

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.339 of 2015

*{Arising out of order dated 24-4-2015 passed by the learned Single Judge
in W.P.(S)No.2912/2014}*

Nilesh Kumar Pandey, S/o Shri Dinesh Kumar Pandey, aged about
34 years, R/o 27 Kholi, Bilaspur, Police Station Civil Line, District
Bilaspur (C.G.)

(Petitioner)
---- Appellant

Versus

1. State of Chhattisgarh, Through the Secretary, Labour Department,
Mantralaya, New Raipur, P.S. Rakhi, District Raipur (C.G.)
2. Chhattisgarh Public Service Commission, through the Secretary,
Chhattisgarh Public Service Commission, Shankar Nagar Road,
Raipur (C.G.)

(Respondents)
---- Respondents

For Appellant: Mr. Anup Majumdar and Mr. Shankar Nandi, Advocates.
For Respondent No.1 / State: -
Mrs. Fouzia Mirza, Additional Advocate General.
For Respondent No.2 / PSC: -
Mr. Rajendra Tripathi, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, CJ and
Hon'ble Shri Sanjay K. Agrawal, J.

Order On Board

Sanjay K. Agrawal, J

24/06/2019

1. Invoking the appellate jurisdiction of this Court under Section 2(1) of
the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006,
this writ appeal has been preferred by the appellant / writ petitioner
questioning the order passed by the learned Single Judge by which
his writ petition has been dismissed finding no merit in the said writ
petition.

(For the sake of convenience, parties would be referred as per their status and ranking shown in the writ petition before the writ court.)

2. The petitioner applied for the post of Presiding Officer, Labour Court, pursuant to the advertisement dated 27-3-2008 issued by respondent No.2. On 7-7-2009, select list was published and thereafter, on 9-7-2009, name of the petitioner was also recommended by the Chhattisgarh Public Service Commission (for short, 'the Chhattisgarh PSC') for his appointment as Presiding Officer, but on account of the ongoing litigation, appointment could not be made immediately after publication of select list and on the request made by the State Government, on 24-6-2010, the validity of select list was extended and made valid up to 5-1-2011. During the period of operation of the select list, the order of appointment was issued in favour of the petitioner on 28-8-2010 clearly stipulating that he has to join on the said post within a period of one month from the date of issuance of the order of appointment failing which his order of appointment would automatically come to an end. It was also stipulated that the order of appointment dated 28-8-2010 will be subject to the outcome of the two writ petitions namely W.P.(S) Nos.3100/2009 and 3101/2009 pending before this Court. The petitioner did not join on the said post presumably on account of pendency of the two writ petitions filed by some of the unsuccessful candidates who did not find place in the select list issued by the Chhattisgarh PSC. Ultimately, the petitioner made an application on 28-4-2014 to the State of Chhattisgarh for extending the period of joining on the post of Presiding Officer, Labour Court

and the State of Chhattisgarh by its order dated 12-6-2014 rejected the said representation / application finding that the validity of the original select list as well as the supplementary list has already come to an end, therefore, joining period cannot be extended in absence of any specific provisions in the rules applicable.

3. Feeling aggrieved and dissatisfied with the order passed by the State Government rejecting his representation on 12-6-2014 thereby declining to extend the period of joining, the petitioner filed W.P.(S)No.2912/2014 before this Court stating inter alia that he could not join on the said post on account of the two writ petitions pending and entertained and interim order having been passed making the appointment of the petitioner subject to the outcome of those writ petitions and also for the reason that he was admittedly working as Welfare Officer, Central Jail, Raipur and therefore in order to join on the said post of Presiding Officer, Labour Court during the pendency of the writ petitions, he was required to resign from the said post of Welfare Officer, Central Jail, Raipur, which he was holding, therefore, he is justified in not joining on the post of Presiding Officer, Labour Court and as such, the joining period be extended which was also recommended by the State Government to the PSC at one point of time. Therefore, the order dated 12-6-2014 be quashed and the petitioner be allowed to join on the post of Presiding Officer, Labour Court.
4. The State of Chhattisgarh filed its reply stating inter alia that the peremptory condition for joining on the said post was incorporated in the order of appointment looking to the important post of

