

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No. 664 of 2005

1. State of Chhattisgarh through the Executive Engineer, Public Works Department, B & R Division, Dhamtari, District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B & R Nagri, Sub-Division No.2, Nagri, District Dhamtari (CG)

---- Petitioners

Versus

1. Yaduram S/o Mohan Yadu, R/o Vill. Lunge, P.S. Chhotikareli, Tahsil & District Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 695 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub-Division No.2 Nagri, District Dhamtari (CG)

---- Petitioners

Vs

1. Ramkishun S/o Kartikram, R/o Vill. Kandeli, Tahsil and Distt. Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 699 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari, District Dhamtari, (CG)

2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub-Division No.2 Nagri, District Dhamtari, (CG)

---- Petitioners

Vs

1. Ghanaram S/o Bhaurami R/o Village Kandeli, Tahsil and Distt. Dhamtari
2. Presiding Officer, Labour Court, Raipur, (CG)
3. The Industrial Court, Chhattisgarh Raipur,(CG)

---- Respondents

And

Writ Petition No. 696 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari, District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub-Division No.2, Nagri, District Dhamtari (C.G.)

---- Petitioners

Vs

1. Tejuram S/o Mehatruram R/o Vill. Kandeli, Tahsil and Distt. Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur,(CG)

---- Respondents

And

Writ Petition No. 670 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department B&R Nagri, Sub-Division No. 2 Nagri, District Dhamtari (CG).

---- Petitioners

Vs

1. Santram S/o Jageshwar Sinha, R/o Vill. Kandeli, Tahsil and Distt.

Dhamtari.

2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 671 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub-Division No. 2 Nagri, District Dhamtari (CG)

---- Petitioners

Vs

1. Pachkodram S/o Itwari R/o Vill. & Post: Chhotikareli, P.S. Magarlod, Distt. Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur, (CG)

---- Respondents

And

Writ Petition No. 698 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari, District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub Division No.2, Nagri, District Dhamtari, (CG)

---- Petitioners

Vs

1. Vijay Kumar S/o Prabhulal Sen R/o Vill. Lunge, P.S.Chhotikareli, Tahsil and Distt. Dhamtari.
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 700 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari, District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub-Division No.2 Nagri, District Dhamtari (CG)

---- Petitioners

Vs

1. Hemuram S/o Dular Singh R/o Vill. Kandeli, Tahsil and Distt. Dhamtari.
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 697 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B & R Division, Dhamtari District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub Division No. 2 Nagri, District Dhamtari (CG)

---- Petitioners

Vs

1. Rekhram S/o Chaitram R/o Vill. Lunge, PS Chhotikareli, Tahsil and Distt. Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 694 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari, District Dhamtari, (CG)

2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub-Division No.2 Nagri, District Dhamtari,(CG)

---- **Petitioners**

Vs

1. Ganesh Ram S/o Anujram R/o Village & Post Megha, P.S. Magarload, Tahsil Kurud, District- Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur(CG)

---- **Respondents**

And

Writ Petition No. 666 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B & R Division, Dhamtari, District Dhamtari (CG).
2. The Sub Divisional Officer, Public Works Department, B&R Nagri, Sub Division No. 2 Nagri, District Dhamtari (CG)

---- **Petitioners**

Vs

1. Dinanath S/o Mayaram Sahu R/o Vill. Mohdi, PS Kurud, Tahsil and Distt. Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- **Respondents**

And

Writ Petition No. 967 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works Department, B&R Division, Dhamtari, District Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B& R Division, Dhamtari, District Dhamtari (CG)

---- **Petitioners**

Vs

1. Rewa Ram S/o Heera Ram Dhimar, R/o Village and Post Kandel, Tahsil and District Dhamtari, (C.G.)
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh Raipur (CG)

---- Respondents

And

Writ Petition No. 278 of 2005

1. Dhanna Ram S/o Bhau Ram, R/o Village Kandel Tahsil & District Dhamtari (CG)

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, Public Works Department D.K.S. Bhawan, Mantralaya, Raipur Distt. Raipur (CG)
2. The Executive Engineer, (B&R) Public Works Department, Dhamtari, Distt. Dhamtari (CG)
3. The Sub Divisional Officer (B&R) Sub Division No. 1, Dhamtari, Tahsil & District Dhamtari (CG)

---- Respondents

And

Writ Petition No. 275 of 2005

1. Santh Ram Sinha S/o Jogeshwar Sinha R/o Village Kandel Tahsil & District Dhamtari (CG)

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, Public Works Department D.K.S. Bhawan, Mantralaya, Raipur Distt. Raipur (CG)
2. The Executive Engineer, (B&R) Public Works Department, Dhamtari, Distt. Dhamtari (CG)
3. The Sub Divisional Officer (B&R) Sub Division No. 1, Dhamtari, Tahsil & District Dhamtari (CG)

---- Respondents

And

Writ Petition No.277 of 2005

1. Hemu Ram S/o Dular Singh R/o Village Kandel Tahsil & District Dhamtari (CG)

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, Public Works Department D.K.S. Bhawan, Mantralaya, Raipur Distt. Raipur (CG)
2. The Executive Engineer, (B& R) Public Works Department, Dhamtari, Distt. Dhamtari (CG)
3. The Sub Divisional Officer (B&R) Sub Division No. 1, Dhamtari, Tahsil & District Dhamtari (CG)

---- Respondents

And

Writ Petition No. 241 of 2005

1. Teju Ram S/o Mehtruram Sahu R/o Village Kandel Tahsil & District Dhamtari (CG)

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, Public Works Department D.K.S. Bhawan, Mantralaya, Raipur Distt. Raipur (CG)
2. The Executive Engineer, (B&R) Public Works Department, Dhamtari, Distt. Dhamtari (CG)
3. The Sub Divisional Officer (B&R) Sub Division No. 1, Dhamtari, Tahsil & District Dhamtari (CG)

---- Respondents

And

Writ Petition No. 279 of 2005

1. Ram Kishan S/o Kanti Ram R/o Village Kandel Tahsil & District Dhamtari (CG)

---- Petitioner

Vs

1. State of Chhattisgarh Through The Secretary, Public Works Department
D.K.S. Bhawan, Mantralaya, Raipur Distt. Raipur (CG)
2. The Executive Engineer, (B&R) Public Works Department, Dhamtari, Distt.
Dhamtari (CG)
3. The Sub Divisional Officer (B&R) Sub Division No. 1, Dhamtari, Tahsil &
District Dhamtari (CG)

---- Respondents

And

Writ Petition No. 701 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works
Department, B & R Division, Dhamtari, District -Dhamtari (CG)
2. The Sub Divisional Officer, Public Works Department, B & R Nagri, Sub -
Division No.2, Nagri, District - Dhamtari (CG)

---- Petitioners

Vs

1. Dayaluram S/o Shobharam R/o Village - Chhotikareli, P.S. Magarlod,
Tahsil Kurud, District - Dhamtari
2. Presiding Officer, Labour Court, Raipur (CG)
3. The Industrial Court, Chhattisgarh, Raipur (CG)

---- Respondents

And

Writ Petition No. 1396 of 2005

1. State of Chhattisgarh Through The Executive Engineer, Public Works
Department, B&R Division, Dhamtari, District Dhamtari, (CG)
2. The Sub Divisional Officer, Public Works Department, B&R Division,
Dhamtari, District Dhamtari, (CG)

---- Petitioners

Vs

1. Rikhi Ram S/o Kartik Ram Sahu R/o Village and Post Kandel, Tahsil and
District Dhamtari, (CG)

2. Presiding Officer, Labour Court, Raipur, (CG)
3. The Industrial Court, Chhattisgarh Raipur, (CG)

---- Respondents

For Petitioners	:	Shri Prafull Bharat, Additional Advocate General.
For Private Respondents	:	Shri Hemant Kesharwani and Shri Vinod Deshmukh, Advocates.

HON'BLE SHRI NAVIN SINHA, ACTING CHIEF JUSTICE & HON'BLE SHRI PRITINKER DIWAKER, J.

Order On Board

Per NAVIN SINHA, ACTING C.J.

09/03/2015

1. These Writ Petitions arise from order dated 10.2.2004 of the Industrial Court, Raipur, dismissing the appeals filed by the State against the order of the Labour Court dated 27.6.2002 directing reinstatement and regularization, on the grounds of limitation, being barred by delay of approximately one month and twenty days. Simultaneously, the Industrial Court has denied back wages to the workmen giving rise to another set of writ petitions by them. In Writ Petition No. 1396 of 2005, the State challenges the dismissal of its Appeal No. 99/MPIR/A-11/2001 on merits by a non speaking, unreasoned cryptic order.

2. Learned Additional Advocate General on behalf of the State submits that the persons were not in regular employment. It is not in dispute that there is no appointment order or termination order. They had been

engaged in drought relief work as part of a poverty alleviation programme for unemployed rural agricultural workers. They were not appointed against any permanent or temporary vacancy. No sooner that the scheme came to an end, the services of these persons naturally had to be dispensed with. Merely because they may have worked for 240 days, does not vest any right or claim in them for continuance or regularization. Even if there was non-compliance with Section 25 F of the Industrial Disputes Act, it may have been a case for grant of compensation at best but no direction could have been issued for reinstatement and regularization.

3. It was next submitted that Section 65 of the Chhattisgarh Industrial Relations Act, 1960 vests jurisdiction in the Industrial Court to condone delay for sufficient reason. If the order of the Labour Court was contrary to the law, the Industrial Court ought to have condoned delay and heard the matter on merits. Dismissing the appeal on grounds of limitation by resort to technicalities may amount to laying down a wrong law. Discretion for condoning delay has not been exercised in accordance with settled law and in the interest of justice.

4. Learned Counsel for the Respondents submitted that the application for condoning delay did not set forth any sufficient grounds. The Tribunal therefore committed no error in dismissing the appeals on grounds of limitation. Even otherwise, there has been no compliance with Section 25 F of the Industrial Disputes Act. Since the appeal was dismissed the Industrial Court erred in not granting back wages consequent to reinstatement and regularization ordered by the Labour Court.

5. Having considered the submissions on behalf of the parties, we are of the considered opinion that the Industrial Court has failed to exercise its discretionary jurisdiction while considering the application for condoning delay in accordance with settled principles to advance the cause of justice. The delay in any event was not so unreasonable so as to decline condoning the same. A delay of about a month and twenty days only cannot be classified as gross and unreasonable. A certain amount of latitude has to be permitted in delayed appeals filed by the State while considering applications for condoning the delay. In (1996) 2 SCC 82 (State of Jammu & Kashmir v. Ashok Kumar Gupta (Dr.)) it was observed as follows :-

“3.....There was a delay of about 3 months in filing the appeal to the Division Bench. The Division Bench of the High Court was not inclined to condone the delay on the ground that proper explanation had not been given. We have considered the reasoning of the learned Judges. On the facts and circumstances, we think that the explanation given for the delay in filing the appeal is proper. It is notorious and court would take judicial notice that no one would take responsibility for the delay and in the process of leisurely consultations between different departments or at different levels in the same department the limitation to file the appeal gets barred. Refusal to condone the delay feeds public injustice and a premium for lethargy and encourages mischief. Applying the pragmatic approach, the explanation for the delay needs to be considered and the cause of justice advanced and consideration angulated (*sic*) and accordingly, considered from that perspective the delay gets condoned. The matter is remitted to the High Court for fresh disposal on merits according to law.”

6. The words sufficient cause has to be read with elasticity and there can be no rigid definition of the same. What shall constitute sufficient cause, will depend on the facts of each case. In a case even a very short delay may

not warrant condonation while in other cases a long delay may be condoned. The Court exercising discretion to condone the delay therefore has to act judiciously and not in a mechanical manner. In (2000) 9 SCC 94 (State of Bihar v. Kameshwar Prasad Singh) it was observed :-

“11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in *Collector, Land Acquisition v. Katiji* held that the expression “sufficient cause” employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. ‘Every day’s delay must be explained’ does not mean that a pedantic approach should be made. Why not every hour’s delay, every second’s delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

7. If the application is raising important questions of law dismissal,

simplicitor on the grounds of limitation may amount to laying down the wrong law also. An appeal raising questions of law, especially if covered by judicial precedents, in our opinion, deserves to be considered on merits so that the law is clearly laid down for the benefit of all. Enunciating the guiding principles for condoning delay, more recently in (2013) 12 SCC 649 (Esha Bhattacharjee v. Raghunathpur Nafar Academy) it was observed :-

21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non-pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact-situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4. (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

21.5. (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6. (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7. (vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8. (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9. (ix) The conduct, behaviour and attitude of a

party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10. (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11. (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12. (xii) The entire gamut of facts are to be carefully scrutinised and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13. (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.”

8. The order of the Industrial Court dated 10.2.2004 dismissing the appeal filed by the State on grounds of limitation is therefore held to be not sustainable. If the Tribunal dismissed the appeals on grounds of limitation, it ought not to have passed an order on merits denying claim for back wages as there was no occasion for it to examine the matter on merits simultaneously. The order of the Industrial Court is set aside. Delay is condoned and the matter is remanded to the Industrial Court for disposal on merits afresh in accordance with law after hearing the parties.

9. The order of the Industrial Court dated 11.9.2004 in Appeal No. 99/MPIR/A-11/2001 giving rise to Writ Petition No. 1396 of 2005 is unreasoned, non speaking and cryptic. It is therefore also held to be unsustainable. The order is likewise set aside and the matter remanded to

the Industrial Court for passing a fresh reasoned and speaking order after hearing the parties afresh.

10. The parties shall appear before the Industrial Court, Raipur on 9.4.2015. The Industrial Court shall fix the first date for hearing in all cases in presence of the appearing parties. Let fresh appropriate orders be then passed by the Industrial Court, Raipur, within a maximum period of six months from such date of first hearing. Since the matter is old, the Industrial Court is mandated to dispose the matters within the time fixed, even if it is required to proceed ex-parte against a non-appearing party. In that event the Tribunal will record sufficient reasons for proceeding ex-parte including the efforts made to persuade the defaulting parties to participate notwithstanding which it refused to do so.

11. The writ petitions are disposed.

Sd/-

ACTING CHIEF JUSTICE

Sd/-

JUDGE