

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 6305 of 2011**

- Chhattisgarh State Power Distribution Company Ltd. Through- The Executive Engineer (Operation & Maintenance) Chhattisgarh State Power Distribution Company Ltd. Sakti, District- Janjgir Champa (C.G.)

---- Petitioner**Versus**

- Suresh Kumar Uranv, aged about 37 years, S/o Late Shri Chait Ram Uranv, Working As Attendant Grade - I, Chhattisgarh Electricity Board, Chandrapur, District - Janjgir Champa C.G.

---- Respondent**And****WP227 No. 6307 Of 2011**

- Chhattisgarh State Power Distribution Company Ltd. Through- The Executive Engineer (Operation & Maintenance) Chhattisgarh State Power Distribution Company Ltd. Sakti, District- Janjgir Champa (C.G.)

---- Petitioner**Vs**

- Pursotam Kumar Yadav, aged about 48 years, S/o Late Shri Laxmi Prasad Yadav, Working As Attendant Grade - I, Chhattisgarh Electricity Board, Chandrapur, District - Janjgir Champa C.G.

---- Respondent**And****WP227 No. 6306 Of 2011**

- Chhattisgarh State Power Distribution Company Ltd. Through The Executive Engineer (Operation & Maintenance), Chhattisgarh State Power Distribution Company Ltd. Sakti, District Janjgir Champa, (C.G.)

---- Petitioner**Vs**

- Kanti Lal Nirnajak (dead) Through Legal Heirs :

- **1. a.** Smt. Udarani Niranjak, W/o Late Kanti Lal Niranjak,
- **1. b.** Taruneshwari Niranjak, Aged about 22 Years D/o Late Kanti Lal Niranjak,
- **1. c.** Bhamushankar Niranjak, Aged about 18 Years S/o Late Kanti Lal Niranjak,
- **1. d.** Chandreshwari Niranjak, Aged about 16 Years D/o Late Kanti Lal Niranjak,
- **1. e.** Bharti Niranjak, Aged about 13 Years D/o Late Kanit Lal Niranjak,

All resident of Village And Post Chandrapur, District Janjgir Champa (C.G.)

---- Respondents

For Petitioners	:	Shri Shailesh Ahuja, Advocate
For Respondents	:	Shri KPS Gandhi, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

04/03/2016

1. Challenge in these three petitions under Article 227 of the Constitution of India, is to the similar order passed by the industrial Court dismissing the petitioners' appeal on merits, as well as, on the ground of delay.
2. Shri KPS Gandhi, learned counsel would submit that respondent Kanti Lal Niranjak in WP (227) 6306/2011 has obtained no objection from him, therefore, he is not appearing in this writ petition. No other counsel appears for the legal heirs of the deceased respondent Kanti Lal Niranjak in this writ petition.
3. The respondent workmen were working as Line Attendant Grade-II in the Chhattisgarh State Power Distribution Company Ltd. By order dated

30-7-04, they were transferred to the office of Junior Engineer, Chandrapur, district Janjgir-Champa. They challenged the transfer order before the labour Court, wherein an interim order was granted in their favour on 2-11-04 and were paid the salary from 3-11-04 to 30-4-05, however, salary for the period 1-5-05 to 4-8-05 and 8-9-05 to 26-1-06 were not paid to them, therefore, they moved separate applications under Section 31 (3) of the Chhattisgarh Industrial Relations Act, 1960 (in short 'the Act, 1960').

4. The above applications under Section 31 (3) of the Act, 1960 were posted before the labour Court on 17-8-10 for recording the statement of applicants'/workmens' witnesses, however, on the said date counsel for the employer/petitioner herein was not present, nor any other officer or employee of the petitioner informed the Court about non availability of the lawyer, therefore, the labour Court proceeded *ex parte* and thereafter passed final order on 5-1-11.
5. Before the final order could be passed, the petitioner herein moved an application on 17-9-10 for setting aside the *ex parte* order. This application was moved well before the next date of hearing i.e. 21-9-10. It was stated in the application that on 17-8-10, the employee of the petitioner could not come to Bilaspur due to pressure of work and the counsel failed to appear as he was busy before another court. It was stated that the non-appearance is not willful but is *bona fide*. The labour Court rejected the application for setting aside the *ex parte* order on 8-10-10.
6. Challenging the order dated 8-10-10, as well as the final order dated 5-1-

11, the petitioner moved appeal before the industrial Court. The appeal was barred by 14 days, however, the industrial court has dismissed the appeal not only on account of delay but also on merits.

7. Having heard learned counsel for the parties, it appears, when the petitioner was proceeded *ex parte* on 17-8-10 an application was moved before the next date of hearing citing sufficient cause for non-appearance. It was clearly stated in the application that at the time of hearing on 17-8-10 the lawyer engaged by the petitioner was busy before another court and the employee of the petitioner company who was attending the labour Court at Bilaspur used to visit from Sakti, however, because of urgent official work the officer-in-charge or the employee could not come to Bilaspur.
8. In the considered opinion of this Court, this ground for setting aside the *ex parte* order was sufficient ground and the labour Court should have allowed the application for setting aside the *ex parte* order. It is settled law that the litigants ought not to be punished for the mistake of the lawyer.
9. In its order dated 8-10-10 the labour Court has observed that if the lawyer was busy before another court any employee should have remained present before the court, however, while making such observation, the reason assigned in the application about non-availability of the employee has not been taken note of. Similarly, the observation that the lawyer engaged by the petitioner deliberately kept him busy in some other court is also not warranted as no lawyer appearing for the Institution would keep himself deliberately busy in some other court. This

part of the order passed by the labour Court is otherwise without any foundation.

10. The appellate Court has also reiterated the reasons assigned by the labour Court while dismissing the application for setting aside the *ex parte* order. Insofar as, the delay in filing the appeal is concerned, it is to be seen that the appeal was barred by only 14 days and was thus not submitted after enormous delay.

11. For the foregoing, all the petitions are allowed in part.

12. The appellate order passed by the industrial court as well as the order passed by the labour court on 8-10-10 & 5-1-11 are set aside and the matter is remitted back to the labour Court for decision afresh in accordance with the law. The labour court shall decide the matter at the earliest, preferably within a period of 6 months from today.

Sd/-

Judge

Prashant Kumar Mishra

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