

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 36 of 2016**

Dr. Smt. S. Birthare W/o Shri V.N. Birthare, Aged About 62 Years
Occupation Female Medical Officer, Primary Health Centre, Portha,
District Janjgir Champa, R/o Lions School Road, P. S. Champa, District
Janjgir Champa (Chhattisgarh)

----Appellant**Versus**

1. State Of Chhattisgarh Through Health And Family Welfare, D.K.S. Bhawan, Mantralay, Raipur (Chhattisgarh) At Present Mahanadi Bhawan, New Mantralay, District Raipur (Chhattisgarh)
2. Director, Health Services, Old Nurses Hostel, Behind Mantralay, District Raipur (Chhattisgarh)
3. Chief Medical Officer/ Hospital Superintendent, District Janjgir Champa (Chhattisgarh)
4. District Health Officer, District Janjgir Champa (Chhattisgarh)

-----Respondents

For Appellant:

Shri Prakash Tiwari, Advocate.

For Respondents/State:

Shri B.Gopa Kumar, Deputy Advocate General.

Hon'ble The Chief Justice**Hon'ble Shri Justice P. Sam Koshy****Judgment on Board****Per Navin Sinha, Chief Justice****28/1/2016**

1. I.A No.1 of 2016 has been filed to condone 82 days delay in filing the appeal.
2. Having heard Learned Counsel for the parties, the explanation for the delay and the nature of order passed by the Learned Single Judge, delay is condoned.
3. The present appeal assails order dated 24.8.2015 disposing W.P.(S) No.5931 of 2008 setting aside the order of dismissal dated 28.8.2008 holding

that the departmental proceedings were procedurally flawed. The order of dismissal was set aside and the matter remanded to proceed afresh from the stage of charge sheet and filing of reply to the charges, to commence from the stage of evidence and fresh order to be passed by the Enquiry Officer in accordance with law.

4. Learned Counsel for the Appellant submitted that if the departmental proceedings were procedurally flawed, the Appellant is not to be blamed for the same and he cannot be visited with the consequences by being kept out of service during the period when fresh proceedings have been directed. The Appellant is entitled to reinstatement and undertakes to cooperate with the departmental proceedings.

5. Learned Counsel for the State submitted that charge sheet was issued on 29.11.2004 for unauthorized absence since 10.12.1996. Dismissal was ordered on 28.8.2008. The Appellant has already remained out of service till the year 2015. The proceedings have been directed to be concluded within six months. It is not an appropriate case to direct reinstatement during the pendency of the proceedings.

6. We have considered the submissions and are satisfied to hold that the present is not a fit case for directing reinstatement during the pendency of departmental proceedings for more than one reason.

7. No fault can be found with the conclusion of the Learned Single Judge that the departmental proceedings being procedurally flawed, the order of dismissal was not sustainable. The normal order to be passed in such matters is to direct the proceedings to proceed afresh from the stage of irregularity as rightly directed by the Learned Single Judge. Normally, in such cases where fresh proceedings have been directed from the stage of

irregularity, reinstatement is not to be ordered as a matter of course, it is dependent on a variety of factors such as gravity of the charge, passage of time etc. Considering that the Appellant was unauthorizedly absent since 1996, dismissal ordered in the year 2008 and in 2015, directions have been issued to proceed afresh from the stage of irregularity in the departmental proceedings fixing a time limit for completion, we are not satisfied to direct reinstatement in the meantime.

8. Learned Counsel for the Appellant orally submitted that no developments whatsoever have taken place thereafter. There are no pleadings to that effect and therefore it is not possible for us to say anything with regard to the same.

9. No fault can be found with the exercise of discretionary jurisdiction by the Learned Single Judge in not directing reinstatement applying the principles with regard to an order of punishment in a departmental proceeding found to be procedurally flawed. Only because we may be an Appellate Court and may have the power to pass an order over and above that of the Learned Single Judge, is not sufficient reason to interfere with what is otherwise a well reasoned order.

10. Nothing precludes the authorities from concluding the proceedings even earlier subject to cooperation by the Appellant.

11. The Appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE