

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 5974 of 2007**

- Satish Kumar Mishra, S/o Late Shri Ramadhar Mishra, aged about 46 years, Assistant Grade - III & In-charge Rev. Inspector (under suspension), Municipal Corporation, Durg (C.G.)

---- **Petitioner****Versus**

1. Municipal Corporation, Durg, through the Commissioner, Municipal Corporation, Durg
2. The State of Chhattisgarh Through the Secretary, Nagariya & Pariyavaran Ministry, D.K.S. Bhawan, District - Raipur (C.G.)

---- **Respondents**

For Petitioner Shri H. B. Agrawal, Senior Advocate with
Shri Ajay Shrivastava, Advocate

For Respondent-State Shri Arvind Dubey, PL

For Respondent No.1 Shri A. S. Kachhawaha, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****08/05/2017**

1. Petitioner was appointed as LDC in the establishment of Municipal Corporation, Durg on 19.11.1981. His services were regularized on 30.05.1984, however, he was not paid annual increments on the ground that he has not passed

Hindi Typing Examination. Denial of annual increment led to filing of civil suit, which was dismissed by the Civil Judge, Class-I, Durg in Civil Suit No.50A/1993 on 14.02.1996. However, first appeal preferred by the petitioner was allowed by the 3rd Additional District Judge, Durg vide judgment and decree dated 18.01.1999 in Civil Appeal No.14-A/1996. The Municipal Corporation thereafter preferred Second Appeal No.545/1999 before this Court and the second appeal was partly allowed on 02.08.2005 modifying the decree to declare that withholding of annual increment, seniority and other service benefits in the garb of non qualifying Hindi Typing Examination, which is not a condition imposed in the appointment order dated 19.11.1981 or regularization order dated 30.05.1984, is illegal. The Municipal Corporation did not prefer any SLP, therefore, the decree has become final in between the parties.

2. Despite the said decree, the Municipal Corporation did not pay annual increments nor accorded seniority to the petitioner, therefore, the present writ petition has been preferred seeking annual increment and promotion on the post of Revenue Inspector w.e.f. 26.07.2004, when the resolution to the said effect was passed by the Mayor-in-Council of the Corporation.

3. Shri Kachhawaha, learned counsel appearing for the Municipal Corporation, would submit that the decree passed by the Civil Court was only declaratory in nature, therefore, it was not executable. He would also submit that the petitioner's promotion on the post of Revenue Inspector was contrary to the Chhattisgarh Municipal Service Executive Rules, 1973, because the petitioner's substantive post is of the ministerial cadre, whereas the post of Revenue Inspector is an executive cadre post, for promotion to which LDC is not one of the feeder cadre.

4. Insofar as the first objection is concerned, it is to be noticed that the Municipal Corporation has not preferred any SLP before the Supreme Court challenging the decree passed by this Court. Therefore, in between the parties, the said issue having already attained finality the same is binding on the Municipal Corporation, Durg. In service matters, even a declaratory decree is binding on the employer and it is required to be given effect to, because the declaration is about petitioner's right to enjoy certain service benefits, for which the Court has declared him to be entitled. It is not necessary for the employee/plaintiff to pray for any consequential relief of mandatory injunction as ordinarily happens in relation to decree concerning immovable property.

5. In the above context, it will be profitable to refer to the observation made by the Supreme Court in the matter of **Mysore State Road Transport Corporation vs. Mirja Khasim Ali Beg and another**¹, wherein referring to its earlier decision in **Executive Committee, U.P. Warehousing Corporation vs. Chandra Kiran Tyagi**² and **Executive Committee of Vaish Degree College, Shamli and others vs. Lakshmi Narain and others**³, it was held that declaration to enforce a contract of personal service can be granted in the following three cases:-

“(i) appropriate cases of public servants who have been dismissed from service in contravention of Article 311;

(ii) dismissed workers under industrial and Labour Law; and

(iii) when a statutory body has acted in breach of a mandatory obligation imposed by a statute.”

6. In the matters of **State of M.P. vs Chain Singh**⁴ and **Pannalal Tayal vs State of M.P.**⁵, it is held that in service matters, a suit for mere declaration is enough and maintainable. When the declaratory relief is granted, it is implicit in such relief that the employee should be treated in service in all respects. In other words, further relief is wholly unnecessary in service matters. In this case, the previous

1 (1977) 2 SCC 457

2 (1969) 2 SCC 838

3 (1976) 2 SCC 58

4 1996 (1) MPWN 57

5 1975 MPLJ 545

judgment reported in 1962 J LJ 228 (N) (DB) {**J. S. Dhopte vs State**} has been relied upon.

7. It is also to be noticed that the Municipal Corporation, Durg does not seem to have raised any objection as to the maintainability of the suit on the basis of the first proviso to Section 34 of the Specific Relief Act, 1963 (henceforth 'the Act, 1963'), which bars a relief of declaration when the plaintiff being able to seek further relief, then a mere declaration omits to do so. It is too late for the Municipal Corporation to contend today that despite a decree, the plaintiff would not be entitled for any relief flowing from the said decree, because it is only declaratory in nature. As held by the Supreme Court in **Mysore State Road Transport Corporation** (supra), declaration to enforce a contract of personal service, which necessarily includes declaration as to a legal right flowing from the contract of appointment, be it of personal nature or concerning any post under the State Government or Union of India, the suit is maintainable. If the suit for mere declaration of legal character or entitlement is maintainable under Section 34 of the Act, 1963, the decree is not only binding on the defendant/employer but the employer is also bound to give effect to the same by providing the fruits of that decree to the concerned employee. A decree passed by a Civil Court in such circumstances is not merely a waste paper but it is an

effective instrument to protect the lawful interest of an employee who has been denied his right under the terms of employment or under the Rules governing his employment, which necessarily includes right to receive annual increment.

8. For the afore-stated reasons, the petition is allowed in the following terms:-

I. The respondent Municipal Corporation shall grant annual increments to the petitioner on and from completion of 1st year of service and grant him due seniority on the post in accordance with law. However, the issue of promotion to the post of Revenue Inspector shall be re-examined by the respondents, for which the petitioner shall prefer representation before the Commissioner, Municipal Corporation, Durg within a period of three months from today and thereafter the Corporation shall decide the same in accordance with law within a further period of 3 months.

II. The entire arrears towards annual increments shall be paid to the petitioner within a period of three months from today.

9. The writ petition stands allowed in the afore-stated terms.

Sd/-
Judge
Prashant Kumar Mishra