

HIGH COURT OF CHHATTISGARH, BILASPURWPS No. 239 of 2008

1. Laxmichand Kashyap, S/o Nandkeshwar Prasad Kashyap, aged about 34 years, Police Constable, Badge No.225, R/o Jail Road, Baikunthpur, Dist. Korea, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh, through Secretary, Home Department, DKS Bhawan, Raipur, Chhattisgarh.
2. Director General of Police, Police Headquarters, Raipur, Chhattisgarh.
3. Inspector General of Police, Surguja Range, Dist. Ambikapur, Chhattisgarh.
4. Superintendent of Police, Dist. Korea, Chhattisgarh.

---- Respondents

For Petitioner

Ms Anju Ahuja, Advocate

For Respondent/State

Shri Rajendra Tripathi, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, JOrder On Board7/11/2019

1. Petitioner was removed from service vide order dated 18-5-2001 after the charges in the departmental enquiry were found proved against him. Thereafter, the petitioner, a Constable working in Baikunthpur, District Korea, preferred mercy appeal before the Director General of Police,

Chhattisgarh, which was eventually allowed vide order dated 24-1-2002 (Annexure – P/5) thereby reducing the quantum of punishment. Instead the order of removal from service the petitioner was visited with penalty of bringing him to the lowest pay scale and no other pay for the period during which he remained out of service on the principle of '*no work no pay*'. This order was not given effect to in favour of the petitioner despite his representation dated 31-1-2002 (Annexure – P/6). Petitioner claims to have served other representations, but they are not made part of the record of the writ petition. In any case, the petitioner was not allowed to join duties nor posting was given to him till 26-6-2003 when Reserved Line, Ambikapur, accepted his joining as is recorded in the *rojnamcha sanha* (Annexure – P/8).

2. Petitioner was also not granted annual increments after completion of one year service from 18-5-2001 i.e. the date of termination till the date he was promoted as Head Constable on 1-1-2008.
3. In the above factual background, Ms Anju Ahuja, learned counsel appearing for the petitioner, would contend that refusal to grant annual increments from the date of completion of one year service from 18-5-2001 till the petitioner was promoted to the post of Head Constable and

non-grant of salary for the period from 24-1-2002 to 26-6-2003 is illegal being without any legal basis.

4. Shri Rajendra Tripathi, learned Panel Lawyer appearing for the State, *per contra*, would submit that the petitioner should have joined the duties at Baikunthpur immediately after reinstatement and fault lies on him if he did not attend the duties.
5. What is argued by the learned counsel appearing for the State is not reflected in the return filed by the State. There is no mention in the return that the petitioner never approached the officers at Baikunthpur for attending the duties or that the officers never disallowed him to attend duties.
6. Similarly, there is no averment as to why annual increments were not allowed to the petitioner after completion of one year service w.e.f. 18-5-2001 till he was promoted as Head Constable. The order passed in petitioner's mercy appeal nowhere says that after bringing him to the lowest pay scale admissible to a Constable he will not be allowed annual increments on the post. In absence of any such mention in the order, stoppage of annual increment cannot be read in the order of punishment and such stoppage of annual increment is found illegal. Similarly not allowing the petitioner to perform

duties by ordering his posting after his reinstatement has no justifiable basis or reasoning. There being no mention in the return in this regard, it is treated that the respondents have no explanation for not allowing the petitioner to resume duties after his reinstatement.

7. For the reasons stated hereinabove, the writ petition is allowed in part with the following directions/observation :

a) Petitioner is held entitled for salary for the period from 24-1-2002 to 26-6-2003.

b) Petitioner is also held entitled for annual increments for the post of Constable on completion of one year from the date of termination i.e. 18-5-2001.

8. At this stage, Ms Anju Ahuja, learned counsel, would submit that the petitioner has already been promoted to the post of Head Constable in January, 2008 and thereafter, to the post of Assistant Sub Inspector, however, on account of grant of annual increment, as stated *supra*, on the post of Constable there may be a change in the corresponding pay scale on the promoted post of Head Constable and Assistant Sub Inspector.

9. On this count, it is observed that if the petitioner is held entitled to any different pay scale after grant of annual increment on the post of Constable, the Department shall work out the consequences to grant benefit of admissible pay scale to the petitioner on the promoted posts.
10. There shall be no order as to cost(s).

Sd/-

Judge
Prashant Kumar Mishra

Gowri