

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 305 of 2015**

H.N. Verma son of late Shri Mahaveer Mahto, aged about 72 years,
R/o Ward No.6, Maharana Pratap Ward, North Ring Road, Kedarpur,
Ambikapur, District Surguja (CG).

---- Appellant

Versus

1. State of Chhattisgarh, Through : The Secretary, Agriculture Department, Mantralaya, Mahanadi Bhawan, New Raipur, District Raipur (CG)
2. Joint Director, Agriculture, Bilaspur Division, District Bilaspur (CG)
3. Sub Divisional Officer (Agriculture), Lormi, District Bilsapur (CG)

---- Respondents

For Appellant	:	Shri Uttam Pandey, Advocate.
For Respondent/ State	:	Shri Prafull Bharat, Additional Advocate General

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

Order On Board**Per NAVIN SINHA, C.J.****15/6/2015**

1. The present appeal arises from order dated 7.4.2015 dismissing Writ Petition (S) No. 1170 of 2015. The Appellant was compulsorily retired on 21.2.1995 with effect from 28.2.1995. He was paid three months salary in lieu of the notice period under Rule 42 of the Chhattisgarh (Civil Services), Rules 1976. He represented against the same and then filed Original Application No. 664 of 1995 before the Madhya Pradesh State Administrative Tribunal. After abolition of the Tribunal, the application was transferred to this court and registered as Writ Petition (S) No. 1070 of 2005 consequent to the re-organization of the State of Madhya

Pradesh.

2. Learned Counsel for the Appellant submits that the Learned Single Judge in the interest of justice ought to have heard the appeal on merits and decided it in accordance with law. **AIR 1987 SC 88 (Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others)** relied upon by the Learned Single Judge has no application to the facts of the case.

3. Learned Additional Advocate General has opposed the appeal submitting that the order under appeal calls for no interference which is otherwise well reasoned for declining exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

4. We have considered the respective submissions.

5. The Appellant was compulsorily retired way back in 1995 and was also paid three months salary in lieu of the notice period. Writ Petition (S) No. 1070 of 2005 preferred against the same was dismissed for non-prosecution on 26.10.2009. Copy of the order was sent to the Appellant also.

6. M.C.C. No. 784 of 2012 preferred against the same was filed three years later. It was again dismissed for want of prosecution on 6.9.2013. Subsequently, the Appellant preferred M.C.C. No.1059 of 2013 for restoration of M.C.C. No.784 of 2012 which was allowed on 16.7.2014. Thereafter, M.C.C. No. 784 of 2012 was again dismissed for non-prosecution on 18.8.2014. M.C.C. No. 844 of 2014 for restoration of M.C.C. No. 784 of 2012 was dismissed on 16.1.2015.

7. It is apparent that the Learned Single Judge exercising his discretionary jurisdiction under Article 226 of the Constitution of India, in the facts and circumstances of the case, including the conduct of the

Appellant himself was not satisfied that it was a fit case calling for entertaining the writ application under Article 226 of the Constitution. The view taken by the Learned Single Judge is certainly a plausible view and if we may say so, discretion has been declined by a reasoned order.

8. The exercise of jurisdiction under Article 226 of the Constitution being discretionary in nature, it shall not be an appropriate exercise of jurisdiction by us to interfere with the order of the Learned Single Judge merely because we in Appellate Jurisdiction may have the power to do so. Unless the exercise of jurisdiction by the learned Single Judge is found to be arbitrary, dealt with in a non-speaking manner, arriving at a conclusion which no person would have arrived at in the facts of the case, there is no occasion for us to interfere with the same. Presently, we do not find the order under appeal to be of such nature.

9. The appeal is dismissed.

(Navin Sinha)
CHIEF JUSTICE

(P. Sam Koshy)
JUDGE