

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 3575 of 2014**

Durga Prasad Sahu S/o late Shri Sita Ram Sahu, Occupation – Service
(Posted as LDC/Officer Assistant Central Library, Guru Ghasi Das University
(Central University), Post & P.S. Koni, Tahsil-Bilaspur, Revenue & Civil
District Bilaspur (CG), R/o Village & Post – Singhari, P.S. & Tahsil-Bilaspur,
Revenue & Civil District-Bilaspur, Chhattisgarh

---- Petitioner**Versus**

1. Guru Ghasi Das University (Central University) through its Vice
Chancellor, Post & P.S. Koni, Tahsil-Bilaspur, Revenue & Civil District
Bilaspur (CG)
2. Registrar, Guru Ghasi Das University (Central University), Post & P.S.
Koni, Tahsil-Bilaspur, Revenue & Civil District Bilaspur (CG)

---- Respondents

For Petitioner	:	Mr. Saleem Kazi with Mr. Faiz Kazi, Advocates
For Respondents	:	Mr. K. A. Ansari, Senior Advocate with Mr. Devesh G. Kela, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05.01.2021**

1. The present writ petition has been filed claiming for the following reliefs:

“i. 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 the 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).

ii. 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)."

2. The facts of the case are that the petitioner in the instant case was appointed by the respondents as a Peon vide order dated 05.03.1984. Down the line certain persons who were appointed along with the petitioner as a Peon were promoted on the post of LDC and also further promoted to the post of UDC in the year 1996, 1999 and thereafter further in 2005. The petitioner however was not considered for promotion initially to the post of LDC since he did not have the minimum requisite qualification for the said post. Subsequently, on his attaining the requisite qualification he was promoted to the post of LDC on 12.01.1996 (Annexure P-2). However, he was not considered for further promotion to the post of UDC which is his grievance.
3. The pleadings to the writ petition show that the petitioner on an earlier occasion had filed a writ petition for the same cause of action i.e. WP No. 2379 of 2004. The substantive ground raised in the said writ petition was the denial of further promotion as UDC particularly was on the ground that similarly placed persons have been promoted ahead of the petitioner. The Writ Court finally vide order dated 01.07.2014 dismissed the writ petition. Immediately thereafter the present writ petition has been filed on 22.07.2014 after dismissal of the earlier writ petition.
4. It would be relevant at this juncture to reproduce the operative part of

Writ Petition No. 2379 of 2004:

“6. On perusal of petitioner’s promotion as LDC vide Annexure P/2, on 12/01/1996 it would appear that two other persons were promoted along with him and thus petitioner would be having seniority on the post of LDC along with two other persons who were also promoted on 12.01.1996. It is not a case of the petitioner that persons promoted as LDC along with him have been considered for promotion in October, 1996 when others were promoted. Indisputably, those persons who were promoted as UDC Grade-I in October 1996 were working as LDC much prior to the petitioner, therefore, petitioner has not been superceded in the matter of promotion to the post of UDC Grade-I.

7. For the foregoing this Court does not find any substance in the writ petition, accordingly the writ petition being bereft of any substance, it deserves to be and is hereby dismissed, however, dismissal of this writ petition would not come in the way of the petitioner, if he prefers fresh writ petition on the ground that any person who were born in cadre of LDC with him have been subsequently promoted ignoring his candidature.”

5. The broad reading of the relief clause of this writ petition would clearly reflect that the writ petition has been filed for the same relief seeking promotion to the post of UDC and consequential promotion thereafter. The ground harped by the petitioner in the present writ petition is that a person born along with the petitioner in the same cadre namely Ram Chandra Raj was promoted from the post of LDC to UDC in the year 1999 and that in the order of merit, the name of the petitioner stood

ahead of the said person and therefore, the petitioner should have been considered for promotion ahead of Ram Chandra Raj.

6. If we look into the operative part of the order dated 01.07.2014 in WP No. 2379/2004, it would reflect that after dismissing the writ petition on merits the Writ Court had reserved the liberty of the petitioner to approach the Court by way of a fresh writ petition if subsequently somebody who has born in the cadre of LDC along with the petitioner is promoted ignoring the claim of the petitioner. The Writ Court having used the term “subsequently” in the operative part of the order in the opinion of this Court means, any promotion made subsequent to the dismissal of the writ petition on 01.07.2014 would give rise to a cause of action for the petitioner to file a fresh writ petition. The intention of the Writ Court giving liberty to the petitioner to file a fresh writ petition never intended to file a fresh writ petition for the same cause of action and for the same relief with the same grounds and facts which were raised or available with the petitioner at the time of hearing of the earlier writ petition i.e. WP No. 2379/2004. The present writ petition of the petitioner is therefore hit by the principles of res-judicata. The change of ground and availability of additional ground not raised earlier can never be construed as a cause of action by which a fresh writ petition could be filed in respect of a matter for which there is already an adjudication done, which in the instant case is WP No. 2379/2004 decided on 01.07.2014. Undisputedly, there is no promotion order issued subsequent to 01.07.2014 putting the claim of the petitioner at detriment which could have given rise for filing of a fresh writ petition.
7. The contention of the learned counsel for the petitioner is that the use

of the term “subsequently” by the High Court in its order dated 01.07.2014 would mean anybody who has been subsequently promoted ignoring the claim of the petitioner among the persons who were born in the cadre along with the petitioner. This submission of the petitioner cannot be accepted for the reason that the said ground was already available with the petitioner at the first instance at the first round of litigation or else there was no necessity for the Writ Court to have used the word “subsequently” while dismissing the writ petition at the first instance.

8. For the aforesaid reasons this Court is of the opinion that the second writ petition for the same cause of action would not be maintainable. Thus, the present writ petition stands dismissed on that ground alone.

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