

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 2555 of 2019

Vimal Kumar Pandey S/o Shri Virendra Kumar Pandey Aged About 59 Years R/o Atal Bihari Vajpai Ward No. 38, Dharampura, Jagdalpur, District Bastar Chhattisgarh.

---- Petitioner(s)

Versus

1. State of Chhattisgarh Through The Secretary Department of Urban Administration and Development Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Commissioner, Bastar Division Jagdalpur, District Bastar Chhattisgarh.
3. Commissioner Municipal Corporation Jagdalpur, District Bastar Chhattisgarh.
4. Appellate Committee Through The Chairman (Mayor), Municipal Corporation Jagdalpur, District Bastar Chhattisgarh.

---Respondents

For Petitioner	:	Shri Atanu Ghosh, Advocate.
For State	:	Shri Rahul Mishra, Dy. Govt. Advocate.
For Respondent No.3	:	Shri B.L. Sahu on behalf of Shri A.S. Kachhwaha, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

09.04.2019.

1. Challenge in this petition is to the order dated 14.11.2018 (Annexure P/1) whereby the respondent No.2 has rejected the departmental appeal which the petitioner has preferred on the ground of limitation.
2. The facts of the case is that, the petitioner was working as Motor Mechanic and was incharge of the Swimming Pool run by the Municipal Corporation, Jagdalpur. That, on 06.05.2017 some casualty took place in the swimming pool and one youth is said to have died. The petitioner was inflicted with punishment of stoppage

of one annual increment with cumulative effect holding the petitioner responsible for the said incident/casualty.

3. Against the said order of punishment, the petitioner made a representation to the Commissioner, Municipal Corporation highlighting the fact that punishment order issued was not proper, legal and justified. The Commissioner finally vide order dated 27.09.2018 (Annexure P/9) ordered that since the punishment has been inflicted and the same is appealable and the appeal lies to the Divisional Commissioner, the petitioner was granted liberty to prefer an appeal. The petitioner thereafter immediately preferred an appeal on 24.10.2018 i.e. in less than 30 days time from the date the order dated 27.09.2018 was passed. The appellate authority i.e. the Divisional Commissioner-respondent No.2 vide his order dated 14.11.2018 however rejected the appeal of the petitioner holding it to be barred by limitation holding that the reasons assigned in the application for condonation of delay was not giving proper explanation for the delay caused in filing the appeal.
4. The contention of the petitioner is that it is a case where the petitioner had preferred a representation against the punishment before the Commissioner and which was kept pending by the Commissioner for almost 9-10 months before the order Annexure P/9 was passed directing the petitioner to prefer a duly constituted appeal before the Divisional Commissioner who is the appellate authority. The petitioner further submits that taking into consideration the fact that the petitioner is a low paid Class-IV employee, the

authority should have converted the said representation itself as an appeal and should have forwarded it to the appellate authority for deciding the appeal instead of relegating the petitioner to prefer a duly constituted fresh appeal.

5. The petitioner further submits that it is not a case where the petitioner has not questioned the order of punishment dated 15.06.2017. Rather, it is a case where the petitioner has been pursuing the same before the Municipal Corporation, Jagdalpur, who in turn, took 9-10 months for deciding the representation of the petitioner. The Divisional Commissioner while considering the application under Section 5 of the Limitation Act should have considered the fact that the petitioner would have got an advantage under Section 14 of the Limitation Act for having availed remedy before a wrong forum. Thus, prayed for quashing of the impugned order and for remitting the matter back to the appellate authority for deciding the appeal on merit.
6. The counsel for the State however justifying the impugned order submitted that it is a case where the representation which the petitioner has filed on 22.12.2017 could not be construed as a duly constituted departmental appeal, neither was it submitted before the actual appellate authority. Actually the appeal was filed only on 24.10.2018, therefore, the finding of the appellate authority cannot be said to be in any manner bad in law. Even otherwise, the reasons assigned in the application under Section 5 of the Limitation Act filed along with the appeal by the petitioner does not give any plausible

explanation for the delay caused in filing the appeal. Thus, the findings on this ground also does not warrant interference.

7. Having heard the contentions put forth on either side and on perusal of records what cannot be brushed aside is the fact that punishment order was infact passed on 15.06.2017. The petitioner thereafter filed a representation before the Commissioner on 22.12.2017 and the Commissioner in turn took about 9-10 months in holding that the representation could not be decided by the Commissioner as the order of punishment is an appealable order and the petitioner should have preferred a departmental appeal against the punishment order dated 15.06.2017.
8. Another fact which also has to be looked into sympathetically and with a pragmatic approach is that the petitioner is a Class-IV employee working as Motor Mechanic and the punishment imposed upon the petitioner is that of stoppage of one annual increment with cumulative effect. Stoppage of increment with cumulative effect is by now through various decisions of this court have been held to be one which comes within the ambit of a major punishment. It has also been held in a couple of decisions of this court that before imposition of punishment of stoppage of annual increment with cumulative effect, a duly constituted departmental enquiry must be conducted.
9. These are facts which are not available in the records. Nor does it reflect from the impugned order. These are facts which also should have been considered by the appellate authority while deciding the appeal, rather than entertaining the application under Section 5 of

Limitation Act and rejecting the same by applying a strict interpretation of law. Moreover, it is an admitted fact that the petitioner did prefer a representation against the punishment order before the Commissioner, Municipal Corporation on 22.12.2017 and it is not a case where the petitioner was sitting idle or slept over the impugned order of punishment and has for the first time challenged it before the appellate authority vide appeal dated 24.10.2018.

10. In view of the same, this court is of the opinion that rejection of departmental appeal of the petitioner by the respondent No.2 is not justified, proper and legal and the impugned order dated 14.11.2018 to that extent is set aside/quashed. The matter is remitted back to the appellate authority for deciding the appeal afresh. The respondent No.2 is further directed to ensure that the appeal of the petitioner is decided on merit ignoring the aspect of limitation in accordance with rules and regulations governing the field.
11. It is expected that the appellate authority shall take a decision on the appeal of the petitioner at the earliest preferably within a period of 90 days from the date of receipt of copy of this order.
12. With the aforesaid, the present writ petition stands partly allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge