

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 794 of 2021**

- Smt. Sunita Kushwaha W/o Shri C. L. Kushwaha Aged About 37 Years R/o Kush General Store And Grain Center, Professor Colony, Sector-3, Raipur, District- Raipur (C.G.).

---- Petitioner**Versus**

1. State of Chhattisgarh, Through- Secretary Department of Home Mantralaya, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District- Raipur (C.G.).
2. Director General of Police, Police Head Quarter, Indrawati Bhawan, Nawa Raipur, Atal Nagar, District- Raipur (C.G.).
3. Inspector General of Police, Raipur Range, Raipur, District- Raipur (C.G.).
4. Superintendent of Police Raipur, District- Raipur (C.G.).
5. Station House Officer Police Station, Vidhan Sabha, Nawa Raipur, Atal Nagar, District- Raipur (C.G.).
6. B. L. Thakur Former Chairman, Chhattisgarh Public Service Commission, Shankar Nagar, Raipur, District- Raipur (C.G.).
7. Xavier Tigga Former Secretary, Chhattisgarh Public Service Commission, Shankar Nagar, Raipur, District- Raipur (C.G.).
8. M. K. Raut Former Principle Secretary, Higher Education Department, Mahanadi Bhawan, Nawa Raipur, Atal Nagar, District- Raipur (C.G.).

---- Respondents

For Petitioner	:	Mr. Malay Shrivastava, Adv.
For State	:	Mr. Ghanshyam Patel, G.A.

Hon'ble Smt. Justice Rajani Dubey**Order on Board****03/12/2021**

1. The facts projected by the petitioner are that the petitioner has submitted her application for appointment on the post of Assistant Professor (Computer Science) in lieu of advertisement issued on 20.05.2009. The petitioner has filed a Writ Petition (s) No. 2648/2012 before this Hon'ble Court by which a direction was sought to conclude the selection process of Assistant Professor (Computer Science) for the candidates who are having requisite qualification of Ms.C. (Computer Science). The Writ Petition (S) No. 2648/2012 was disposed of in favour of the petitioner, however, vide order dated 27.09.2014, ignoring the

directions given by this Hon'ble Court and taking the shelter of the order dated 24.11.2010, the petitioner was deprived from appointment on the post of Assistant Professor (computer Science). The petitioner has challenged the order dated 27.09.2014 in Writ Petition (S) No. 5335/2014 which is pending before this Hon'ble Court. The petitioner has filed an application under Right to Information Act, 2005 seeking the note sheets with regard to passing of the order dated 24/11/2010 and in which the petitioner came to know that no documents is available with the department with regard to issuances of the order dated 24/11/2010. Therefore, the petitioner submitted a written complaint before the respondent No. 5 however, without doing any inquiry, the respondent No. 5 has issued the notice dated 12.09.2021 under Section 155 of Cr.P.C.

2. On the basis of this factual matrix, the petitioner has filed this petition and prayed for following reliefs:-

- i. That, this Hon'ble Court may kindly be pleased to quash the notice dated 12.09.2021 issued under Section 155 of the Cr.P.C.
- ii. That, this Hon'ble Court may kindly be pleased to direct the respondent No. 5 to register the FIR against the respondents No. 6 to 8.
- iii. Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioner, in the interest of justice.
- iv. Cost of the petition.

3. The Hon'ble Supreme Court in case of **Sakiri Vasu Vs. State of Uttar Pradesh & others 1**, has examined the issue in paragraphs 27 and 28 and held as under:-

"27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Section 36 and

154 (3) before the concerned police officers, and if that is of no avail, under Section 156 (3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section Cr.P.C.

"28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere."

4. The judgment passed by Hon'ble the Supreme Court in Sakiri Vasu (Supra) has again come up for consideration before three judges (2008) 2 SCC 409 Bench in case of **M. Subramaniam & another Vs. S. Janaki & another 2**. The Supreme Court after considering the same judgment has held at para 7 & 9 which are as under:-

"7. The said ratio has been followed in Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage, in which it is observed: (SCC p. 278, paras 2-4) "2. This Court has held in Sakiri Vasu V. State of U.P., that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156 (3) CrPC. If such an application under Section 156 (3) CrPC is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in Sakiri Vasu case because what we have found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation."

"9. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the Magistrate concerned under Section 156 (3) CrPC and if he does so, the

Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.”

5. From analysis of the above legal provisions, it is crystal clear that the writ petition under Article 226 of the Constitution of India is not maintainable before the High Court. However, it is open to the petitioner to approach the court of Judicial Magistrate First Class having territorial jurisdiction over the place of offence if it deemed appropriate and necessary for filing of complaint under Section 156(3) of Cr.P.C or Section 200 of Cr.P.C. and in-turn Magistrate will follow the procedure prescribed under the provisions of the Cr.P.C. It is made clear that this Court has not expressed any opinion on merits of the case whether the averments made in the petition discloses any criminal offence or not, it is for the concerning Magistrate to decide the case on merits of the case without being influenced by any of the observations made by this Court.

6. Considering the facts and materials on record and in view of the law laid down by the Hon'ble Supreme Court, this Court is of the view that this writ petition is not maintainable.

7. With the aforesaid observations, the writ petition (criminal) is finally disposed of with the aforesaid liberty in favour of the petitioner.

Sd/-
(Rajani Dubey)
Judge