

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 25.09.2017****Delivered on 27.09.2017****Writ Appeal No. 349 of 2017**

(Arising out of Order dated 12.04.2017 in Writ Petition (S) No.
979/2017 of the learned Single Judge)

- Charan Singh Dhurve S/o Shri Kunwar Singh Dhurve aged about 36 years Occupation Service, Ex - Secretary of Gram Panchayat Mudghusari, R/o Village Mudghusari, Thana & Tahsil Bodla Civil and Revenue District Kabirdham, Chhattisgarh.

---- Appellant**Versus**

1. State of Chhattisgarh Through the Secretary, Panchayat and Social Welfare Department, Mantralaya, Mahanadi Bhavan, Capital Complex, New Raipur, District Raipur, Chhattisgarh.
2. The Commissioner, Durg Division Durg, Civil and Revenue District Durg, Chhattisgarh.
3. Collector, Kabirdham, Civil and Revenue District Kabirdham, Chhattisgarh.
4. Sub Divisional Officer, Bodla, Civil and Revenue District Kabirdham, Chhattisgarh.
5. Chief Executive Officer, Janpad Panchayat Bodla, Civil and Revenue District Kabirdham, Chhattisgarh.
6. Krishna Kumar Markam S/o Shri Dasaruram Markam R/o Village Sontara Post Baijalpur, Gram Panchayat Mudghusari, Thana and Tehsil Bodla, Civil and Revenue District Kabirdham, Chhattisgarh.
7. Sarpanch Ishwar Singh Markam, Gram Panchayat Mudghusari, Thana and Tahsil Bodla, Civil and Revenue District Kabirdham, Chhattisgarh.
8. Secretary Vazir Khan, Gram Panchayat Mudghusari, Thana and Tahsil Bodla, Civil and Revenue District Kabirdham, Chhattisgarh.

---- Respondents

For Appellant	:	Shri Govind Dewangan, Advocate
For Respondent -State	:	Shri Yashwant Singh Thakur, Additional Advocate General

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge

C.A.V. JUDGMENT

Per Sharad Kumar Gupta, Judge

1. In this writ appeal, the challenge levied is to the order dated 12.04.2017 passed by the learned Single Judge of this Court in Writ Petition (S) No. 979 of 2017, whereby the said writ petition has been dismissed.
2. In brief, the appellant's case is that he was appointed as Panchayat Karmi of Gram Panchayat, Mudghusari. Respondent No.6-Krishna Kumar Markam who was unsuccessful in getting the post, challenged the aforesaid appointment of the appellant preferring an appeal before the Sub-Divisional Officer (Revenue), Bodla, District- Kabirdham who vide order dated 14/10/2010 (Annexure P-4) allowed the said appeal and canceled proposal No.1 dated 4/11/2007 which was passed in favour of appellant by the Gram Panchayat, Mudghusari. Being aggrieved, the appellant preferred an appeal against the said order before the Collector, Kabirdham who dismissed his appeal vide order dated 22/12/2007 (Annexure P-3). The appellant, in the earlier round of litigation, challenged the said order by filing a writ petition which was dismissed vide order dated 18/12/2014 (Annexure P-5). Thereafter, the appellant preferred a writ appeal against that order which was dismissed as withdrawn, vide order dated 23/07/2015 (Annexure P-6) with a liberty to avail remedies before the competent authorities. The appellant preferred an appeal in the court of the Commissioner, Durg where he initially succeeded

and his appeal was allowed vide order dated 19/05/2016 (Annexure P-2). But later, considering the letter of the Chief Executive Officer, District Panchayat Kabirdham, the Commissioner, Durg immediately reviewed his order (Annexure P-2), recalled it and dismissed the appeal vide order dated 26/05/2016 (Annexure P-1). All the annexures referred to in this judgment are marked in the Writ Petition.

3. Further, in the second round of litigation, the appellant again preferred a writ petition from which this appeal arose, challenging that the subsequent order passed by the Commissioner, was passed in the absence of any application by any party and without giving an opportunity of hearing to him. The learned Single Judge dismissed that writ petition vide the impugned order. Hence, this writ appeal.

4. Shri Govind Dewangan, counsel for the appellant argued that the learned Single Judge ought to have decided the aforesaid writ petition on the merits, whereas, he did not do so.

5. On the other hand, Shri Yashwant Singh Thakur, Additional Advocate General submitted that impugned order passed by the learned Single Judge is proper and in accordance with law. Hence, do not call for any interference.

6. We have gone through the record with utmost care.

7. It would be pertinent to mention para-1 of the order (Annexure P-6) passed by the learned Division Bench, which reads as follows:-

“1. After some argument, Learned Counsel for the Appellant submits that because of subsequent development by reason of which the village in the Gram Panchayat to which private

Respondent No.3 belongs having been transferred to another Gram Panchayat, the appeal may be permitted to be withdrawn to pursue remedies before the authorities.”

8. It is not mentioned in the order (Annexure P-6) that if the appellant approaches to some other forum for seeking the same relief which has been decided by the learned Single Judge, then the order of the learned Single Judge would not come in their way in the proceedings before any such forum.
9. The writ appeal was withdrawn with the permission of the learned Division Bench on the ground of some subsequent development, therefore, the order of learned Single Judge (Annexure P-5) attained finality. Thus, the appellant had no right to file an appeal for the same cause of action before the court of Commissioner, Durg. Once when the matter has already been decided by the learned Single Judge, then the Commissioner, Durg ought not to have entertained the appeal on same cause. Entertaining and deciding the same subject matter by the Commissioner, Durg is against the general practice and discipline.
10. On the basis of the aforesaid discussion, we agree with the impugned order of the learned single judge, which is in accordance with law and sound reasoning.
11. Moreover, this appeal is barred by 104 days of limitation. The appellant failed to give any plausible reason for the same. It is his duty to explain such inordinate delay in filing the appeal but he failed to do so.
12. On the cornerstone of the aforesaid facts and circumstances, we conclude that there is no substantial issue raised in this appeal calling for

interference with the impugned order passed by the learned Single Judge. Hence, the writ appeal and I.A. No 1/2017 for condonation of delay are liable to be dismissed.

13. Accordingly, the writ appeal and I.A. No.1 are hereby dismissed. No order as to costs.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sharad Kumar Gupta)
Judge