

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5545 of 2019**

Pradeep Kumar Sana S/o Late Shri Dharendra Sana Aged About 42 Years
Presently Working As Constable B.No. 718 In Cyber Cell Balrampur,
District- Balrampur-Ramanujganj, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary Department Of Home (Police) Mahanadi Bhawan Raipur, Chhattisgarh
2. Director General Of Police, Police Head Quarter- Raipur, District- Raipur, Chhattisgarh
3. Inspector General Of Police, Surguja Range, Ambikapur, District- Surguja, Chhattisgarh
4. Superintendent Of Police, Office Of S.P. Balrampur, District- Balrampur-Ramanujganj, Chhattisgarh

---- Respondents**AND****WPS No. 5590 of 2019**

Brijmohan Singh S/o Emer Sai Singh Presently Working As Constable No. 353 In Police Station - Police Line Balrakmpur, District Balrampur- Ramanugajn Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home (Police) Mahanadi Bhawan Raipur Chhattisgarh.
2. Director General Of Police Police Head Quarter, Raipur, District Raipur Chhattisgarh.
3. Inspector General Of Police Surguja Range, Ambikapur, District Surguja Chhattisgarh.
4. Superintendent Of Police Office Of S.P. Balrampur, District Balrampur- Ramanujganj Chhattisgarh.

---- Respondents**AND**

WPS No. 5549 of 2019

Ram Kumar Bhagat S/o Late Shri Putu Ram Bhagat Aged About 39 Years
Presently Working As Constable B.No. 676 In Police Station- Ramanujganj,
District- Balrampur, Ramanujganj, Chhattisgarh

---- **Petitioner**

Versus

1. State Of Chhattisgarh Through Secretary Department Of Home
(Police) Mahanadi Bhawan, Raipur, Chhattisgarh
2. Director General Of Police, Police Head Quarter Raipur, District-
Raipur, Chhattisgarh
3. Inspector General Of Police, Surguja Range, Ambikapur, District-
Surguja, Chhattisgarh
4. Superintendent Of Police, Office Of S.P. Balrampur, District-
Balrampur-Ramanujganj, Chhattisgarh

---- **Respondents**

For Petitioners	:	Mr. Sushil Dubey, Advocate along with Mr. Aman Upadhyay, Advocate
For State	:	Mr. Sudeep Verma, Deputy G.A. and Mr. Avinash Singh, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/03/2021

1. The three writ petitions being common in nature the facts, grounds
and the reliefs sought for being similar are being disposed of by a
common order.
2. The grievance of the petitioners in these three writ petitions is the
non-counting of their services rendered under the Chhattisgarh
Armed Force for the period between 04.07.2001 till they were
appointed in the District Police Force as constable.

3. The facts in brief relevant for disposal of the three writ petitions are that the petitioners were initially appointed as Constable under the Chhattisgarh Armed Force in July, 2001. The petitioners continued to work there for a period of 5-7 years when a new recruitment drive was initiated by the State Government for filling up of the post of Constable for the District Police Force of District Balrampur. The petitioners applied for the said post. While applying the petitioners had obtained the NOC from the employer under the Chhattisgarh Armed Force seeking permission to participate in the said recruitment. On obtaining the NOC the petitioners participated in the recruitment process and on clearing the selection process, the petitioners were appointed into the District Force as Constable (GD) on 02.12.2005, 15.01.2007 and 30.01.2007. The petitioners continued to work till under the District Police Force, District Balrampur.

4. In between the respondents authorities taking into consideration the services rendered by the petitioners under the Chhattisgarh Armed Force and counting the said period, granted the benefit of kramonnati/revised pay-scale to the petitioners on completion of 8 years of service vide order dated 04.04.2008. The petitioners enjoyed the said benefit till abruptly the same was withdrawn vide order dated 03.12.2018. This led to the filing of a joint petition by the petitioners i.e. WPS No. 1498/2019 and this High Court vide order dated 05.03.2019 allowed the writ petition only on the ground of the order being in violation of the principles of natural justice and reserving the right of the respondents to initiate appropriate action if they so want, the impugned orders were set-aside. Subsequently, it

appears that the respondents have not initiated any further steps for withdrawal of the said benefit of revised pay-scale granted to the petitioners.

5. Now the petitioners have filed the present writ petitions claiming for grant of seniority from the date of initial appointment under the Chhattisgarh Armed Force and as a consequence, the petitioners also are claiming for being declared eligible for participating in the next promotion process to the post of Head Constable by firstly permitting them to participate in the departmental examination or considering their claims by counting the total number of service rendered, without undertaking the departmental examination they be considered for promotion to the post of Head Constable.

6. According to the petitioners, since the respondents have granted the benefit of higher pay-scale/revised pay-scale to the petitioners counting the previous service, there is no reason why the petitioners should not be granted the benefit of seniority also. The petitioners also relied upon a recent correspondence issued by the Director General of Police on 30.12.2019, whereby he had granted the approval for counting the service of the petitioners for the service that they have rendered under the Chhattisgarh Armed Force in the light of the circular of the Finance Department dated 26.09.1972.

7. According to the counsel for the petitioners, now that the Director General of Police also has granted an instructions for counting the said service. All that the Department needs to do is to grant proper seniority by amending the gradation list and grant the petitioners the benefit of consequential relief of being treated as eligible for

promotion both under class-A as also under class-B for promotion to the post of Head Constable.

8. The State counsel however opposing the petitions submits that since the petitioners have been appointed by way of a direct recruitment from a separate recruitment process initiated for filling up of the post of Constable (GD) under the District Police Force for District Balrampur for all practical purposes the services of the petitioners for the purpose of seniority can be counted only from the date of their appointment in the District Police Force, which in the instant case is 02.12.2005, 15.01.2007 and 30.01.2007.

9. According to the State counsel, merely because the services of the petitioners for the purpose of revised pay-scale has been considered in the past by itself would not mean that the petitioners would also be entitled for the seniority for the said period. Moreover, the only advantage that the petitioners can have or claimed would be for counting the said period for the purpose of pension and gratuity on their retirement and that the seniority would however be always determined, in terms of the Rules governing seniority under the Chhattisgarh Civil Services (General Conditions to Service) Rules, 1961.

10. It was the further contention of the learned State counsel that from the plain reading of the NOC which was obtained by the petitioners also it would clearly reveal that the NOC was only granted for the purpose of permission to participate in the subsequent recruitment proceedings and that there was no NOC for the purpose of counting the previous service for the purpose of seniority etc. and therefore

mere grant of NOC alone will not be sufficient for construing that the services rendered by the petitioners under the Chhattisgarh Armed Force has to be treated as continuity in service of the petitioners under the District Police Force, where in fact the petitioners have been appointed only in the year 2005 & 2007 and therefore their seniority can only be counted from the date they were born in the District Police Force and not prior to that.

11. Having heard the contentions put forth on either side and on perusal of record, what needs to be considered and what is culled out from the admitted factual position as it stands, from the preceding paragraphs is that the petitioners admittedly, had participated in two separate independent recruitment process, one in the year 2001 for appointment to the Chhattisgarh Armed Force and second in the year 2005 and 2007 for recruitment to the District Police Force for District Balrampur. Both these recruitment process were independent and separate by nature and the rules governing the field. It is only for the purpose of the petitioners being Constable under the Chhattisgarh Armed Force were required to obtain NOC of the employer for the purpose of applying and also for participating in the subsequent recruitment process. Nowhere was any assurance given by the respondents either in the advertisement or by way of any circulars or instructions of the State Government entitling the petitioners for the seniority for the previous service rendered under the Chhattisgarh Armed Force.

12. As regards, the benefit of counting of service by the respondents for the purpose of revised pay-scale and the subsequent cancellation of

the same followed by the order of this Court in WPS No. 1498/2019, it is made clear that the interference of this Court was only on the ground of the action being in violation of the principles of natural justice, which by itself does not mean that this High Court had decided the entitlement part of the petitioners for the benefit of revised pay-scale.

13. Moreover, as regards the correspondences of the Director General of Police of 2019 the same also is in the context of a circular of the Finance Department dated 26.09.1972 which again would be a circular based upon the Pension Rules governing the field, wherein for the purpose of determining the qualifying service the services rendered by a person prior to the appointment in the present Department, if the same was also a pensionable service under the State Government, the same should be counted only for the purpose of pension and gratuity. This further would establish the fact that except for the benefit of pension and grant of gratuity the earlier services rendered by the petitioners being recruited by a separate recruitment altogether, cannot be counted for the purpose of grant of seniority.

14. Even otherwise, the petitioners' claim for seniority cannot be entertained or accepted for the simple reason that, the petitioners have been appointed along with a large number of other candidates on the post of Constable (GD) and for all these candidates appointed by the same recruitment, it would be the date of appointment which is material and that would be the date on which the petitioners are to be treated to have born in the cadre and therefore, the petitioners

cannot be granted seniority of a period when in fact they were not born in the Department or in the particular cadre of District Police Force. Unless of course the services of the petitioners were either sent on deputation or sent on transfer and thereafter the petitioners would have been absorbed in the District Police Force, which is not the case herein.

15. For all the aforesaid reasons, this Court does not find any strong case made out by the petitioners calling for an interference or for issuance of a mandamus directing the respondents to grant seniority for the period that the petitioners have rendered under the Chhattisgarh Armed Force.

16. The writ petitions therefore fail and are accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Ved