

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 47 of 2018**

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, Chhattisgarh.
2. 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 Collector Raigarh, Chhattisgarh.

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1. Ramesh Kumar Choubey, S/o S/o Murlidhar Chowby, Aged About 44 Years Ex-Manager, Adim Jati Sewa Sahakari Samiti Maryadit Gharghoda, R/o Gharghoda District- Raigarh, Chhattisgarh.
2. Joint Registrar, Co- Operative Societies, Chhattisgarh Raipur, Chhattisgarh.

---- Respondents

For Appellants	: Shri Animesh Verma, Advocate.
For Respondent No.1	: Shri Faiz Kazi, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****07/03/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the Appellants and counsel for the private Respondent.
2. A mountain out of a molehill is being tried to be made out against the order dated 20.09.2017 passed by the learned Single Judge on the question that the appeal of the private Respondent was not filed before the Co-operative Authority within the period of limitation under Section 55(2) of the Chhattisgarh Co-operative Societies Act, 1960.
3. There are two aspects of the matter. First the learned Single Judge had recorded his opinion on such argument in following terms:-

“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. Krishnamurthy, (1998) 7 SCC 123, 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.”

4. The other aspect of the matter is that in the return which was filed before the learned Single Judge on behalf of the private Respondent, Annexure R/1, was annexed by him, showing that within a period of 15 days of order of his dismissal,

the appeal had been filed to be more precise on 20.03.1997. There is also a seal of receipt on the appeal.

5. A bald denial on behalf of the State showing that no such appeal was filed may not do so now. In fact, this could be a circumstance under which the Appellant-Bank counsel did not seriously contest the issue of appeal not having been filed on time and the matter was allowed to be decided on merits which ultimately came to be allowed in favour of the employee so dismissed by the Registrar Co-operative Society.

6. The submission of the counsel therefore by placing reliance on the decision of the Apex Court in **Noharlal Verma v. District Cooperative Central Bank Limited, Jagdalpur** reported in **(2008) 14 SCC 445** does not apply in the facts of the case, so noticed in the earlier part of the order.

7. The appeal has no merit. It is dismissed.

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE