

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 3265 of 2005**

Hingulaj Prasad Patel, S/o Late Shri Nilamber Prasad Patel, R/o Village
Patharipali, Post Pahanda, Tahsil-Sarangarh, District Raigarh (M.P.)

---- Petitioner**Versus**

1. State of Madhya Pradesh, Through – Principal Secretary, Revenue
Department, State of M.P., Bhopal (MP)
2. Collector, Jashpur, District Jashpur (M.P.)
3. Sub-Divisional Officer (Revenue), Jashpur, District Jashpur (MP)

---- Respondents

For Petitioner	:	Mr. H.S. Patel with Mr. N.Naha Roy, Advocates
For State	:	Mr. R.K. Mishra, Dy. A.G., on advance copy

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****04/04/2017**

Heard on admission.

1. The petitioner initially filed an Original Application before the then, Madhya Pradesh State Administrative Tribunal Bench Raipur, registered as O.A. No.393 of 2000, assailing correctness and validity of order dated 05.11.1981 and order dated 01.03.2000. During the pendency of the petition, it was transferred to this Court, upon abolition of the Tribunal.

2. The petitioner was initially appointed as Patwari on 12.04.1956. On 19.04.1980, the petitioner was transferred from Baramkela to Jashpur, which order, he did not comply. This led to initiation of a departmental action. He was suspended on 06.08.1980 and on the same date, the charge-sheet was also issued to him. The petitioner submitted his reply on 30.08.1980. During this

period, the petitioner kept on making demand for payment of his subsistence allowance and finally in the year 1985, as averred, suspension allowance from 07.08.1980 to 04.11.1981 was paid to the petitioner. Thereafter, the petitioner did not receive any information. According to the petitioner, he kept on making representation to regularize the period of suspension and pay him subsistence allowance, which was not paid any heed. On 30.06.1994, the petitioner attained the age of superannuation also. During this period, the petitioner, as stated, kept on raising demands for payment of subsistence allowance.

3. As late as in the year 1999, in response to various representations made by the petitioner, Commissioner vide his letter dated 11.03.1999, communicated the petitioner that vide order dated 05.11.1981 of the Sub-Divisional Officer, Jashpur, the petitioner has been terminated from service. According to the petitioner, this order was never served upon him. A copy of this order was finally supplied to the petitioner on his application dated 16.11.1999 whereafter, the petitioner preferred an appeal before the Collector. Vide impugned order dated 01.03.2000, the Collector dismissed the appeal as barred by limitation giving rise to Original Application (present petition).

4. Submission of learned counsel for the petitioner is that when the petitioner was placed under suspension, a charge-sheet was issued, suspension allowance was not being paid, therefore, the petitioner kept on making representation and he was never informed that on 05.11.81, his services have been terminated. According to learned counsel for the petitioner, once a charge-sheet was issued, it should have been brought to his logical conclusion. He submits that even on the ground of unauthorized absence, the petitioner could not be terminated from service without holding a departmental enquiry to prove the charges of unauthorized absence. Learned counsel for the petitioner further argued that the order of termination was never communicated to him, therefore, the order never became effective and therefore, he continued in service until he attained the age of superannuation on 30.06.1994. Therefore, even if the petitioner is stated to be under suspension, he is not only entitled to the subsistence allowance as per Rules on enhanced rate due to long continuance of suspension but also he is entitled to pensionary benefit treating him to be in service till attains the age of

superannuation and therefore, he is entitled to pension and other benefit. Learned counsel for the petitioner places reliance upon the judgments of the Apex Court in the cases of **State of Punjab Vs. Amar Singh Harika¹**, **Municipal Corporation of Delhi vs. Qimat Rai Gupta and Others²**, **Prithipal Singh Vs. State of Punjab³**, **R. Mahalingam Vs. Chairman, Tamil Nadu Public Service Commission and another⁴** and **Union of India Vs. Madhusudan Prasad⁵**.

5. On the other hand, learned State counsel raises serious objection with regard to the very maintainability of the petition only on the ground of delay and laches by submitting that the petitioner was placed under suspension in the year 1980 and thereafter, he was terminated by order dated 05.11.1981. He submits that it was wholly improbable that the petitioner would not have known about the order and this has also been noted by the Collector in the impugned order. Further submission is that the petitioner never approached the Court of law. There is nothing on record to show that the petitioner ever attended the office. If suspension allowance was not being paid and salary was not being paid or the petitioner was not being allowed to work, the petitioner ought to have approached the Court of law within a reasonable time but the petitioner sat over the matter and even though he attained the age of superannuation on 30.06.1994, for a period of about 14 years, the petitioner did not take recourse to any remedy under the law which shows that the petitioner was never interested in the service and even after he had full notice and knowledge of the order of termination dated 05.11.1981, the petitioner did take any remedy in time. Learned State counsel further argued that even after superannuation in the year 1994, the petitioner did not do anything and only in the year 1999, taking advantage of the fact that the respondents were not possessed of all the records, it being an old matter, started raising that order dated 05.11.1981 was not served on him. Therefore, in these circumstances, the petition may be dismissed only on the ground of delay and laches.

6. On the other ground, learned counsel for the respondents submits that

1 AIR 1966 SC 1313

2 (2007) 7 SCC 309

3 (2006) 13 SCC 314

4 (2013) 14 SCC 379

5 (2004) 1 SCC 43

the petitioner was rightly terminated from service because the petitioner never complied with the order of transfer by which, he was transferred from Baramkela to Jashpur. The petitioner remained unauthorizedly absent, therefore, the authority was left with no option except to terminate the services of the petitioner on the ground of unauthorized absence vide order dated 05.11.1981.

7. The petitioner was transferred vide order dated 19.04.1980 from Baramkela to Jashpur. The order of suspension and the charge-sheet show that the petitioner was placed under suspension because he did not proceed on transfer. There is no material on record to show that he had joined at Jashpur. The petitioner was, thus, nowhere. The petitioner could not demonstrate from any record that he was allowed to work to Baramkela. This clearly shows that the petitioner was not working anywhere and in view of order of suspension by which, his headquarter be fixed at Jashpur Nagar, he never bothered to join there also, at the same time, he kept on making demand for payment of his subsistence allowance, therefore, subsistence allowance from 07.08.1980 to 03.10.1985 was paid to him sometime in the year 1985. No specific document has been placed on record but averment has been made regarding payment of subsistence allowance for the period from 07.08.1980 to 04.11.1981. In the absence of there being any material brought on record by the petitioner that he was reporting at the headquarter for the purposes of collecting subsistence allowance, all that can be inferred in the case is that the petitioner never went to Jashpur. There is no material on record to show that the petitioner had left any address for services of notice of the dates of departmental enquiry and for that reason, final order was passed on 05.11.81 terminating his services on account of unauthorized absence.

8. Even if the contention of the petitioner were to be accepted that the order dated 05.11.1981 was not served upon him, it is highly surprising as to what the petitioner was doing till the date he attained the age of superannuation in the year 1994. The petitioner never approached any Court of law till his attaining the age of superannuation i.e. for about 14 years, the petitioner was only engaged in making certain representations that too during the period from year 1982 to 1986. This conduct of the petitioner raises

serious doubt with regard to dates of the petitioner. The petitioner practically sat at home without taking any remedy. Even after the petitioner attained the age of superannuation, the petitioner did not take any remedy. He claims to have obtained the copy of the order of termination on 05.11.1981 through various representation in the year 1999 and thereafter appeal to the Collector.

9. The conduct of the petitioner, therefore, does not entitle him any relief from the Court of law. The petitioner approached the Tribunal after 19 years of the order of suspension. As a prudent person, the petitioner, if not paid subsistence allowance, not allowed to work, ought to have approached the Court of law within the reasonable time. Approaching Tribunal after almost two decades, disentitled the petitioner to any relief only on the ground of delay and laches. Therefore, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)

J U D G E