

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 5479 of 2021**

Purshottam Kumbhkar S/o Late Atma Kumbhkar Aged About 42 Years
Working As Constable At City Kotwali, Bemetara, District- Bemetara (C.G.)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through- The Secretary Home Department, Ministry, Mahanadi Bhawan, Atal Nagar, Nava Raipur, District- Raipur (C.G.), Chhattisgarh
2. Director General Of Police, Police Head Quarter, Atal Nagar, Nava Raipur, District- Raipur (C.G.), Chhattisgarh
3. Inspector General Of Police Rang-Durg, District- Durg (C.G.), Chhattisgarh

----Respondents

For Petitioner	:	Mr. Somkant Verma, Advocate
For State	:	Ms. Akanksha Jain, Dy. G.A.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****01/10/2021**

1. The relief sought for by the petitioner in the present writ petition is reproduced hereinunder:-

“10.1] That, this Hon'ble Court may kindly be pleased to direct the respondent No.2 to consider case of the petitioner and grant similar benefit, which grant similar employees and also consider seniority of earlier for Departmental Promotion Examination Year-2021.

2. The brief facts relevant for the adjudication of the present writ petition is that the petitioner was initially appointed under the respondents on the post of Constable (SAF) in the year 2001. The respondents had initiated a fresh recruitment process for the post of Constable (General Duty). The petitioner sought permission to participate in the said recruitment process and permission was granted. Thereafter since the

petitioner was successful and declared meritorious, he was appointed under the services of the respondents by way of a fresh order of appointment issued in the year 2009. Since the petitioner was under the same Department earlier as Constable (SAF), he moved an application before the respondents for the purpose of counting his past services. The respondents allowed the same by an order dated 27.08.2015 stating that his past services shall be counted only for the purpose of leave, annual increment, etc.

3. Recently the respondents authorities have now initiated proceedings for promotion from the post of Constable to Head Constable. The petitioner also had participated in the fresh recruitment process and his name was considered by the authority. During the course of scrutiny of the documents of the petitioner, it has been found that the petitioner from the date of initial appointment in the present cadre in which the petitioner is working, do not have sufficient seniority for promotion and therefore he has been declared ineligible. The name of petitioner was considered by the respondent authorities vide Annexure P/3 during the course of Departmental Promotion Process of 2021, but the petitioner has not been found entitled. This has led to the filing of the present writ petition.
4. The only contention of the petitioner is that if the order of the respondents to the extent of counting the past service of the petitioner is accepted for the purpose of seniority also, then the petitioner would also be entitled for the advantage of seniority and shall become eligible for promotion, which has not been properly appreciated by the respondents.

5. Claim of Petitioner also is on the ground that few of the colleagues of petitioner who were also originally appointed as Constable (SAF) have been granted the advantage of seniority by counting their previous services rendered as Constable (SAF) and thereby they have been found fit for further promotion process now being initiated by respondents on the post of Assistant Sub-Inspector.
6. Contention of learned State Counsel opposing the petition is that the petitioner in the present cadre has come only in the year 2009 and therefore for all practical purposes the seniority of petitioner would be determined from the date he was born in the present cadre i.e. on 03.01.2009. Further contention of learned State Counsel is that the past services rendered by petitioner as Constable (SAF) have been reckoned with only for the purpose of grant of pensionary benefits in terms of Rule 26 of the Chhattisgarh Civil Services (Pension Rules), 1976. Further, that the said Rules cannot be extended to the extent of determining the seniority of petitioner. The seniority of a government employee has to be determined 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 petitioner's claim is totally misconceived and deserves to be rejected.
7. Having heard the contentions put forth on either side and on perusal of record, undoubtedly, the factual matrix as it stands, the petitioner herein has been appointed as Constable (SAF) somewhere in the year 2001. Not satisfied with the nature of duties of Constable (SAF), the petitioner after obtaining NOC from the department had applied for fresh

recruitment initiated by respondents to the post of Constable (General Duty) somewhere in the year 2008 and on being found suitable he was appointed as fresh Constable (General Duty) vide order dated 03.01.2009 and since then he is discharging the duties of Constable (General Duty).

8. Right from the time the petitioner has been appointed as Constable in the general duty, his initial date of appointment in the department has been reflected as 03.01.2009. Petitioner has been trying to get relief of counting of his past services rendered as Constable (SAF) from 2001, which according to the petitioner if taken into consideration he would become eligible for being considered for promotion to the post of Head Constable by virtue of the increased length of service. In the process he will be placed over and above the Police Constables appointed on 04.01.2001 which can increase the prospects of petitioner for being promoted earlier at par with few of the police personnels who have been promoted by virtue of their past services having been counted.
9. What needs to be considered at this juncture is what would be the effective date of appointment of petitioner in the present cadre that he was working. Undisputedly, the petitioner was appointed in the present cadre vide order dated 03.01.2009. Petitioner was 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 petitioner was sent on transfer or deputation and later absorbed to the present cadre and where the petitioner is seeking for counting of his services rendered in the parent department. Rather, it is a case where the petitioner has been appointed by way of direct recruitment after undergoing a

complete selection process initiated for direct recruitment. Neither in the recruitment process that the petitioner had participated in the year 2008, i.e. the direct recruitment for the post of Constable (General Duty), nor by any subsequent orders passed by respondents for the petitioner been shown to be recruits of the year 2001 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 03.01.2009.

10. Another aspect which needs consideration is that the petitioner's order of appointment dated 03.01.2009 was pursuant to a direct recruitment process initiated by respondents. Recruitment to the post of Constable (General Duty) of petitioner was not by way of transfer or by way of deputation or under any other mode. Only because the petitioner had obtained NOC for participating in the direct recruitment process of Constable (General Duty) by itself would not be a ground available for the petitioner to claim seniority for the period rendered by him as Constable (SAF). The NOC issued in favour of petitioner was confined only permitting him to 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 petitioner being

unsuccessful for appointment. Unless the petitioner would have been appointed the claim for seniority cannot be perceived or conceived and therefore the granting of NOC cannot by any stretch of imagination be construed granting advantage so far as the claim of seniority is concerned.

11. As regards the contention of petitioner 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 those persons after being appointed under the respondents vide order dated 03.01.2009 had approached the department for counting their past services and the respondents have considered their case and passed an order for absorption of his services as Constable (General Duty) considering the past services that he had rendered. By virtue of absorption he had got the advantage of seniority. Whereas, in the instant case of petitioner, there is no such order of absorption and till now from 03.01.2009 the petitioner has been treated in the department as direct Recruits.
12. Even otherwise if the relief sought for by petitioner is to be accepted and granted, it would be hit by Article 14 of the Constitution of India for the reason that the petitioner would be marching ahead of all those candidates who have been appointed along with the petitioner vide order dated 03.01.2009 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 of Direct Recruits 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 petitioner, the claim put forth by petitioner cannot be accepted. Hence for the same reasons the decision of respondents in declaring the petitioner ineligible in participating in the promotion process for the post of Head Constable also cannot be said to arbitrary, malafide and unjustified.

13. Thus, for all the aforesaid reasons, this Court does not find any strong case made out by petitioner calling for an interference with the impugned order and action of the respondents. The Writ Petition thus *sans* merit the same is liable to be and is accordingly dismissed.
14. Reluctance of this Court in granting the relief sought for, to the petitioner would not preclude him from approaching the respondents on the administrative side ventilating his grievances on the basis of the treatment being given to other similarly placed persons.

Sd/-
(P. Sam Koshy)
Judge