

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 1410 of 2017**

- Raj Kumar Yadav S/o Shri Om Prakash Yadav Aged About 25 Years R/o Adhari Nawagaon Ward, Dhamtari, Tahsil & District- Dhamtari, Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Urban Administration And Development Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. The Commissioner, Raipur Division, Raipur, District- Raipur, Chhattisgarh
3. The Commissioner, Municipal Corporation, Dhamtari, District- Dhamtari, Chhattisgarh

---- Respondents

For Petitioner:

Mr. P.R. Patankar, Advocate

For State :

Mr. Gary Mukhopadhyay, Dy. Government Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23.03.2017**

1. The limited grievance of the Petitioner is that the departmental appeal preferred by him under Appeal Rules Section 60 of the Municipal Corporation Act has been rejected on the ground of limitation.
2. The contention of the Petitioner is that the service of the Petitioner was terminated vide order dated 18.02.2015 Annexure P/2. Immediately after the order of termination being issued the Petitioner had approached the Respondents by way of a representation dated 01.04.2015 and 17.08.2015 (Anexure P/3 and P/4). The said two representations filed by the Petitioner

were rejected on 28.08.2015 (Annexure P/5) holding that the representation was not worth consideration in view of the fact that the order of termination has been issued after giving sufficient opportunity of hearing to the Petitioner.

3. Immediately thereafter the petitioner preferred departmental appeal under the Appeal under Section 403 of the Municipal Corporation Act on 01.09.2015. The period for appeal in the Act is 45 days as per the Rule 6 of the Appeal Rules. Also the provision of Section 5 of the Indian Limitation Act 1908 was also applicable for condonation of delay.
4. The Petitioner along with the appeal had also filed an application under Section 5 of the Limitation Act. However the Respondent vide the impugned order dated 19.12.2016 have rejected the appeal on the ground that the appeal has been preferred beyond the period of limitation and has accordingly rejected.
5. The Contention of the Petitioner is that the Respondent Appellate Authority ought to have considered the fact that the Petitioner had ventilated his grievance before the disciplinary authority by making repeated representation dated 01.04.2015 and 17.08.2015. The said two representation were finally rejected on 28.08.2015 and immediately thereafter the departmental appeal was preferred. According to the Petitioner from of dates it would show that the Petitioner has been continuously trying to ventilate his grievance before the disciplinary authority as well as before the Appellate Authority. The Appellate Authority thus ought to have considered and decide the appeal on its merits. The

Petitioner further contended that the delay should have been condoned by the Appellate Authority and should have considered in the light of the Section 14 of the Limitation Act. Even though the Petitioner had preferred appeal only on 01.09.2015 but in between he had ventilated his grievance before the disciplinary authority which stands established vide the order of the disciplinary authority dated 28.08.2015. Therefore the provision of Section 14 of the Limitation Act would have squarely been applicable in the case of the Petitioner.

6. Under the given factual matrix of the case this Court is of the opinion that the impugned order passed by the Appellate Authority vide its order dated 19.12.2016 rejecting the appeal on the ground of limitation is bad in law and the same deserves to be and accordingly set aside.
7. The Appellate Authority is directed to entertain the appeal and decide the same in accordance with its merits.
8. With the aforesaid observation the present Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE