

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 124 of 2016**

Rahman S/o Shri Shafi Mohammad, Aged about 54 years, R/o Ward No. 3,
North Jhagrakhand Colliery, District Korea, (Chhattisgarh)

---- Appellant**Versus**

1. Chief Managing Director, South Eastern Coalfields Limited, Bilaspur, (Chhattisgarh)
2. General Manager, South Eastern Coalfields Limited, GM Office (Ledari) South Jhagrakhand Colliery, District Korea, Chhattisgarh.
3. Sub Divisional Manager, West Jhagrakhand Colliery (Khongapani) SECL (Hasdev Area) District Korea, Chhattisgarh.
4. Manager, Palaki Bhandra, New Incline West Jhagrakhand Colliery, District Korea Chhattisgarh.

---- Respondents

For Appellant	:	Shri Vikrant Pillai and Shri R.R.Soni, Advocates.
For Respondent/SECL	:	Dr. N.K.Shukla, Senior Advocate with Shri Manoj Yadav, Advocate.

Hon'ble Shri Navin Sinha, Chief Justice**Hon'ble Shri P. Sam Koshy, J.****Judgment on Board****Per Navin Sinha, Chief Justice****15/03/2016**

1. This appeal is barred by 1776 days. IA No. 1 of 2016 has been filed to condone the delay.
2. The present appeal arises from order dated 15.3.2011 dismissing Writ Petition No. 800 of 2006.
3. Learned Counsel for the Appellant submits that he was made accused in a police case under Section 379 of the Indian Penal Code while performing duties under the Respondent-SECL. Because of the same, he was also removed from service. Subsequently, acquittal has followed on 26.2.2000 in Criminal

Case No. 2497 of 1989 ordered by the Judicial Magistrate, First Class, Manendragarh. The Appellant then made a prayer for reinstatement which was declined. Departmental proceedings having been held on the same charge, it can be no defence to deny the benefit of acquittal by reference to the same. Reliance was placed on (2016) 2 SCC 123 (B.S.Sheshagiri Setty v. State of Karnataka).

4. Learned Senior Counsel for the Respondent-SECL submits that the appeal is barred by gross delay and laches. Even otherwise, acquittal in the criminal case is not on merit, but technicalities of law as prosecution witnesses did not appear to depose. Acquittal in the criminal case for the aforesaid reason does not invalidate the findings in the departmental proceedings which in any event have admittedly not been assailed at all.

5. We have considered the respective submissions.

6. A person seeking relief in the equitable discretionary writ jurisdiction has an obligation to come to the Court at the earliest point of time and if there is delay, there must be reasonable and plausible explanation for the same. In service matters, delay has always been considered very vital. If a person is dismissed from service, the employer does not keep the post vacant to facilitate the dismissed employee from approaching the Court at his convenience and obtain relief for reinstatement. Vacancies are filled immediately according to the need of the employer. The Appellant was dismissed on 21.5.1986. Acquittal on which he relies was made on 26.2.2000. The Writ Petition itself was filed six years later. If that were not enough, the present appeal is again barred by delay of 1776 days.

7. Learned Senior Counsel for the Respondent-SECL has rightly submitted that even if the charges in criminal case and the departmental proceedings were the same, reinstatement does not follow automatically and matters essentially

remain within the realm of the employer, involving issues for lack of confidence in the employee. In any event, in the present case, acquittal in the criminal trial was not on merits but on technicalities as the prosecution witnesses did not appear.

8. We have considered the submissions on behalf of the parties.

9. Reliance upon B.S.Sheshagiri Setty (supra) is completely misconceived. The Appellants therein were small farmers who had availed loan of Rs. 16,000/- from the Kadur Taluk Primary Co-Operative Land Development Bank Limited by mortgaging their entire agricultural property as security. Being unable to repay the loan, an ex-parte award was made against them. Delay was condoned considering that they were poor farmers litigating for three decades with regard to the land which was the only source of their livelihood invoking Article 21 of the Constitution. The records revealed that the Appellants had in fact paid the entire principal amount. The case is completely distinguishable on its own facts.

10. In (2006) 6 SCC 366 (Uttaranchal Road Transport Corpn. v. Mansaram Nainwal), the Appellant was dismissed after departmental enquiry. Reinstatement was ordered after acquittal in criminal case placing reliance on (1999) 3 SCC 679 (Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.) on the reasoning that the charges were common. Disapproving of the same, it was held relying on (1997) 4 SCC 385 (Union of India v. Bihari Lal Sidhana) that mere acquittal in criminal case did not result automatically in reinstatement and it was open for the appropriate authority to take a decision in the particular facts of a case whether reinstatement ought to be ordered or not.

11. Likewise, in (2013) 7 SCC 685 (Commissioner of Police, New Delhi v. Mehar Singh), the difference between an honourable acquittal and acquittal on technical grounds was noticed holding that while the former may be relevant, the latter was an irrelevant consideration.

12. Considered from any aspect, whether it be delay or merits, we do not find any reason to condone the delay. No sufficient explanation has been furnished for this long inordinate delay and we do not approve of the grounds urged merely by change of Counsel. No statement has been made why the Appellant was not vigilant for the protection of his own interests and did not consider it necessary to keep in touch with his Counsel. The application for condonation of delay is dismissed as no sufficient explanation has been shown for condoning such long and inordinate delay.

13. Consequently, the appeal also fails.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE