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HIGH COURT OF CHHATTISGARH AT BILASPUR**WRIT PETITION (SERVICE) NO. 3194 OF 2021**

1. Umesh Kumar Kashyap, S/o Shri Kaushal Singh Kashyap, aged about 43 years, posted as Additional Superintendent of Police, Bilaspur, District Bilaspur (CG)
2. Tarkeshwar Patel, S/o Shri Radhav Charan Patel, aged about 37 years, posted as Additional Superintendent of Police (Rural), Raipur, District Raipur (CG)
3. Pankaj Chandra, S/o Late Dr. Girish Chandra, aged about 48 years, posted as Superintendent of Police (Economics Offences Wing & Anti Corruption Bureau, Raipur, District Raipur (CG)
4. Anshuman Sisodiya, S/o Shri Raghunath Singh Sisodiya, aged about 39 years, posted as Deputy Transport Commissioner, Raipur, District Raipur (CG)
5. Deepmala Kashyap, W/o Shri Umesh Kumar Kashyap, aged about 40 years, posted as Additional Superintendent of Police (IG Office), Bilaspur, District Bilaspur (CG)

... Petitioners**versus**

1. State of Chhattisgarh, through the Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur (CG)
2. Union of India, through the Secretary, Department of Home Affairs, North Block, New Delhi.
3. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi- 110069.
4. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar, Raipur, District Raipur (CG)
5. Director General of Police, Chhattisgarh, Police Head Quarter, Raipur, District Raipur (CG)
6. Yashpal Singh, presently posted as Additional Superintendent of Police at Police Head Quarter, Naya Raipur, Atal Nagar, Raipur, District Raipur (CG)

... Respondents**WRIT PETITION (SERVICE) NO. 3195 OF 2021**

1. J.R. Thakur, S/o Late Shri Paltu Ram Thakur, aged about 56 years, presently posted as Superintendent of Police (Rail), Raipur, District Raipur (CG)
2. Maheshwar Nag, S/o Shri A.L. Nag, aged about 41 years, presently posted as Additional Superintendent of Police (Anti Corruption Bureau), Office of the Superintendent of Police (Anti Corruption Bureau), Raipur, District Raipur (CG)
3. Vikrant Rahi, S/o G.S. Rahi, aged about 36 years, posted as Deputy Superintendent of Police (Economics Offences Wing), Raipur, District Raipur (CG)

4. Lakhan Patle, S/o Shri T.L. Patle, aged about 43 years, posted as Additional Superintendent of Police (City), Raipur, District Raipur (CG)
5. Rohit Kumar Jha, W/o Shri R.C. Jha, aged about 41 years, posted as Additional Superintendent of Police (Rural), Bilaspur, District Bilaspur (CG)

... Petitioners

versus

1. State of Chhattisgarh, through the Secretary, Department of Home, Mantralaya, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District Raipur (CG)
2. Union of India, through the Secretary, Department of Home Affairs, North Block, New Delhi.
3. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi- 110069.
4. Chhattisgarh Public Service Commission, through its Secretary, Shankar Nagar, Raipur, District Raipur (CG)
5. Director General of Police, Chhattisgarh, Police Head Quarter, Raipur, District Raipur (CG)
6. Yashpal Singh, presently posted as Additional Superintendent of Police at Police Head Quarter, Naya Raipur, Atal Nagar, Raipur, District Raipur (CG)

... Respondents

For Petitioners :

Mr. Manoj Sharma, Mr. Manoj Paranjpe and Mr. Dhiraj Kumar Wankhede, Advocates.

For Respondent/State :

Mr. Amrito Das, Addl. Advocate General.

For Respondent/UOI :

Mr. Ramakant Mishra, A.S.G.

For Respondent/CGPSC :

Mr. Anand Mohan Tiwari, Advocate.

For Respondent No.6 :

Mr. Abhishek Sinha, Sr. Advocate, assisted by Mr. D.L. Dewangan, Adv.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/06/2021

1. Since the present two Writ Petitions are common in nature, the relief sought for and the private Respondent all being common, the Writ Petitions are being decided by this common Order.
2. For proper understanding of the issue involved in the case, it would be relevant at this juncture to reproduce the relief sought for in the present two

Writ Petitions which are common and therefore to avoid any repetition the relief clause of only one of the Writ Petitions is being reproduced below:-

“10.1. That, this Hon’ble Court may further kindly be pleased to direct the respondents not to consider the name of respondent No.6 in the upcoming departmental promotion process for filling up the post of IPS cadre awarding the IPS to the respondent No.6 on top of the petitioners which is scheduled on 28.6.2021.

10.2. That, this Hon’ble Court may further kindly be pleased to set aside the order of Departmental Promotion Committee (DPC) and subsequent proceedings relating to the DPC so far as it relates to the respondent No.6.

10.3. That, this Hon’ble Court may also kindly be pleased to direct the respondents to comply with the judicial order dated 04.09.2018 passed in O.A. No.830/2018 (Yashpal Singh – Versus – Ministry of Home Affairs) pending before the learned CAT, Principal Bench, Jabalpur.

10.4. That, this Hon’ble Court may also kindly be pleased to direct the State Government to provide proper and correct information to the Government of India regarding vacancy of promotion quota of Chhattisgarh cadre of IPS.

10.5. XXX XXX XXX
10.6. XXX XXX XXX”

3. Brief facts of the case relevant for the adjudication of the present set of Writ Petitions are that the Respondent-State is holding a DPC for the officers in the Police Department in the State of Chhattisgarh considering for promotion on the cadre of IPS. The DPC is proposed to be held on 28.6.2021. In the zone of consideration for the said DPC is the name of the private Respondent i.e. Respondent No.6 Yashpal Singh. It is the consideration of Respondent No.6 for promotion to the IPS Cadre which the Petitioners herein are aggrieved most and which has led to the filing of the present Writ Petitions.
4. All the Petitioners herein and also the Respondent No.6 are the officers who are presently working on the post of Superintendent of Police or Additional Superintendent of Police and all are senior level officers in the said cadre of the State. The whole dispute revolves around the absorption of Respondent No.6 in the Chhattisgarh State Police cadre granting

seniority to him from the initial date of appointment i.e. from 1997 onwards, which however is not under challenge in either of the two Writ Petitions.

5. Respondent No.6 was originally the officer in the Border Security Force which is otherwise a Central Armed Police Force of India and is directly under the control of the Central Government. The entire appointments and recruitments are made exclusively under the rules framed by the Central Government. The said officer Respondent No.6 was sent on deputation to Chhattisgarh to combat naxalite problems in the State. He was sent on deputation on 7.10.2009. He continued to remain on deputation till 2014. The maximum period for which a Central Government servant could be sent on deputation is 7 years. Before the maximum deputation period could get completed, the State of Chhattisgarh vide Order dated 10.11.2014 sent an offer to Respondent No.6 for being considered for absorption which the Respondent No.6 accepted and finally the Respondent-State vide Order dated 19.9.2016 absorbed the Respondent No.6 in the service of the State Government placing his name in the cadre of Deputy Superintendent of Police, 1997 batch, granting him seniority from 1997 onwards i.e. the period when he was initially appointed in the Border Security Force.
6. The aforesaid order of absorption initially was not challenged by any of the officers. However, in the year 2018, a couple of Writ Petitions were filed before this Court challenging the absorption and also questioning the action on the part of Respondent-State in considering the Respondent No.6 for promotion to the IPS cadre. Though the said Writ Petitions have been entertained by the High Court by admitting the same, but no interim relief as such is in operation, rather the application for interim relief stands rejected by this Court in those batch of Writ Petitions. Those Writ Petitions are WPS No.1736/2018, WPS No.3034/2018 & WPS No.3398/2018, and

all these Writ Petition are till date pending final adjudication before this Court.

7. Earlier in the month of June, 2021, another Writ Petition was filed being WPS No.2352/2021 whereby the Petitioners therein had challenged the same move of the State Government in holding the DPC for promotion to the IPS cadre. However, when the said matter was listed for admission on 15.6.2021, the Petitioners therein informed the Court that the State Government has deferred the date for holding the DPC. Therefore, the said Writ Petition was then disposed of reserving the right of the Petitioners therein to approach the Court in case if need so arises at a later date. Subsequently, the present two Writ Petitions have been filed.
8. At the outset, this Court is of the opinion that the present Writ Petitions before the High Court would not be maintainable for the reason that the issue involved is one which otherwise falls within the jurisdiction of the Central Administrative Tribunal under the Administrative Tribunals Act, 1985. The holding of DPC for promotion to the IPS cadre and the promotions are to be made under the "Indian Police Service (Appointments by Promotion) Regulations, 1955". The said Regulations have been framed invoking the "Indian Police Service (Cadre) Rules, 1954.
9. Under the Administrative Tribunals Act, 1985, Section 14 deals with the jurisdiction governing the authority of the Central Administrative Tribunal which specifically envisages the fact that all matters relating to recruitment, concerning recruitment to any All India Service will be heard by the Central Administrative Tribunal. Likewise, Section 28 of the said Act also has a specific provision envisaging the exclusion of jurisdiction of the other Courts in entertaining the matter relating to All India Service. The promotion to the IPS cadre undoubtedly is one which would fall under the All India

Service. In view of the same, this Court is of the firm view that the present Writ Petitions before the High Court would not be maintainable and the same deserve to be dismissed.

10. Learned Counsels appearing for the Petitioners tried to canvass the argument that this Court under Article 226 of the Constitution of India is not excluded of its jurisdiction to hear the dispute of promotion pertaining to the officers in the State cadre and they relied upon a judgment of the Delhi High Court reported in 2020 SCC Online 1376 (Delhi) "Akul Bhargava & Others Vs. Union Public Service Commission & Others" wherein under similar circumstances the Delhi High Court had entertained a Writ Petition.
11. True it is that the Delhi High Court under the precarious condition prevailing because of the impact of Covid-19 has entertained the Writ Petition under similar circumstances. However, this Court during the course of hearing finds that among the Petitioners in the two Writ Petitions, one of the Petitioners, i.e. Petitioner No.4 in WPS No.3195/2021, has already approached the Central Administrative Tribunal aggrieved of the same cause of action by filing O.A. No.313/2021. Similarly, it is also revealed that from among the Petitioners who had also earlier in the month filed a Writ Petition i.e. WPS No.2352/2021, two of the Petitioners therein have also approached the Central Administrative Tribunal for the same cause of action vide O.A. No.395/2021 filed by one Surjan Ram Bhagat and Prafull Thakur.
12. During the course of hearing also it is revealed that as regards the O.A. No.395/2021, the relief sought for was the same that has been sought for in the present Writ Petitions. The said matter came up for hearing before the Central Administrative Tribunal today itself in the forenoon and after

hearing the learned Counsel for the parties, the Division Bench of the Tribunal has already rejected the interim application.

13. In view of the fact that since the matter is already seized by the Central Administrative Tribunal and the interim application also stands rejected, more particularly since one of the OAs has been filed by one of the Petitioners from the present set of Writ Petitions, this Court is of the firm view that the present Writ Petitions in its present form would not be maintainable and the Petitioners also if they intend to get a relief would be at liberty to avail appropriate remedies from the concerned Central Administrative Tribunal which has already seized of the same matter.
14. So far as the judgment of the Delhi High Court relied upon by the Petitioners is concerned, the same was passed under the then prevailing circumstances which since have improved substantially and the Central Administrative Tribunal also has become functional now.
15. Thus, for all the aforesaid reasons, both the present two Writ Petitions deserve to be and are dismissed on the ground of jurisdiction alone, leaving open the issue to be considered by the Central Administrative Tribunal in case the Petitioners approach the Tribunal.

Sd/-
(P. Sam Koshy)
JUDGE

Sharad