

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 5003 of 2021

1. Amitabh Kumar Rawat S/o Shri Mohan Prasad Rawat Aged About 40 Years Working As Constable (General Duty) (Batch No. 177) Posted At Sub-Police Station Kudargarh, P.S. Odigi, District Surajpur, R/o Village, Post And P.S. Bhaiyathan, Tahsil Bhaiyathan, District- Surajpur (C.G.)
2. Rakesh Kumar Yadav S/o Shri Motiram Yadav Aged About 46 Years Working As Constable (General Duty) (Batch No. 558) Posted At Police Station Bishrampur, District Surajpur, R/o Village Khadgawakala, P.S. Pratappur, District- Surajpur (C.G.)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home (Police), Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nava Raipur, District- Raipur (C.G.)
2. Director General Of Police Police Headquarters, Raipur, District- Raipur (C.G.)
3. Inspector General Of Police Surguja Range, Surguja, District Surguja (C.G.)
4. Superintendent Of Police Surajpur, District Surajpur (C.G.)

---- Respondents

AND

WPS No. 5061 of 2021

Ravi Shankar Pandey S/o Shri Jaganath Pandey Aged About 42 Years Working As Constable (General Duty) (Batch No. 713) Posted At Police Station Bishrampur, District Surajpur, R/o Khongapani, District Koriya Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home (Police) Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh.
2. Director General Of Police Police Headquarters, Raipur, District Raipur, Chhattisgarh
3. Inspector General Of Police Surguja Range, Surguja, District Surguja Chhattisgarh.
4. Superintendent Of Police Surajpur, District Surajpur Chhattisgarh.

---- Respondents

AND

WPS No. 5090 of 2021

Dashrath Ram S/o Shri Sewaram, Aged About 45 Years Working As Constable (General Duty) (Batch No. 200) Posted At Sub- Police Station Kudargarh, Police Station Odigi, District Surajpur, R/o Village Bakalo, Darima, District Surguja Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Home (Police), Government Of Chhattisgarh, Mahanadi Bhawan, Mantralaya, Capital Complex, Atal Nagar, Nava Raipur, District Raipur Chhattisgarh
2. Director General Of Police, Police Headquarters, Raipur, District Raipur Chhattisgarh
3. Inspector General Of Police, Surguja Range, Surguja, District Surguja Chhattisgarh
4. Superintendent Of Police, Surajpur, District Surajpur Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Dhiraj Kumar Wankhede, Advocate
For State	:	Mr. Amrito Das, Additional A.G.

Hon'ble Shri Justice P. Sam Koshy
Order on Board

15/09/2021

1. These are three writ petitions filed for the same relief and since the facts in all these cases and the grounds of contentions on either side being identical, this Court proceeds to decide the three writ petitions by a common order.
2. For proper understanding of the dispute it would be relevant at this juncture to quote the reliefs clause, which in the three writ petitions being identical, the main relief clause in the main petition i.e. in WPS No. 5003/2021 are being reproduced hereinunder:-

“10.1] The Hon'ble Court may kindly be pleased to call for the entire records leading to passing of the impugned order dated 01.09.2021 (Annexure P/1) for the kind perusal of this Hon'ble Court.

10.2] The Hon'ble Court may further kindly be pleased to quash the impugned order dated 01.09.2021 (Annexure P/1) relating to rejection of the petitioners' candidature for the promotional post of Head Constable.

10.3] The Hon'ble Court may also kindly be pleased to direct the respondent Inspector General of Police, Surguja Range, Surguja and the Superintendent of Police, Surajpur to comply the order passed by the Director General of Police on 10.02.2017."

3. The impugned order in the instant case is the order Annexure P/1 passed by the respondent No.3 whereby all the petitioners have been declared ineligible for promotion to the post of Head Constable.
4. The brief facts relevant for the adjudication of the present writ petitions is that three petitioners herein were initially appointed under the respondents on the post of Constable (Ardali) in the year 2005 and 2006. In between 2006 and 2008 the respondents had initiated a fresh recruitment process for the post of Constable (General Duty). The petitioners sought permission to participate in the said recruitment process and permission was granted. Thereafter since the petitioners were successful and declared meritorious, they were appointed under the services of the respondents by way of a fresh orders of appointment issued in the year between 2007 and 2008. Since the petitioners were under the same Department earlier as Constable (Ardali), they moved an application before the respondents for the purpose of counting their past services.
5. The respondents allowed the same by an order stating that their past services shall be counted for the purpose of leave, annual increment, etc. The petitioners thereafter sought a clarification from the said order of the higher authorities in the Department as to how the past service would be counted. The respondent-Director General of Police vide his

order dated 25.04.2018 clarified that the Department has already passed an order to include the past service, so far as leave, increment, etc. and as regards the seniority, it has been ordered that it will be maintained district wise, because the appointment of the petitioners were made at the district level.

6. Recently the respondents authorities have now initiated proceedings for promotion from the post of Constable to Head Constable. The petitioners also had participated in the fresh recruitment process. During the course of scrutiny of the documents of the petitioners, it has been found that the petitioners from the date of initial appointment in the present cadre in which the petitioners are working, do not have sufficient seniority for promotion and therefore they have been declared ineligible. This has led to the filing of the present writ petitions.
7. The only contention of the petitioners is that if the order of the respondents to the extent of counting the past service of the petitioners are accepted for the purpose of seniority also, then the petitioners would also be entitled for the advantage of seniority and shall become eligible for promotion, which has not been properly appreciated by the respondents.
8. Claim of Petitioners also is on the ground that few of the colleagues of petitioners who had also originally appointed as Constable (Ardali) have been granted the advantage of seniority by counting their previous services rendered as Constable (Ardali) and thereby have been found fit for further promotion process now being initiated by respondents on the post of Head Constable.

9. Contention of learned State Counsel opposing the petition is that the petitioners in the present cadre have come in the year 2007 and therefore for all practical purposes the seniority of petitioners would be determined from the date they were born in the present cadre i.e. on 11.1.2007. Further contention of learned State Counsel is that the past services rendered by petitioners as Constable (Ardali) have been reckoned with only for the purpose of grant of pensionary benefits in terms of Rule 23 of the Chhattisgarh Civil Services (Pension Rules), 1976. Further, that the said Rules cannot be extended to the extent of determining the seniority of petitioners and other similarly placed persons. The seniority of a government employee has to be strictly in accordance with the Chhattisgarh Civil Services (General Conditions of Services) Rules, 1961. The seniority cannot be determined invoking any other rules other than the aforesaid Rules of 1961 and therefore the petitioners' claim is total misconceived and deserves to be rejected.
10. Having heard the contentions put forth on either side and on perusal of record, undoubtedly, the factual matrix as it stands, the petitioners herein have been appointed as Constable (Ardali) somewhere in the year 2005. Not satisfied with the nature of duties of Constable (Ardali), the petitioners after obtaining NOC from the department applied for the fresh recruitment initiated by respondents to the post of Constable (General Duty) somewhere in the year 2006 and on being found suitable they were appointed as fresh Constable (General Duty) vide order dated 11.1.2007 and since then they are discharging the duties of Constable (General Duty).

11. Right from the time the petitioners have been appointed as Constable in the general duty, their initial date of appointment in the department has been reflected as 11.1.2007. Petitioners have been trying to get relief of counting of their past services rendered as Constable (Ardali) from 2005 to 2007 which if taken into consideration the petitioners would become eligible for being considered for promotion to the post of Head Constable by virtue of the increased length of service that they have. In the process they will be placed over and above the Police Constables appointed on 11.1.2007 which can increase the prospects of petitioners for being promoted earlier at par with few of the police personnels who have been promoted by virtue of their past services being counted.
12. What needs to be considered at this juncture is what would be the effective date of appointment of petitioners in the present cadre that they were working. Undisputedly, the petitioners were appointed in the present cadre vide order dated 11.1.2007. Petitioners were appointed by way of participating in a process of direct recruitment to the post of Constable (General Duty). It is not a case where the petitioners were sent on transfer or deputation to the present cadre and where the petitioners are seeking for counting of their services rendered in the parent department. Rather, it is a case where the petitioners have been appointed by way of direct recruitment after undergoing a complete selection process initiated for direct recruitment. Neither in the recruitment process that the petitioners had participated in the year 2006, i.e. ,the direct recruitment for the post of Constable (General Duty), nor by any subsequent orders passed by respondents for the

petitioners been shown to be recruits of the year 2005 or for that matter have been granted the advantage of past services for the purpose of seniority. Seniority of a government servant under the State Government is determined as per the rules dealing with the seniority i.e. Rule 12 of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961. Rule 12(a) of the said Rules specifically deals with granting of seniority to direct recruits. For all practical purposes, a direct recruit would be given the seniority from the date of his appointment in the cadre, which in the instant case is 11.1.2007.

13. Another aspect which needs consideration is that the petitioners' order of appointment dated 11.1.2007 was pursuant to a direct recruitment process initiated by respondents. Recruitment to the post of Constable (General Duty) of petitioners was not by way of transfer or by way of deputation or under any other mode. Only because the petitioners had obtained NOC for participating in the direct recruitment process of Constable (General Duty) by itself would not be a ground available for the petitioners to claim seniority for the period rendered by them as Constable (Ardali). The NOC issued in favour of petitioners was confined only permitting them to only participate in the recruitment process. The said NOC had nothing to do with the aspect of seniority and the aspect of seniority could not have been pursued at that juncture for the reason that there could also have been a situation of the petitioners being unsuccessful for appointment. Unless the petitioners would have been appointed the claim for seniority cannot be perceived or conceived and therefore the said NOC by any stretch

of imagination cannot be construed for taking advantage for the purpose of claiming seniority.

14. As regards the contention of petitioners of similarly placed persons being given the advantage of seniority and being considered for promotion to the post of Head Constable. It has been found that that those persons after being appointed under the respondents vide order dated 11.1.2007 had approached the department for counting their past services and the respondents have considered their case and have ordered for absorption of their services as Constable (General Duty) considering the past services that they had rendered. By virtue of absorption they had got the advantage of seniority. Whereas, in the instant case of petitioners, there is no such order of absorption and till now from 11.1.2007 the petitioners have been treated in the department as direct Recruits. Even otherwise if the relief sought for by petitioners is to be accepted and granted, it would be hit by Article 14 of the Constitution of India for the reason that the petitioners could be marching ahead of all those candidates who have been appointed along with the petitioners vide order dated 11.1.2007 when the entire recruitment process was initiated for filling up of the posts under the rules only by way of direct recruitment. There is no rules governing the field which provides for counting of past services for the purpose of granting seniority, particularly when the subsequent appointment having been made exclusively by way of direct recruitment. In the absence of any rules giving the protection to petitioners, the claim put forth by petitioners cannot be accepted and for the same reasons the decision of respondents in declaring the petitioners ineligible in

participating in the promotion process for the post of Head Constable also cannot be said to arbitrary, malafide and unjustified.

15. Thus, for all the aforesaid reasons, this Court does not find any strong case made out by petitioners calling for an interference with the impugned order and action of the respondents.
16. All the three Writ Petitions thus *sans* merit the same are liable to be and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved