

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 586 of 2016**

Shashank Bhimte S/o Late Shri Shyam Lal Bhimte aged about 35 years R/o A-10
Pink City Shankar Nagar Raipur District Raipur Chhattisgarh

---- Appellant**Versus**

1. The Managing Director M.P. Audhyogik Kendra Vikas Nigam Raipur Ltd. 99
Samta Colony Raipur Madhya Pradesh (Now Chhattisgarh)
2. Managing Director Chhattisgarh State Industrial Development Corporation
Pandari Raipur Chhattisgarh

---- Respondents

For Appellant	: Ms. Ranjana Singh Tomar, Advocate.
For Respondents	: Shri Anand Dadariya, Advocate on behalf of Shri Kashif Shakeel, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri P. Sam Koshy, Judge.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****04/05/2017**

1. This application is filed seeking condonation of delay of seven months in instituting the writ appeal. The writ appeal is by one among the legal representatives of a deceased employee of the Chhattisgarh State Industrial Development Corporation. The said person Shyamlal Bhimte was removed from service on 6.9.1995. He had challenged the matter before this Court. Pending that, he died on 26.1.2011. The only person who came on record is his son-Shashank Bhimte who has now instituted this writ appeal.

2. The Learned Single Judge found that the enquiry proceeding was in order and there was no ground for the delinquent to seek for an opportunity to be represented through Advocate of his choice, particularly when the management had not appointed an Advocate to be the presenting officer. Merely because an

Advocate was the enquiry officer, there was no right in the delinquent to ask for permission to be represented through an Advocate. The Learned Single Judge also assimilated the relevant facts and factors and concluded ultimately that in view of the proved charges, there was no ground to interfere with the disciplinary proceedings in writ jurisdiction.

3. The deceased employee was an Engineer. He was served charge-sheet on different counts. It was found that he recorded incorrect measurements in the measurement books resulting in making excess payment to the contractors and thereby causing loss to Madhya Pradesh Audhyogik Vikas Nigam (hereinafter referred to as 'AKVN'). The quantity of materials used in the construction site was not in terms of the requirement. That was also found to be the responsibility of the delinquent. The enquiry officer also found that at the construction site, 240 bags of cement of CCI, Akaltara was found which was never purchased by the AKVN and the establishment had concluded that there was thus clear proof of misappropriation in collusion with the contractors.

4. Notwithstanding the aforesaid factual findings, this appeal is barred by limitation. In support of the application seeking condonation of delay of more than seven months, all that the Appellant said in the application for condonation of delay (I.A. No.1 of 2016) is that his wife was sick and he was busy in taking care of his wife. This obviously did not indicate any relevant particulars or materials to be countenanced in terms of Section 5 of the Limitation Act to condone the delay in filing this appeal. Therefore, an order was passed by this Court on 13.4.2015 to the following effect:

“We are totally dissatisfied with the contents of the affidavit filed in support of the application. Namesake affidavit with no details or material particulars has been filed to sustain the application under Section 5 of the Limitation Act.

As a last opportunity, we grant an adjournment to the Appellant by two weeks to place a better affidavit if at all he has reasons to state in support to the request

for condonation of delay. Specific pleadings including materials particular as are required in terms of laws are to be shown.”

5. Though the case was thereafter posted and in spite of written objections being filed by the opposite side, there is no further better affidavit disclosing material particulars or specific pleadings in support of the application seeking condonation of delay. We are satisfied that this is a case where the Appellant is merely enjoying the luxury of the litigation not even taking the responsibility to file affidavit to the satisfaction of this Court to demonstrate any sustainable and acceptable reason whatsoever for the inordinate delay in instituting this appeal. We have also noticed above that even on merits, this appeal is not deserves to be admitted.

6. In the result, the application seeking condonation of delay and the writ appeal are dismissed in limine.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE