

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 245 of 2016**

Arun Kumar Pathak S/o Late Shri Jawala Prasad Pathak, Aged About 62 Years
 Multipurpose Health Worker, R/o Qr. No. F/3, Ridhi Sidhi Colony, Phase 3,
 Rajnandgaon Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Medical And Health Services,
 Mantralaya, Raipur Chhattisgarh
2. The Joint Director, Health Services, Raipur Chhattisgarh
3. The Chief Medical And Health Officer, Jagdalpur District Bastar Chhattisgarh
4. The Director, Family Welfare And Health Officer, Kaniker Chhattisgarh
5. The Block Health Officer, Primary Health Centre, Kondagaon, Chhattisgarh

---- Respondents

For Appellant	:	Shri Harshal Chouhan, Advocate.
For Respondents/State	:	Shri Y.S. Thakur, Deputy Advocate General.

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Order on Board**Per Deepak Gupta, Chief Justice****16/06/2016**

1. This writ appeal is directed against the judgment dated 16.2.2016 delivered in Writ Petition (S) No.2989 of 2011 whereby the Learned Single Judge dismissed the petition as being barred under the doctrine of delay and laches.
2. The facts necessary for disposal of this writ appeal are that the Appellant was appointed as a Surveillance Worker on adhoc basis by the Divisional Joint Director, Health Services, Bastar Division on 10.1.1984. The Appellant applied for grant of casual leave for four days from 7.9.1987 to 10.7.1987 on the ground of his illness. He however did not report back to duty after the period of sanctioned leave was over. He in fact, appeared before his higher authorities on 20.4.1988 alongwith a fitness certificate issued by the Medical Officer. He was not allowed to rejoin his duties.

3. The case of the Appellant is that he kept filing representations in the matter but no order was passed on his representations. Finally on 29.6.1999, the Director of Health Service passed an order accepting one of the representations of the Appellant and allowed the Appellant to rejoin his duties. However, by the same order, it was also ordered that the entire period of absence shall not be treated to be period on duty. The Appellant accepted this order, rejoined duties and continued working. He received his salary as per the order passed by not giving him the benefit of the period of absence of more than 12 years. Finally, he filed a writ petition on 13.6.2011 i.e. more than 12 years after he had rejoined challenging that portion of the order whereby his period of absence was to be treated as not on duty.

4. The Learned Single Judge rejected the petition holding that the Appellant had slept over his right, if any, for a period of 12 years and therefore, the petition was barred by the doctrine of delay and laches.

5. Learned Counsel for the Appellant submits that doctrine of delay and laches would not be applicable to this case since every month he is getting pay which is less than the pay he was entitled to and therefore each month when he gets his pay gives him a new cause of action for filing the writ petition. In this regard, he has relied upon a judgment of the Apex Supreme Court in 1989 AIR 985 (P.L. Shah v. Union of India & Another). In our considered view that judgment has no applicability to the facts of this case. In that case the grievance of the Petitioner was that he was not getting suspension allowance as per the Rules. The Tribunal constituted under the Administrative Tribunals Act had rejected the prayer on the ground of limitation. The Apex Court held that every month the Petitioner was paid subsistence allowance and paying him less subsistence allowance gave rise to fresh cause of action each month.

6. The facts of this case are totally different. The Appellant initially remained

absent from duty for seven months. He actually absented himself right from the year 1989 and was permitted to rejoin duties only in the year 1999. An order was passed and in that order permitting him to rejoin a specific condition was laid down that the period of absence will not be considered towards the service of the Appellant. The cause of action for the Appellant arose then and there. It may be true that consequent to the said order every month the Appellant may get lesser pay but unless the order is set aside, the prayer of the Appellant cannot even be looked into. The legality of the order should have been challenged by the Appellant within a reasonable period. In this regard, we would also like to observe that the Appellant took the benefit of that portion of the order which was beneficial to him and now after 12 years, he cannot be permitted to challenge the remaining portion which is against him.

7. We therefore find no merit in the writ appeal. It is dismissed accordingly.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE