

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 236 of 2015**

Koopcharan Das, s/o Shri Jhitru Das, aged about 43 years, R/o Chatrapati Shivaji Ward No. 35, near Mata Gangadai Mandir, Jagdalpur, district Bastar (C.G.)

---- Appellant**Versus**

1. State of Chhattisgarh, through its Secretary, Department of Panchayat & Rural Development, Ministry, Mahanadi Bhavan, New Raipur, District Raipur (Chhattisgarh)
2. Deputy Director, Department of Panchayat & Rural Development, Jagdalpur, district Bastar (Chhattisgarh)
3. Chief Executive Officer, Janpad Panchayat, Jagdalpur, District Bastar (Chhattisgarh)
4. The Commissioner, Nagar Palik Nigam, Jagdalpur, district Bastar (Chhattisgarh).

---- Respondents

For Appellants	:	Shri Alok Kumar Dewangan, Advocate.
For Respondent/ State	:	Shri B. Gopa Kumar, Deputy Advocate General.

**HON'BLE SHRI NAVIN SINHA, CHIEF JUSTICE &
HON'BLE SHRI P. SAM KOSHY, J.**

Judgment On Board**Per NAVIN SINHA, C.J.****29/4/2015**

1. The present appeal arises from the order dated 9.2.2015 dismissing Writ Petition (S) No. 6451 of 2008 on the twin grounds of inordinate and unexplained delay and the non-impleadment of the person appointed consequent to the termination of the Appellant, as a necessary party to the writ petition.

2. Learned Counsel for the Appellant submits that no formal orders of termination were issued. The Appellant kept representing before the

authorities to permit him to work. If he was unauthorizedly absent, the authorities should have first reinstated him and then proceeded in accordance with law. An oral order of termination does not have any legal sanctity and therefore delay is irrelevant.

3. Learned Counsel for the Respondents has supported the order under appeal. It is submitted that the writ petition itself was filed nearly seven years after the Appellant was removed from service. There is no plausible explanation for the delay, much less any explanation for the absence. It is lastly submitted that consequent to the vacancy arising from the termination, one Shri B.R. Kashyap has already been appointed. Any order will prejudicially affect Shri B.R. Kashyap who was not impleaded as party to the writ petition.

4. The Learned Single Judge after examining the records of the case *inter alia* from the resolution dated 17.1.2001 of the Respondents noticed that the Appellant used to remain unauthorizedly absent for longtime without intimating the Competent Authority and therefore the resolution was passed to terminate his services. The resolution had not been challenged. Shri B.R. Kashyap was appointed on 27.2.2001. Third party rights have accrued and fructified. Any consideration of the Appellants grievance would affect Shri Kashyap. He was therefore a necessary party in whose absence the writ petition was not maintainable suffering from a vital defect of non-impleadment of a necessary party.

5. The Learned Single Judge therefore held in the entirety of the matter after referring to several judicial precedents that the writ petition was barred by inordinate and unexplained delay and in absence of Shri B.R. Kashyap who is a necessary party to the writ petition, no relief could be granted.

6. We have gone through the memo of appeal which is completely silent about the resolution dated 17.1.2001, notwithstanding the fact that the Learned Single Judge has taken it into consideration to arrive at a determination that the writ application was highly belated. Despite the observations of the Learned Single Judge that Shri B.R. Kashyap was a necessary party in absence of whom the application was not maintainable, the Appellant has not taken any defence with regard to the same in the memo of appeal.

7. In the entirety of the matter, the resolution dated 17.1.2001 not having been challenged in the writ petition, the delay in preferring the same, and the fatal defect for non-impleadment of a necessary party, we find no reason to interfere with the order under appeal.

8. The writ appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE