

**HIGH COURT OF CHHATTISGARH, BILASPUR**

Judgment reserved on 12.02.2021

Judgment pronounced on **22.02.2021**

**WA No. 30 of 2021**

- Durga Prasad Sahu, S/o Late Shri Sita Ram Sahu, Occupation Service (Posted as LDC/Officer Assistant Central Library, Guru Ghasidas University) (Central University), Post And Police Station Koni, Tahsil Bilaspur, Revenue And Civil District Bilaspur Chhattisgarh, R/o Village And Post Singhari, Police Station And Tahsil Bilaspur, Revenue And Civil District Bilaspur Chhattisgarh

**---- Appellant**

**Versus**

1. Guru Ghasi Das University (Central University) Through Vice Chancellor, Post And Police Station Koni, Tahsil Bilaspur , Revenue And Civil District Bilaspur Chhattisgarh
2. Registrar, Guru Ghasi Das University (Central University), Post And Police Station Koni, Tahsil Bilaspur, Revenue And Civil District Bilaspur Chhattisgarh

**----Respondents**

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For Appellants : Shri Faiz Kazi, Advocate

For Respondents : Shri Shashank Thakur, Advocate  
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**Hon'ble Shri PR Ramachandra Menon, Chief Justice &**  
**Hon'ble Shri Justice Parth Prateem Sahu**  
**CAV Judgment**

**Per Parth Prateem Sahu, J.**

1. Challenge in this appeal is to the order dated 05.01.2021 passed by learned Single Judge, whereby the Writ Petition filed by the appellant has been dismissed considering that the 2<sup>nd</sup> Writ Petition for the same cause of action would not be maintainable.

2. Relevant facts for disposal of this appeal are that appellant was initially appointed on the post of Peon on 05.03.1984 vide Annexure P1. At the time of his appointment, he was not possessed with qualification of Matriculation, which

he obtained in the year 1995. After informing the respondents with regard to his passing Matriculation examination, he was considered for promotion on the post of LDC (Lower Division Clerk) and was promoted on the post of LDC on 12.01.1996 vide Annexure P2 along with other two persons, namely, Shri Sunder Lal Jaiswal and Shri Rama Chandra Raj (since deceased).

3. Appellant filed a Writ Petition-2379 of 2004 (1<sup>st</sup> Writ Petition) which came to be dismissed by learned Single Judge on 01.07.2014 vide Annexure P4. While dismissing the Writ Petition, learned Single Judge has made an observation that if the appellant prefers fresh Writ Petition on the ground that any employee who was born in cadre of LDC with him have been subsequently promoted ignoring his candidature, the order of dismissal would not come in the way of the petitioner/appellant.

4. Appellant thereafter filed a Writ Petition on 21.07.2014 bearing No.WPS-3575 of 2014 (2<sup>nd</sup> Writ Petition) within a period of 20 days of dismissal of the 1<sup>st</sup> Writ Petition with following prayers/reliefs:

“10.1 That, this Hon'ble Court may kindly be pleased to issue a suitable writ(s), order(s), direction(s) by directing the respondent university for granting promotion unto your petitioner for the post of UDC and consequential promotion thereafter, in the light of order dated 12.01.1996 (Annexure P-2) and all the consequential benefits of promotion from the date of 18.05.1999 (filed as Annexure P-3).

10.2 That, this Hon'ble Court may kindly be pleased to issue a suitable writ(s), order(s), direction(s) by directing the respondent authorities to consider the case of your petitioner for promotion and seniority over and above to Ram Chandra Raj, as per the seniority arrived on 12.01.1996 (Annexure P-2).

10.3 That, this Hon'ble court may kindly be pleased to call the entire records from the respondents authorities for its kind perusal.

10.4 Any other relief, which may be suitable in the facts and circumstances of the case, may also be granted.”

5. The said Writ Petition came up for further hearing on 05.01.2021 which came to be dismissed on the ground that the 2<sup>nd</sup> Writ Petition for the same cause of action would not be maintainable.

