

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 380 of 2011

K.K. Shrivastava, S/o late Shri Baijnath Prasad Shrivastava, aged about 64 years, retired Commercial Tax Officer, resident of MIG-19, Nehru Nagar, Bilaspur, District Bilaspur (CG).

---Petitioner(s)

Versus

State of Chhattisgarh Through the Secretary, Department of Commercial Tax, Mantralaya, Dau Kalyan Singh Bhawan, Raipur, Distt. Raipur, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Ashish Shrivastava and Shri Vivek Sharma, Advocates.
For State	:	Ms. Sunita Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

06.03.2020

1. The present writ petition has been filed seeking for the following relief:

“10.2. That, this Hon'ble court may kindly be pleased to issue an appropriate writ commanding the respondent department to grant benefit of scale promotion to the petitioner on the post of ACTO in the pay scale of Rs.6500-200-10500 with effect from 19.04.1999 and other consequential benefits.”

2. Perusal of record would show that the petitioner on an earlier occasion had also filed another writ petition WP No.127 of 2003. The said writ petition was dismissed as withdrawn on 09.01.2006 by the petitioner on his getting promotion in the year, 2003. The writ petition was withdrawn stating that since the petitioner has been promoted on the post of Commercial Tax Officer, he wants to withdraw the writ petition with liberty to challenge the pay scale, if necessary.

3. Perusal of record would show that subsequently the petitioner did not raise any claim before the respondents at any point of time. The petitioner, in due course of time, also stood retired and after about 4-5 years from the

date of retirement the present writ petition has been filed seeking for the same relief that was sought for in the earlier writ petition i.e. WP No.127 of 2003. The relief clause 7.2 of WP No.127 of 2003 is being reproduced herein for ready reference:

“7.2. This Hon'ble court may kindly be pleased to issue appropriate writ of mandamus commanding the respondents to consider the petitioner's case for grant of appropriate pay scale of 2000-3500 with effect from 01.01.1986 pay scale of Rs.6500-10500 with effect from 01.01.1996 and the pay scale of Rs.7500-12000 with effect from 19.04.1999 with all consequential benefits and arrears.”

4. Given the fact that the earlier writ petition was for the same relief for which the present writ petition has been filed and the earlier writ petition was withdrawn by the petitioner on his getting proper promotion from the department, this court is of the opinion that the subsequent writ petition for the same relief as such would not be maintainable and would be hit by the principles of res-judicata. Though there was a liberty granted by the court while withdrawing the earlier writ petition, on withdrawal of that writ petition the petitioner should have promptly approached the court for redressal of his grievance, if any. It appears that the petitioner continued to discharge his duties on the promoted post without any complaint/objection till his retirement and even for about 4-5 years after his retirement and it is only thereafter that the petitioner for the first time has filed this present writ petition seeking the same relief.
5. Accordingly, this court is of the opinion that the writ petition as such would not be sustainable and the same stands rejected.

Sd/-
(P. Sam Koshy)
Judge