

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 192 of 2016**

Ram Sanahi Rathore S/o Late Shri Hanuman Prasad Rathore, Aged about 56 years, Occupation Service, Presently posted as Sub Divisional Officer, Rural Engineering Services, Sub Division, Tumnar, Thana and Tehsil Tamnar, Civil and Revenue District Raigarh, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh, Through Secretary, Rural Engineering Services, Secretariat, Mantralaya, Mahanadi Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh.
2. Joint Secretary, Panchayat and Rural Development Department, Mantralaya, Mahanadi Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh.
3. Chief Engineer, Development Commissioner Office, Civil Lines, Raipur, PS Civil Lines, Civil and Revenue District Raipur, Chhattisgarh.

---- Respondents

For Appellant : Shri Rahul Tamaskar, Advocate.
 For Respondent/State : Shri R.K.Gupta, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board**Per Navin Sinha, Chief Justice****18/04/2016**

1. The present appeal arises from order dated 4.12.2015 dismissing Writ Petition (S) No. 4614 of 2015 declining to grant relief for promotion w.e.f 2007 while it has been granted effectively on 31.12.2012, inter alia, on the grounds of delay.

2. Learned Counsel for the Appellant submits that earlier, in Writ Petition (S) No. 2791 of 2014, this Court permitted the Appellant to represent. The representation has since been disposed on merits. The ground that no posts were

available for promotion on the date DPC was convened is factually and legally incorrect.

3. Learned Counsel for the State has opposed the appeal submitting that in service matters, delay has always been considered vital as it necessarily has repercussions on others who may have been promoted in the meantime.

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

5. Delay in service matters, specially with regard to promotion, has always been considered very vital. Persons who are promoted in the meantime sit sanguine in the safety of their accrued rights and would receive a sudden jolt if belated claims are entertained giving rise to more litigation and as observed by the Learned Single Judge unsettling what may otherwise be settled matters.

6. The Appellant claims promotion from the year 2007. The Appellant does not deny that he has been given promotion on 31.12.2012. He does not deny that before grant of promotion, he did not pursue any legal remedies with regard to the same. Even Writ Petition (S) No. 2791 of 2014 was filed 1½ years after promotion and withdrawn to pursue matters in a representation.

7. It is a matter of common knowledge that when the Court is not inclined to entertain a claim on merits, rather than to take an adverse order of dismissal, the claim is sought to be disposed with liberty to file a representation. The filing of such representation does not condone the earlier delay. If relief is granted on such a belated representation, so much the better for the person concerned. But if the representation is rejected, the order of rejection does not resurrect a cause of action to file a writ petition which never existed on the earlier occasion itself when the Court had declined to interfere on merits leaving the Appellant to his fate on a representation. We need not enunciate and discuss any further in view of the principles laid down in (2008) 10 SCC 115 (C. Jacob v. Director of Geology & Mining).

8. In so far as delay with regard to matters of promotion is concerned, we can only extract the following from a judgment as far back as (1975) 1 SCC 152 (P. Sadasivaswamy v. State of Tamil Nadu) and observe that it was virtually prophecy which has come true with over burdened dockets of the Court by stale claims like the present, observing as follows:

"2....A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner's petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. it clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant's petition as well as the appeal."

9. IA No. 1 of 2016, for condoning 24 days delay in filing the appeal is allowed. The writ appeal is dismissed.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE