

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MISC. CIVIL CASE NO. 567 OF 2009

Kedar Prasad Agrawal, aged about 55 years, S/o Late Shri Shivram Prasad Agrawal, Lower Division Clerk, Commercial Tax (Old-Sale Tax) Office, Resident of Bastar, Tah. & Dist. Jagdalpur (C.G.)

... Petitioner

Versus

1. State of Madhya Pradesh (now changed) State of Chhattisgarh, through the Chief Secretary, D.K.S. Bhawan, Raipur (C.G.)
2. The Commissioner of Commercial Tax (Old Sales Tax), Chhattisgarh, Raipur (C.G.)
3. Deputy Commissioner of Commercial Tax (Old Sales Tax), Raipur Division -2, Raipur (C.G.)

... Respondents

For Petitioner	:	Mr. Viprasen Agrawal, Advocate.
For Respondents	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19/08/2016

1. The Petitioner has preferred the present Misc. Civil Case seeking for restoration of Original Application No. 479 of 1990 which got dismissed for want of prosecution by the State Administrative Tribunal at Jabalpur on 24.6.1998.
2. I.A. No.1 has been filed by the Petitioner seeking for condonation of delay in filing of the present Misc. Civil Case which is barred by 4145 days.
3. Facts relevant for the adjudication of the present case are that on 20.2.1990 the Petitioner is said to have filed an original application before the State Administrative Tribunal at Jabalpur challenging the order dated 31.3.1989 as also the order dated 17.11.1985. By order dated 17.11.1985 the Petitioner was imposed with a punishment of stoppage of two increments with cumulative effect. Subsequently, the appeal against the said order was preferred and by order dated 31.3.1989 the appeal so

preferred by the Petitioner was dismissed. The said original application was admitted by the State Administrative Tribunal and notices were issued to the State and in the year 1995 it is said that the reply of the State was also filed and the matter was fixed for the rejoinder of the Petitioner. However, when the matter came up for hearing on 24.6.1998 since there was no representation on behalf of the Petitioner, the said Court dismissed the original application for want of prosecution.

4. Though the order of dismissal of the original application was passed on 24.6.1998, the present application for restoration of original application has been filed before this Court on 7.12.2009 i.e., almost after about 11½ years seeking for restoration of the original application which stood dismissed on 24.6.1998.

5. At the first instance what has to be seen is the fact that the original application was allowed by the Madhya Pradesh State Administrative Tribunal as it then stood. At the relevant point of time the State of Chhattisgarh was not even created. The High Court of Chhattisgarh also had not come into existence. Subsequently, the present application for restoration of original application has been filed on 7.12.2009. Along with the present application for restoration, an application (I.A. No.1) under Section 5 of the Limitation Act for condoning the delay in filing the present application for restoration of original application has also been filed by the Petitioner.

6. The solitary ground seeking for condonation of delay is the death of the Counsel engaged by the Petitioner at Jabalpur. According to the Counsel for the Petitioner, he initially engaged one Shri M.M. Agrawal, Advocate, at Jabalpur and that the said Counsel in the year 1995 had expired on account of some ailment. Subsequently, the Petitioner was not

aware of any further developments that took place and neither was he ever intimated by the family members of his lawyer or any of his associates in respect of the death of his Counsel at Jabalpur and the rejection of his original application in the year 1998.

7. Further contention of the Counsel for the Petitioner in respect of seeking of condonation of delay is that he had learnt about the dismissal of the original application in the year 2009 when he had went to Jabalpur for verifying about the details of his case where he was informed that the Tribunal in the process has been abolished and all the matters have been transferred to the State of Chhattisgarh and it would be the High Court of Chhattisgarh where he could seek further informations in respect of his case. When he had inquired about the development of his case at Bilaspur High Court it is then only that he had applied for the certified copy of the order and has filed the present application for restoration on 7.12.2009. As such the delay is not inordinate on his part and there is no malafide intention in the delay that has occurred and the same may be liberally and sympathetically considered and the delay of 11½ years occurred in filing of the present application may be condoned.

