

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 218 of 2017**

- Hingulaj Prasad Patel S/o Late Shri Nilamber Prasad Patel R/o Village Patharipali, Post Pahanda, Tahsil- Sarangarh, District- Raigarh, Madhya Pradesh Now Chhattisgarh, Chhattisgarh

---- Appellant**Versus**

1. State of Madhya Pradesh Through Principal Secretary, Revenue Department, State of MP, Bhopal Madhya Pradesh,
2. Collector, Jashpur, District Jashpur, Madhya Pradesh Now Chhattisgarh
3. The Sub-Divisional Officer Revenue , Jashpur, District- Jashpur, Madhya Pradesh Now Chhattisgarh

---- Respondents

For Appellant	:	Shri N. Naha Roy and Shri H.S. Patel Advocates
For Respondents/State	:	Shri Rajnish Singh Baghel, Deputy Advocate General

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per, Ajay Kumar Tripathi, Chief Justice****12.03.2019**

1. Heard counsel for the parties.
2. The facts of this case which have been taken note of by the learned Single Judge in quite a detail speaks for itself and in our opinion those are good grounds by itself why the writ application should have been dismissed and has been dismissed vide order dated 04.04.2017, against which the present appeal has been preferred.
3. Even as per the pleading of the Appellant, he was appointed as a Patwari on 12.04.1956. On 19.04.1980, he was transferred from Baramkela to Jashpur. That order of transfer was not complied. He was put under suspension on 06.08.1980, charge-sheet was also issued to him. The Appellant filed his reply on 30.08.1980 and thereafter started making demands for payment of subsistence allowance for the period while he was under suspension. Suspension allowance was paid to him between 07.08.1980 to 04.11.1981. It is

the case of the Appellant that thereafter he heard nothing from the Respondent authorities and on 30.06.1994 he attained the age of superannuation. For more than nine years, the Appellant supposedly kept on raising demand for payment of subsistence allowance alone.

4. The payment of suspension allowance till 04.11.1981 seems to have significance because on 05.11.1981, the Sub Divisional Officer, Jashpur had terminated the service of the Appellant and therefore, subsistence allowance was paid only till 04.11.1981. Appellant took a plea that the 1981 order of termination was never served upon him. He gained knowledge of the same because of his perseverance in filing representations which according to him got response by a communication received from the Commissioner dated 11.03.1999. Based on such knowledge and receipt of the order of termination, an application was filed by way of an appeal before the Collector. The Collector dismissed the appeal vide order dated 01.03.2000 primarily on the ground that it was a barred application. Thereafter the Appellant preferred to file an Original Application before the Madhya Pradesh State Administrative Tribunal (hereinafter referred to as 'the Tribunal'). In the meantime, the State got bifurcated, State of Chhattisgarh was created. Since no corresponding Administrative Tribunal was created in the State of Chhattisgarh, cases pending in relation to the geographical area of Chhattisgarh State stood transferred from the Tribunal before the High Court and this is how the writ application was registered as WPS No.3265 of 2005 which could only be heard finally on 04.04.2017 and the order was passed by the learned Single Judge, dismissing the writ application.
5. The learned Single Judge after taking note of the various submissions concluded his opinion in following words :

“7. The petitioner was transferred vide order dated 19.04.1980 from Baramkela to Jashpur. The order of suspension and the charge-sheet show that the petitioner was placed under suspension because he did not proceed on transfer. There is no material on record to show that he had joined at Jashpur. The petitioner was, thus, nowhere. The petitioner could not demonstrate from any record that he was allowed to work to Baramkela. This clearly show that the petitioner was not working anywhere and in view of order of suspension by which, his headquarter be fixed at Jashpur Nagar, he never bothered to join there also, at the same time, he kept on making demand for payment of his subsistence allowance, therefore, subsistence allowance from 07.08.1980 to 03.10.1985 was paid to him sometime in the year 1985. No specific document has been placed on record but averment has been made regarding payment of subsistence allowance for the period from 07.08.1980 to 04.11.1981. In the absence of there being any material brought on record by the petitioner that he was reporting at the headquarter for the purposes of collecting subsistence allowance, all that can be inferred in the case is that the petitioner never went to Jashpur. There is no material on record to show that the petitioner had left any address for services of notice of the dates of departmental enquiry and for that reason, final order was passed on 05.11.81 terminating his services on account of unauthorized absence.

8. Even if the contention of the petitioner were to be accepted that the order dated 05.11.1981 was not served upon him, it is highly surprising as to what the petitioner was doing till the date he attained the age of superannuation in the year 1994. The petitioner never approached any Court of law till his attaining the age of superannuation i.e. for about 14 years, the petitioner was only engaged in making certain representations that too during the period from year 1982 to 1986. This conduct of the petitioner raises serious doubt with regard to dates of the petitioner. The petitioner practically sat at home without taking any remedy. Even after the petitioner attained the age of superannuation, the petitioner did not take any remedy. He claims to have obtained the copy of the order of termination on 05.11.1981 through various representation in the year 1999 and thereafter appeal to the Collector.

9. The conduct of the petitioner, therefore, does not entitle him any relief from the Court of law. The petitioner approached the Tribunal after 19 years of the order of suspension. As a prudent person, the petitioner, if not paid subsistence allowance, not allowed to work, ought to have approached the Court of law within the reasonable time. Approaching Tribunal after almost two decades, disentitled the petitioner to any relief only on the ground of delay and laches. Therefore, the petition is dismissed.”

6. Submission of the counsel for the Appellant is that the learned Single Judge erred in not appreciating the fact that no order of termination was ever communicated to the Appellant and that has significance to the adjudication.
7. This Court is bewildered that a man who was transferred did not obey the order of transfer, for which he was put under suspension, is a matter not in dispute. Thereafter he was terminated in the year 1981 and from 1981 till 1999 he goes into hibernation and only when he became smug that enough number of years have gone past even beyond his 'superannuation' which according to him happened on 30.06.1994 that he bases his case that his representations got acknowledged by way of bringing to his knowledge the order of termination and therefore the cause of action arose.
8. We have hardly come across such an obedient Government servant, who will continue to be under suspension for years together, will not take recourse to law, as if representation writing it at all was the only remedy for his grievance.
9. This Court is constrained to record that the Hon'ble Supreme Court has had on many occasions has observed that filing repeated representations are no answer to the malady of latches and delay. The whole case has been built up on half baked facts, if not on misleading facts, therefore in the given facts if the writ application was dismissed by the learned Single Judge, he has done no wrong.
10. Appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge