

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 1036 of 2012****Reserved on : 04/02/2020****Delivered on : 14/02/2020**

Yamuna Prasad S/o. Late Bhagwan Prasad, Aged about 47 years,
Presently working as Constable at Police Training School Mana,
Raipur, District Raipur, Chhattisgarh

---- Petitioner**Versus**

1. State of Chhattisgarh, through: the Secretary, Department of Home, D.K.S. Bhawan, Mantralaya, Raipur, District Raipur, Chhattisgarh.
2. Director General of Police, Raipur, Chhattisgarh
3. The Inspector General of Police, Training division, Raipur, Chhattisgarh
4. The Superintendent of Police, Police Training School, Mana Raipur, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Yamuna Prasad, Petitioner in person
For State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy**C.A.V. Order**

1. The relief sought for by the petitioner in the present writ petition is firstly to direct the respondents to give the petitioner all consequential benefits like; seniority, pay protection, arrears, etc. The further relief sought for by the petitioner is also for a direction to the respondents to grant the benefit of promotion to the petitioner.
2. The facts relevant for adjudication of the present writ petition is that the petitioner was initially appointed as a Constable in the erstwhile State of Madhya Pradesh on 15.09.1983. Working as a Constable, the petitioner was served with a charge-sheet on

09.03.1988. The petitioner denied all the charges. The Department, thereafter placed the petitioner under suspension and appointed an Inquiry Officer to conduct an inquiry and to submit his report. After the inquiry was complete and on the inquiry report submitted, the Disciplinary Authority imposed a punishment of reducing the pay-scale and placing the petitioner on the basic pay-scale of the post of Constable. The petitioner thereafter preferred a departmental appeal before the Deputy Inspector General of Police. The Appellate Authority did not agree with the punishment imposed by the Disciplinary Authority and the Appellate Authority enhancing the punishment, dismissed the petitioner from service on 10.07.1998. The petitioner further preferred an appeal before the Inspector General of Police which was dismissed on 22.02.1990.

3. The petitioner thereafter questioned the order of dismissal and rejection of the appeal before the Madhya Pradesh State Administrative Tribunal, where the case was registered as O.A. No. 2003/1990. Later on when the said Tribunal stood abolished, the writ petition stood transferred to the High Court of Madhya Pradesh at Jabalpur, where it got registered as W.P. No. 6277/2003. The High Court of M.P. Finally vide its judgment dated 10.11.2005 allowed the writ petition and while allowing the writ petition the High Court held as under:-

“The impugned orders Annexure-8 dated 30.06.1988 passed by the respondent No.5, Annexure-12 dated 10.07.1989 passed by the respondent No.3 and Annexure-14 dated 22.02.1990 passed by the respondent No.2 are hereby quashed. The respondents are hereby directed to reinstate the petitioner forthwith. However, looking to the facts and circumstances, the petitioner shall not be entitled for any back wages.”

4. Subsequent to the order passed by the High Court on 10.11.2005, the petitioner stood reinstated in service on 17.03.2006 and he was reinstated on the post of Constable. Thereafter, the present writ petition has since been filed in the year 2012 seeking for grant of consequential benefits and seniority, increments, arrears, etc. and also for grant of promotion to the higher post.
5. What has to be taken note of is the fact that the judgment of the Madhya Pradesh High Court dated 10.11.2005 passed in WP No. 6277/2003 has not been challenged any further either by the petitioner or by the Department. Thus, in due course of time the same has attained finality.
6. What has also to be realized is the fact that from the plain reading of the judgment of the Madhya Pradesh High Court, it clearly reflects that the High Court had not granted any consequential benefits to the petitioner including back-wages. Non-granting of consequential relief, so also refusal to grant of back-wages, etc. is one which the petitioner should have challenged by filing an appeal against the said judgment. The non-granting of the aforesaid consequential relief and back-wages, etc. by the High Court would also mean that the High Court has deliberately and consciously refused to grant the same. Once when the Hon'ble High Court has deliberately and consciously refused to grant this relief to the petitioner and at the same time, the petitioner accepting the said verdict without challenging it any further forces this Court to reach to the conclusion that the petitioner has acquiesced of his claim for consequential relief and back-wages.

7. What has also to be realized is the fact that the petitioner having not challenged the said judgment before a higher forum, the consequential relief and the claim for back-wages in itself cannot be claimed by filing another writ petition.
8. As regards his claim for promotion is concerned, from the reply of the Department it is evidently clear that the Department had asked the petitioner to appear in the departmental promotion exam for the post of constable (A-class). The results of the said exam was declared on 29.05.2012 and it was found that the petitioner's name did not found place among the candidates, who had successfully cleared the exam thereby. It means that the petitioner was unsuccessful for grant of further promotion.
9. Under the service Rules, if the requirement for grant of promotion is passing of a departmental examination, then it is not within the domain of the Court to pass orders for bypassing the requirement of law. The record shows that the petitioner was called for promotion and that he could not succeed in the departmental promotion examination, therefore, this Court finds it difficult at this juncture to grant the said relief that the petitioner has sought for.
10. In the case of Hitendra Borkar v. State of Chhattisgarh & Another, reported in AIR 2015 CHHATTISGARH 165, this Court has relied upon the decision of Hon'ble Supreme Court, on the issue of res judicata, rendered in the case of State of Karnataka & Another v. All India Manufacturers Organisation & Others [2006 (4) SCC 683], while rejecting the writ petition, wherein the Supreme Court has held as under:

“Res judicata is a doctrine based on the larger public interest and is founded on two grounds: one being the maxim nemo debet bis vexari pro una et eadem causa (No one ought to be twice vexed for one and the same cause) and second public policy that there ought to be an end to the same litigation. Section 11, CPC is not the foundation of the principle of res judicata, but merely statutory recognition thereof and hence, the section is not to be considered exhaustive of the general principle of law. The main purpose of the doctrine is that once a matter has been determined in a former proceeding, it should not be open to parties to reagitate the matter again and again. Section 11, CPC recognises this principle and forbids a court from trying any suit or issue, which is res judicata, recognising both “cause of action estoppel” and “issue estoppel.”

11. For the aforesaid reasons, this Court does not find any merit in the writ petition and the same deserves to be and is accordingly dismissed.

**Sd/-
(P. Sam Koshy)
Judge**

Ved