

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No.2617 of 2003**

1. Zila Sahakari Kendriya Bank Maryadit, Raigarh Bearing Registration No.9 Dated 21/3/49, having its office at Gandhi Pratima Chowk, Raigarh through its Chief Executive Officer (Manager), Raigarh, Distt. Raigarh (CG)

- 1.1 Zila Sahakari Kendriya Bank Maryadit Raigarh bearing

Registration No.9 dated 21/3/49, having its office at Gandhi Pratima Chowk, Raigarh Through the Official Liquidator being the Collector Raigarh (CG)

----Petitioners

Versus

1. Ramesh Kumar Choubey S/o Murlidhar Choubey, Aged about 52 years, Ex-Manager, Adim Jati Sewa Sahakari Samiti, Gharghoda, Resident of Gharghoda, District Raigarh (CG)
2. The Joint Registrar, Co-operative Societies Chhattisgarh, Raipur (CG)

---- Respondents

For Petitioner	:	Mr.Animesh Verma, Advocate
For Respondent No.1	:	Mr.Varun Sharma, Advocate
For Respondent No.2	:	Mr.Arun Sao, Deputy Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

20/09/2017

1. By way of this writ petition, the petitioners call in question the legality, validity and correctness of the order dated 30.6.2003 (Annexure P/10) passed by respondent No.2/Joint Registrar, Co-operative Societies, Chhattisgarh, Raipur in Appeal Case No.78-71/R/2003, whereby respondent No.2 has allowed the appeal filed by respondent No.1 and set aside the order dated 26.3.2003 (Annexure P/5) passed by the Deputy Registrar,

Co-operatives Societies, Raigarh.

2. Learned counsel for the petitioners would submit that the Deputy Registrar, Co-operatives Societies, Raigarh has rejected the service dispute raised by respondent No.1 under Section 55(2) of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as "Act of 1960") only on the ground of delay, but respondent No.2/Joint Registrar, Co-operative Societies, Raipur while setting aside the order of the Deputy Registrar, Co-operative Societies, Raigarh has decided the appeal on merits and clearly erred in not remanding the matter back to respondent No.2. Even question of limitation has not been considered by respondent No.2, therefore, the impugned order passed by respondent No.2 is unsustainable and bad in law, which deserves to be set aside.
3. On the other hand, learned counsel for respondent No.1 would support the impugned order.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.
5. The service dispute raised by respondent No.1 under Section 55(2) of the Act of 1960 was dismissed by the Deputy Registrar, Co-operative Societies, Raigarh on 26.3.2003 finding that the dispute is barred by limitation and respondent No.2/Joint Registrar, Co-operative Societies, Raipur finding sufficient cause set aside the order of dismissal from service of respondent No.1,

which has been assailed.

6. The Supreme Court in the matter of N. Balakrishnan Vs. M. Krishnamurthy¹ has held that once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding. It was observed as under:-

“9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.”

7. I do not find any merit in the contention of the petitioners and order condoning delay is sustainable in law.
8. The next contention of Mr.Verma is that the matter could have been remanded back to the Deputy Registrar, Co-operative Societies, Raigarh after condoning the delay.
9. A careful perusal of the impugned order would show that counsel

¹ (1998) 7 SCC 123

for the Bank has clearly conceded that he has no objection if the matter is decided on merits and thereafter, the matter has been decided on merits and order of dismissal from service has been set aside finding sufficient opportunity has not been given to respondent No.1 during the course of enquiry and while passing the order of dismissal. The Joint Registrar, Co-operative Societies, Raipur has clearly recorded a finding the petitioner's service has been dismissed in violation of principle of natural justice.

10. Learned counsel for the petitioners could not demonstrate that respondent No.1 was afforded sufficient opportunity of hearing and order of respondent No.2 is unsustainable in law.
11. I do not find any merit in the writ petition. The writ petition being without substance is liable to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-