

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 285 of 2019**

{Arising out of Order dated 29.03.2019 passed in Writ Petition (S) No. 2249 of 2019 by the learned Single Judge}

Panna Lal Tiwari S/o Late Ramkishor Tiwari, aged 71 years (Approx), Ex Nayab Nazir, Bemetara, Residence -Care of Prity Interprizes, Mitan Chowk, Ward No. 41, Subhash Nagar, Durg, PO Kasaridih, PS City Kotwali, Durg, Tahsil and District Durg, Chhattisgarh.

---- Appellant

Versus

1. The Registrar, High Court of Chhattisgarh at Bilaspur, Chhattisgarh.
2. District & Sessions Judge, Durg (Chhattisgarh)

---- Respondents

For Appellant	: Shri K.R.Loniya, Advocate.
For Respondents	: Shri Abhishek Sinha, Advocate.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Goutam Bhaduri, Judge

Judgment on Board**Per Goutam Bhaduri, J.****17/06/2019**

1. The order under challenge is dated 29.03.2019 (Annexure A/1) passed by the learned Single Judge whereby the writ petition preferred by the Appellant, was dismissed.
2. Brief facts of the case are that the Appellant was terminated from service on 09.06.1981 on account of having committed certain grievous misconduct while discharging his duties as Nazir in the Court of District & Sessions Judge, Durg. It is contended by the learned counsel for the Appellant that in the criminal case pertaining to the said misconduct, initially, he was held guilty by the trial Court but subsequently was acquitted of the charges by

the appellate Court vide the judgment dated 27.12.1989. In the meantime, the Appellant was terminated from service vide order dated 09.06.1981 on the basis of initial finding of criminal Court.

3. It appears that the Appellant, of late had approached this Court in the year 2019 with prayers to set aside his termination. The learned Single Judge dismissed the writ petition on the ground of delay holding that the writ petition cannot be treated as a mercy petition after such long lapse of time.
4. The contention of the learned counsel for the Appellant before this Court is that since the Appellant belongs to employee part of judicial fraternity and for the betterment of the judicial fraternity, when the Appellant has been acquitted by the appellate Court in the criminal case, the matter may be reconsidered and the departmental enquiry which resulted in dismissal of service, may be set aside.
5. The fact remains that the Appellant was terminated way back on 09.06.1981. Though initially Appellant was convicted by the trial Court in the criminal case pertaining to the same issue he was subsequently acquitted of the charges in the criminal case by the appellate Court on 27.12.1989. The instant petition is filed after a period of almost 30 years to set aside the termination. No plausible *prima facie* reason has been shown as to why such an inordinate delay has occurred. There has to be some reasonable and plausible grounds to condone such an inordinate delay to entertain a writ petition. It cannot be as a matter of expectation on mercy the long period can be condoned. More so, the finding of the learned Single Bench that writ petition cannot be considered as a mercy petition under Article 226 of the Constitution of India is of much significance. Even otherwise, the order of termination from service was not under challenge in the writ petition. Further, the acquittal in the criminal case will not *ipso facto* dilute the allegations levelled in the departmental enquiry as the consideration of

finding in the departmental enquiry to evaluate the facts are different than that of evaluation of facts in criminal case.

6. For the aforesaid reasons, we are not inclined to entertain this writ appeal. It is dismissed.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Goutam Bhaduri)
JUDGE