the authority. This court under Article 226 of the Constitution of India would not sit upon the discretionary power exercised by the

respondents under service regulations. Even otherwise, the petitioner has not been able to show any indefeasible right created in his favour by which the benefit of fixation of pay on the basis of his last pay could have been granted to him.

7. Given the aforesaid facts and circumstances of the case, this court is of the opinion that the petitioner has not been able to make out a strong case for interference. Accordingly, the petition deserves to be and is hereby dismissed.

Sd/-
(P. Sam Koshy)
Judge

inder