

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 456 of 2017**

Badri Ram Sahu S/o Dhurva Ram Sahu, Aged About 52 Years Occupation Service, Presently Working As Assistant Revenue Inspector, Nagar Palika Parishad, Kawardha, District Kabirdham, R/o Bahaduri Ganj Ward, Ward No.21, Kawardha, District Kabirdham, Chhattisgarh

---- Appellant**Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Urban And Rural Administration, Mantralaya, Mahandi Bhawan, Naya Raipur, District Raipur, Chhattisgarh
2. Collector, Kawardha, District- Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
3. Nagar Palika Parishad, Kawardha, Through Its Chief Municipal Officer, Nagar Palika Parishad, Kawardha, District Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh
4. Mayor In Council, Nagar Palika Parishad, Kawardha, District Kabirdham, Chhattisgarh, District : Kawardha (Kabirdham), Chhattisgarh

---- Respondents

For Appellant : Shri Rajeev Shrivastava and Shri Gagan Tiwari, Advocates.
 For Respondent/State : Shri Rajnish Singh Baghel, Deputy Advocate General.
 For Respondents 3 & 4 : Shri Arun Sao, Advocate.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board**03/01/2019****Per Ajay Kumar Tripathi, Chief Justice**

1. Heard counsel for the parties.
2. The order dated 25.11.2016 i.e. Annexure P/1 to the writ application was passed by the Respondent authorities giving notional seniority to the Appellant over one Liyakat Ali, who was working as Assistant Revenue Inspector. The claim of the Appellant was that he was senior to Liyakat Ali.

3. Liyakat Ali was regularized with effect from 18.05.2001. It was only in the year 2011 i.e. after almost a decade that he suddenly wakes up and files a case for relief, which was negated right till the Hon'ble Apex Court. However, since the Hon'ble Apex Court had observed that if any other remedy is available to the Petitioner, the same will not be precluded, he filed a representation. The Court however cannot be oblivious to the fact that the Hon'ble Apex Court did not find error in matter of dismissal of cases on the ground of laches and delay.

4. If despite that on mere representation, the authority considered the case of the Appellant sympathetically and notionally granted him seniority over Liyakat Ali, he cannot claim benefit of monetary kind as a regular employee from 2001, when he was regularized only in the year 2008.

5. The learned Single Judge has given following reasons for rejecting the claim of the Appellant :-

“4. Having heard the contentions on either side and on perusal of records what is undisputed is the fact that the petitioner who was initially engaged as a daily wage worker was regularized w.e.f. 31.03.2008. His claim was that a junior to him namely Liyakat Ali was regularized w.e.f. 18.05.2001, therefore the petitioner could not have been granted regularization much subsequent to his immediate junior who was granted regularization in the year 2001.

5. What is pertinent to be taken note is the fact that the claim of the regularization from the date his junior has been granted was for the first time claimed by the petitioner before the writ Court vide WPS No. 6035/2011. What cannot be brushed aside is the fact that Liyakat Ali was granted regularization in the year 2001, and the petitioner knew that Liyakat Ali was junior to him, but he did not challenge the regularization of Liyakat Ali or claimed regularization ahead of Liyakat Ali in between 2001 to 2011. The petitioner also did not challenge his regularization in the year 2008 claiming it from a back date. It is only in the year 2011, 10.10.2011 to be precise that for the first time the petitioner had claimed regularization from a date earlier to Liyakat Ali vide a writ petition before the High Court. The petitioner in the instant case right from 2001 to 2011 remained silent as regards the regularization granted to Liyakat Ali. The petitioner not

having challenged the regularization of Liyakat Ali ahead of the petitioner inspite of being junior amounts to the petitioner foregoing his claim or had abandoned his claim for the relief from a back date.

6. What also cannot be ignored is the fact that the writ petition filed by the petitioner was rejected on the ground of delay and laches which was affirmed by the High Court in a writ appeal as also by the Hon'ble Supreme Court in an SLP preferred by the petitioner. The only solace in the Supreme Court's order was that the petitioner if he so may avail other remedies available to him, which he did by filing the representation and which has since been considered and the order Annexure P/1 has been passed."

6. Since the reasons assigned by the learned Single Judge in the given facts and keeping in mind the previous litigation seems to be cogent and valid, therefore, we do not find any infirmity which is required to be rectified in appeal.

7. It is not a case where the earlier attempt made by the Appellant had begotten him some kind of right in his favour. He cannot be permitted to overlook the previous adjudications so made against him merely because a notional benefit of seniority was extended to him in the year 2016.

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

Sd/-

(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-

(Parth Prateem Sahu)
JUDGE