6. Shri Faiz Kazi, learned counsel for the appellant submits that learned Single Judge erred in arriving at a conclusion that the 2<sup>nd</sup> Writ Petition filed by the appellant to be on the same cause of action. The word 'subsequently' has been wrongly interpreted, whereas, learned Single Judge while dismissing the earlier Writ Petition- 2379 of 2004 considering the facts and circumstances of the case and claim of the appellant, has granted liberty to challenge the promotion of employee, who has been promoted and born in the cadre of LDC with the appellant and subsequently promoted ignoring the candidature of appellant. Appellant in his pleadings has very specifically mentioned the fact which were not in earlier Writ Petition that one Rama Chandra Raj, who was appointed on the post of 'Peon' on latter date but was promoted on the post of LDC vide common order of promotion dated 12.01.1996, said Rama Chandra Raj has been considered for promotion on the post of UDC (Upper Division Clerk) on 18.05.1999 and subsequently he has been promoted from UDC to the post of Assistant Superintendent on 29.01.2005. Appellant in the relevant clause has very specifically sought the relief that appellant be promoted from the date of promotion of Rama Chandra Raj ie dated 18.05.1999, consequently, seniority over and above Rama Chandra Raj. Though claim of the appellant is also of

promotion in the 2<sup>nd</sup> Writ Petition, but the ground of filing the same is entirely different than what was taken by the appellant in the 1<sup>st</sup> Writ Petition ie seeking relief of promotion from the date of employee promoted on LDC in 1988. He further submits that the 2<sup>nd</sup> Writ Petition was filed on entirely different grounds challenging the promotion of an employee dated 18.05.1999 who born in the cadre of LDC along with the appellant herein, but junior to the appellant. Word 'subsequently' appearing in order dated 01.07.2014 is to be understood in the context of the case grounds taken and proceeding challenged.

7. Learned counsel for the appellant submits that the service of appellant is governed with Statute No.31 ie “conditions of service for University employees”. He submits that as per Clause-4 of the Statute No.31, all the promotions shall be made on the basis of seniority-cum-merit, hence, the impugned order passed by learned Single Judge is to be interdicted.

8. Shri Shashank Thakur, learned counsel for the respondents/University submits that the appellant has filed the 1<sup>st</sup> Writ Petition in the year 2004. On the date of filing petition, Rama Chandra Raj was already promoted on the Post of UDC on 18.05.1999. On the date of filing of the 1<sup>st</sup> Writ Petition also, appellant was having cause of action to challenge the promotion of Rama Chandra Raj, but appellant consciously, avoided to challenge promotion of Rama Chandra Raj, who has been promoted on the post of LDC along with appellant on 12.01.1996. Once grievance of non-promotion is raised in a Writ Petition, excluding the promotion of any employee for any reason, then it will be treated as petitioner has waived off his right to challenge the promotion of that employee. He further pointed out that the appellant belongs to OBC category, whereas, Rama Chandra Raj was of ST category. He was granted promotion on 18.05.1999 on the post

reserved for ST category employee. Appellant being an employee of OBC category, is not having any ground to challenge the promotion of an employee, who belongs to ST category and also promoted on the post reserved for ST category employee. He further pointed out that the Writ Petition even otherwise suffer delay and latches as the appellant is seeking relief based on the order of promotion which was passed on 18.05.1999 in Writ Petition filed on 22.07.2014, after about 15 years from the date of passing of order of promotion on the ground that the appellant has been superseded. Learned Single Judge has taken into consideration that the order of promotion which was available to him for challenge in the 1<sup>st</sup> Writ Petition filed in the year 2004 has rightly taken into consideration the word 'subsequently' because, appellant has not placed on record and challenged any order of promotion after filing of Writ Petition No.2379 of 2004.

9. We have heard learned counsel for the respective parties and also perused record of Writ Petition as well as Writ Appeal.

10. So far as the 1<sup>st</sup> ground raised by learned counsel for the appellant with regard to the cause of action and reason assigned by learned Single Judge for dismissal of Writ Petition to be *res judicata*, perusal of record would show that earlier order dated 01.07.2014 passed in the 1<sup>st</sup> Writ Petition appellant has challenged the order of promotion of employees like 'KL Maurya' who was appointed with him on the post of Peon and were promoted on the post of LDC prior to the appellant on 05.09.1988 and thereafter, they have been promoted to post of UDC on 28.10.1996.

11. Appellant has claimed his right to be considered for promotion along with the employees appointed with him on the post of Peon and promoted in the post of UDC on 28.10.1996. Perusal of the Order Annexure P4 passed in the 1<sup>st</sup> Writ Petition would show that the whole grievance raised therein to be promotion order dated 28.10.1996 where several LDCs were promoted on the post of UDC Gr-I. The order dated 01.07.2014 is to be read in the context in which it is passed, which can be gathered from reading entire order. The learned Single Judge in the said order considered the claim of the appellant with the persons who were promoted on the post of LDC much prior to the promotion of appellant as LDC. The learned Judge analysing the entire issue, has observed as under.

**“Dismissal of Writ Petition would not come in the way of petitioner if he prefers fresh Writ Petition on the ground that any person who were born in the cadre of LDC with him have been subsequently promoted ignoring his candidature”.**

12. The court while dismissing the Writ Petition considering entire facts of the case had granted liberty then the word 'subsequently' is to be understood as subsequent to the order of promotion on LDC dated 12.01.1996.

13. In view of above, we are of the considered view that the 2<sup>nd</sup> Writ Petition filed on 21.07.2014 cannot be dismissed treating it to have been filed on same cause of action.

14. For the foregoing reason, the order of dismissal of Writ Petition treating it to be 2<sup>nd</sup> Writ Petition for the same cause of action is not sustainable and is hereby set aside.

15. Taking into consideration the facts of the case, we find it appropriate to deal with merits of the case.

16. The appellant in Para-4 of the Writ Petition which is of explaining the delay if any in filing of Writ Petition has pleaded that 'there is no delay'. There is no pleading that the appellant is not aware of promotion of Rama Chandra Raj, who was promoted on 18.05.1999. The appellant for the reasons best known, has not challenged the order of promotion of Rama Chandra Raj dated 18.05.1999, where only two persons were promoted and both belong to Schedule Tribe.

17. The appellant has challenged the order of promotion dated 18.05.1999 by filing the 2<sup>nd</sup> Writ Petition on 22.07.2014 ie virtually after a period of 15 years from the date of passing of order of promotion in favour of Rama Chandra Raj. Though specific limitation has not been prescribed for filing of Writ Petition challenging orders affecting service of a government employee, but then, the aggrieved employee with any of the orders passed by the employer should approach the Court/Tribunal within reasonable time.

18. Term 'Reasonable time' for filing the petition challenging the order of promotion has been considered by Hon'ble Supreme Court in case of **PS Sadasivaswamy Vs State of Tamilnadu**, (1975) 1 SCC 152 and held thus:

“2. xxxxxxxxxxxx A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. xxxxx”

19. In the aforementioned case, employee therein has approached the Court challenging promotion of his junior after delay of 14 years.

20. In case of **New Delhi Municipal Council vs Pan Singh & Ors**, (2007) 9 SCC 278 Hon'ble Supreme Court has again considered the limitation for filing of Writ Petition and opined that there is no period of limitation provided for filing Writ Petition under Article 226 of the Constitution of India, yet ordinarily a Writ Petition should be filed within reasonable time.

21. If in light of aforementioned rulings of Hon'ble Supreme Court, facts of present case are considered, it would reveal that order of promotion dated 18.05.1999 was put to challenge by the appellant only in the 2<sup>nd</sup> Writ Petition on 22.07.2014, ie almost after 15 years of passing of promotion order. Appellant has approached this Court with an unexplained inordinate delay.

22. Respondents in reply to the Writ Petition in Para-12 have specifically pleaded that the Rama Chandra Raj was promoted on the post reserved for Schedule Tribe, whereas, petitioner comes under the OBC Category. This pleading is not controverted by the appellant by filing a rejoinder. This being the position, claim of the appellant that Rama Chandra Raj was promoted superseding the appellant is not sustainable. Hence, he cannot be granted the reliefs sought for in the Writ Petition.

23. For the foregoing reasons, we do not find any merit in the appeal for more than one reason.

24. The promotion of said Rama Chandra Raj is on the reserved quota of ST category employee. Writ Petition filed by the appellant challenging order dated 18.05.1999 is with delay of almost 15 years hence, suffers delay and latches. It is

also brought to the notice of this Court that appellant retired from service after attaining age of superannuation.

25. For the aforementioned reasons, we do not find any merit in this appeal, which is liable to be and it is hereby dismissed.

Sd/-  
**(PR Ramachandra Menon)**  
**Chief Justice**

Sd/-  
**(Parth Prateem Sahu)**  
**Judge**

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