8. Opposing the Misc. Civil Case, learned Counsel for the State submits that there is inordinate, explained delay on the part of the Petitioner in filing the present case. According to the State Counsel, it is a case where the order of punishment was under challenge before the Tribunal and the Petitioner ought to had been vigilant so far as his right is concerned. He ought to have been periodically verified about the status of the case from his Counsel who had been engaged. It was his duty to pursue the proceedings, though he had engaged a Counsel to represent before the Court, but that does not mean that the he should go into deep slumber after entrusting the file with his Counsel.

9. State Counsel further submits that the reasons assigned are too vague and not very specific inasmuch as the Petitioner has not been able to give each days delay caused in the filing of the present Misc. Civil Case. According to the State Counsel, since the death of the earlier Counsel of the Petitioner took place in the year 1999 there was no reason why the Petitioner did not pursue his case in between and the Petitioner should have also taken prompt and periodical informations from the Counsel. Therefore no good case made out by the Petitioner for condoning the inordinate, unexplained delay in the filing of the present case.

10. Having considered the submissions put forth by the Counsels appearing on behalf of either side and on perusal of the record what is clearly reflected is that the solitary ground of the death of the Counsel for the Petitioner appears to have taken place in the year 1999 and from the date of the death of the Counsel also, the present Misc. Civil Case has been filed after more than 10 years and the delay for these 10 years has not been explained in any manner except the fact that he was awaiting an instruction from his Counsel. A person who has approached a Judicial Forum seeking for redressal of his grievance more particularly when a disciplinary action initiated in his service is under challenge, is supposed to be vigilant of his rights and duties and it is also expected that he shall be promptly pursuing his case at regular intervals by seeking information from his Counsel in case of any development or requirement for further progress of the case. In the instant case, no such explanation whatsoever has been given by the Petitioner to show that he has been vigilant and has been pursuing his case seriously. Neither has the Petitioner given any explanation for the 10 years gap that took place from the date of the death of earlier Counsel and the filing of the present Misc. Civil Case.

11. It is a case where the Petitioner was aware of the fact that subsequent to the original application being filed in the State Administrative Tribunal at Jabalpur, there was a development inasmuch as a new State was carved out and a new High Court also was established in the State of Chhattisgarh which is much closer to the place where the Petitioner was working as compared to the place where he has instituted the original application. This also is one of the reasons where he ought to have pursued his remedies by approaching his Counsel at regular intervals to inquire about the updates of his case which he has filed and there is no explanation whatsoever in this regard in the application for condonation of delay.

12. The law so far as condonation of delay is concerned is by now well established. The Courts have specifically held that a discretion in favour of a person who is indolent his right is not be exercised. It is only the person who is prompt in knocking the door of the Court of law and also in pursuing his remedies available under the law who is entitled for any discretionary benefit by the Court of law. True it is that in the instant case it is a disciplinary action which is under challenge by the Petitioner and the Petitioner by now must have reached the age of superannuation and right from the date on which the original application was rejected on 24.6.1998 for a period of 11 years if the Petitioner has not been vigilant about his case or the development in his case or has either contacted his lawyer in between who had in fact expired in the year 1999, it cannot be said that the Petitioner was vigilant of his right. Rather, it is a case where it appears that he was prima facie indolent of his right and went in deep slumber after filing the original application before the State Administrative Tribunal. The delay in the filing of the present Misc. Civil Case is not satisfactorily explained nor has there been any plausible justification given and that

even from the date of the death of the original Counsel for the Petitioner till the filing of the present case also there is a huge inordinate, unexplained delay which does not call for any sympathetic consideration.

13. The application for condonation of delay therefore being bereft of merit the same deserves to be and is accordingly rejected. Consequently, the Misc. Civil Case stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

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