Presiding Officer, Labour Court on which the petitioner was appointed making it further clear that his appointment is subject to the outcome of the two writ petitions pending before this Court, but, despite, the petitioner did not join on the post obviously for the reason that he was sitting comfortably at the fence working as Welfare Officer in Central Jail and allowed the period of joining to expire without any pain and as such, he is an uninterested candidate for the said post and unnecessarily filed writ petition for the said post and therefore the State Government is absolutely justified in rejecting the representation by order dated 12-6-2014.

5. On consideration of submissions of counsel for the parties, learned Single Judge finding no merit in the writ petition dismissed the same holding that the petitioner being an uninterested person and failed to join on the post of Presiding Officer, Labour Court, despite the peremptory period having been prescribed in the order of appointment and which he allowed to expire, therefore, the writ petition holds no water.
6. The Chhattisgarh PSC has also supported the stand of the State Government.
7. Mr. Anup Majumdar, learned counsel for the appellant / writ petitioner, would submit that the State Government is absolutely unjustified in rejecting the candidature of the petitioner for the post, as it is not expected from a person to join on the post on appointment where his appointment is subject to the final outcome of the two writ petitions having been entertained and his appointment is made subject to the outcome of those two writ

petitions, as he was quite apprehensive that if the writ petitions are finally granted, he would not be getting the post of Presiding Officer, Labour Court and he will be out of the job on the post which he is already holding as Welfare Officer, Central Jail, Raipur. He would further submit that from time to time, the Chief Secretary and the State Labour Minister have entertained the application for extension made by the petitioner and made recommendation to the competent authority which was not acted upon, therefore, the impugned order be set aside and the writ appeal be granted.

8. Mrs. Fouzia Mirza, learned Additional Advocate General appearing for the State/respondent No.1, would submit that the State Government is absolutely justified in not entertaining the petitioner's representation for extension of joining period on the post of Presiding Officer, Labour Court, as the post being sensitive post of the Labour Court, he ought to have joined with all promptness and sensitivity considering the function to be discharged on the post of Presiding Officer, Labour Court, which is very sensitive. Enough indulgence has been shown in favour of the petitioner and validity period of the select list has already come to an end, therefore, the learned Single Judge is absolutely justified in dismissing the writ petition, as such, no interference is warranted in exercise of appellate jurisdiction under sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006.
9. We have heard learned counsel for the parties, considered their rival submissions made herein-above and went through the record with utmost circumspection.

10. It is not in dispute that pursuant to the advertisement issued by the Chhattisgarh PSC on 27-3-2008, the petitioner and other candidates applied for one post of Presiding Officer, Labour Court and ultimately, on 7-7-2009, select list was published and the petitioner's name was recommended for the said post by the Chhattisgarh PSC for his appointment as Presiding Officer, but on account of pending litigation, on 24-6-2010, the State Government sought extension of the validity of select list which was favourably granted by the Chhattisgarh PSC and it was extended up to 5-1-2011 by order dated 9-7-2010 and before that period, the petitioner was given the order of appointment on 28-8-2010. In order to make it clear, it would be appropriate to notice the two conditions incorporated in the said order of appointment issued to the petitioner: -

5. अपना कार्यभार इस आदेश प्राप्ति के एक माह के अन्दर निश्चित रूप से ग्रहण करना होगा अन्यथा निर्धारित अवधि में कार्यभार ग्रहण न करने की दशा में नियुक्ति स्वमेव समाप्त मानी जायेगी।
6. उक्त नियुक्ति याचिका क्रमांक 3100/2009 एवं 3101/2009 में माननीय उच्च न्यायालय छत्तीसगढ़ द्वारा पारित अंतिम निर्णय के अधधीन होगी।

11. A careful perusal of the aforesaid conditions would clearly show that the petitioner was required to join within one month from the date of issuance of the order of appointment and that was subject to the outcome of the two writ petitions pending before this Court, which the petitioner did not join and allowed the time stipulated therein come to an end and the above-stated order lost its life on 27-9-2010 being a peremptory order.

12. The learned Single Judge after consideration of the aforesaid conditions has rightly come to a conclusion that the conditions incorporated in the order of appointment were quite specific and quite indicative that the petitioner has to join the post within one month from the date of appointment which he did not do and presumably took a calculated chance, as he was on that day already working on the post of Welfare Officer, Central Jail, Raipur and allowed the period of 30 days expire by not joining on the said post. It is undisputed position on record that the life of the select list had already expired way back on 5-1-2011. The finding of the learned Single Judge holding that the petitioner having acted irresponsibly in not joining the post like Presiding Officer, Labour Court within the stipulated time and having allowed the time indicated in the order of appointment and life of select list to be expired, is a finding of fact based on the material available on record. We do not see any illegality or perversity in the said finding recorded by the learned Single Judge while holding so for the reason that there is no statutory provision or rules providing grant of extension in joining on the appointed post that too after the order of appointment lost its efficacy, as the order of appointment was peremptory in nature.

13. In the matter of Haryana Vidyut Prasaran Nigam and another v. Mukesh Kumar¹ the Supreme Court has held that there is no legal obligation to extend the period of joining which was interfered with by the High Court and allowed the incumbent to join on the post.

The Supreme Court interfered with that order and observed as

¹ (2004) 13 SCC 596

under: -

“8. ... This only shows that the respondent was not really serious in accepting the offer of the appellant and joining the duty with the appellant. Herein, we may notice it is on record that the respondent was serving in an Engineering College as a Lecturer, therefore, obviously he was in no hurry to join the selected post with the appellant. This is further fortified by the fact that the appellant chose to file the writ petition only on 24-8-2000, ...”

14. The facts mentioned in the aforesaid authority is similar to the facts of the present case. In that case also, the respondent therein was not interested in accepting the offer of the Vidyut Nigam as he was working in an Engineering College as a Lecturer. The principle of law laid down in **Mukesh Kumar's** case (supra) squarely applies to the facts of the present case and we find no force in the submission of learned counsel for the petitioner. The petitioner / selectee cannot claim extension of time in joining on the post for which he was appointed, as a matter of right citing personal reasons based on apprehensions de hors the applicable rules.

15. In the matter of **State of Bihar v. Amrendra Kumar Mishra**², their Lordships of the Supreme Court opined that there was no legal right to be appointed. Their Lordships further opined that life of a panel remains valid for a year once it lapses, unless an appropriate order is issued by the State, no appointment can be made out of the said panel. It was also opined that the wait list must be acted upon having regard to the terms of the advertisement and in any event cannot remain operative beyond the prescribed period. The selected candidates do not have legal right in this behalf.

² (2006) 12 SCC 561

16. Mr. Majumdar, learned counsel for the appellant herein / writ petitioner, has next contended that the State Minister has recommended to the Chhattisgarh PSC and other authorities have also made recommendation for extending the period of joining of the petitioner which has been turned down. In our opinion, the finding of the learned Single Judge that no order can be passed based on sympathy especially when the petitioner has not acted responsibly to join on the post and has taken a calculated chance by sitting on the fence awaiting the outcome of the two writ petitions which were subsequently dismissed immediately after some time, is a finding of fact based on the material available on record and we do not find any illegality or perversity in the said finding.

17. As a fallout and consequence of the aforesaid discussion, we do not find any merit in the writ appeal, the writ appeal deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Sanjay K. Agrawal)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Appeal No.339 of 2015

Nilesh Kumar Pandey

Versus

State of Chhattisgarh and another

Head Note

A selectee cannot claim extension of joining period dehors the applicable service rules.

चयनित व्यक्ति लागू सेवा नियमों से बाहर जाकर कार्यभार ग्रहण की अवधि में विस्तार का दावा नहीं कर सकता।