

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 389 of 2019***(Arising out of order dated 12.07.2018 passed in WP(S) No.4800 of 2010 by the learned Single Judge)*

1. State of Chhattisgarh Through The Secretary, Department Of Panchayat And Social Welfare, DKS Bhawan (Now Mahanadi Bhawan), Mantralaya, Naya Raipur Chhattisgarh (C.G.)
2. The Director Directorate Of Panchayat And Social Services, DKS Bhawan (Now Mahanadi Bhawan), Mantralaya, Naya Raipur (C.G.)
3. Deputy Director Panchayat And Social Welfare, Ambikapur, District Surguja (C.G.)

---- Appellants**Versus**

1. Satish Kumar Shrivastava S/o Shri Rana Shyam Kumar Shrivastava Aged About 52 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Rajpur, District Surguja Chhattisgarh
2. Kamleshwar Tiwari S/o Shri Ramvyas Tiwari Aged About 52 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Shankargarh, District Surguja Chhattisgarh
3. Ram Charitra Ram S/o Late Shri Mohan Ram Aged About 54 Years R/o Batoli, Presently Posted As Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Batoli, District Surguja Chhattisgarh
4. Qayum Khan S/o Shri Shamir Khan Aged About 52 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Sitapur, District Surguja Chhattisgarh
5. Kashinath Tigga S/o Shri Shavna Tigga Aged About 50 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Mainpath, District Surguja Chhattisgarh
6. Kameshwar Yadav S/o Late Shri Vasudev Prasad Yadav Aged About 50 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Lundra, District Surguja Chhattisgarh
7. S.P. Kushwaha S/o Shri R.D. Kushwaha Aged About 51 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Surajpur, District Surguja Chhattisgarh
8. Mahendra Prasad Kushwaha S/o Shri Ramdev Aged About 54 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Lakhanpur, District Surguja Chhattisgarh

9. Ramdev Patel S/o Late Shri Puranlal Aged About 56 Years Presently Posted As Varisht Antrik Lekha Parikshan Evam Kararopan Adhikari, At Janpad Panchayat Pratappur, District Surguja Chhattisgarh

---- Respondents

For Appellants : Shri Vikram Sharma, Deputy Government Advocate.

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Justice Parth Prateem Sahu, Judge

Judgment on Board

P. R. Ramachandra Menon, Chief Justice

29.08.2019

1. This is another instance where the State has filed appeal as a matter of course, with inordinate delay of 334 days, just for the sake of filing the same, presumably, for saving themselves from the wrath of contempt.
2. The appeal is against the judgment passed by the learned Single Judge, whereby Annexure P/1 order challenged in the writ petition was set aside for the reasons stated therein, however, with liberty to the Respondents/State to initiate fresh proceedings in accordance with law, after affording an opportunity of hearing to the parties. As mentioned above, the appeal is belated by 334 days, which is sought to be condoned by filing I.A. 01 of 2019. The reasons stated is that the delay has been occurred due to 'departmental/procedural formalities' and that's all. It would be appropriate to extract the paragraphs 2 and 3 of the I.A. for appreciation of the reason stated in this regard:

“2. That, 45 days time is allowed under the law to file an appeal before the Division Bench against the order passed by Single Judge, however, in preferring the present writ appeal some delay has been occurred due to departmental procedural formalities, which is bonafide and not intentional.

3. That the appellants humbly submit that some time is evitable spent in getting sanction etc. The appellants humbly submit that the delay is unintentional and bonafide nor it is acted malice.”

3. The version given by the Appellants that there was some delay due to the 'departmental/procedural formalities', stating that it was *bonafide* and not intentional is not at all an explanation, much less any satisfactory explanation, to condone the delay of 334 days in filing the appeal. The I.A. 01 of 2019, seeking condonation of delay is liable to be dismissed and as a natural consequence, the appeal as well.
4. Coming to the merits of the case, it is stated that the Respondents/writ Petitioners were originally appointed as 'Sahayak Gram Panchayat Adhikari' in the State of Madhya Pradesh and after formation of State of Chhattisgarh, they came to be allotted to this State. As a matter of fact, the post of 'Sahayak Gram Panchayat Adhikari' in the State of Madhya Pradesh was a dying cadre, whereas after the re-allocation to this State, a policy decision was taken to retain the posts and the same was taken out from the District wise cadre and were included in the State wise cadre, stipulating the further course of action as per Annexure P/2 dated 02.03.2009. By virtue of the said order, the posts are categorized in three different categories with separate scales of pay i.e. 4000-6000, 4500-6000 and 5000-8000 and allotment to the different scales was to be on the basis of seniority-cum-merit.
5. The writ Petitioners pointed out that, pursuant to Annexure P/2 order dated 02.03.2009, they were given postings as per Annexure P/3 order dated 27.08.2009 and immediately they joined and were discharging their duties to the satisfaction of all concerned. It was much later, that Annexure P/1 order dated 15.07.2010 was passed, without any reference to Annexure P/3 and shifting the writ Petitioners to a lower post (Antrik Lekha Parikshan Evam Kararopan Adhikari), which was stated as quite detrimental to the rights and interest, having passed without affording opportunity of hearing, and hence, the same was challenged by filing the writ petition.

6. The stand of the Appellants before the learned Single Judge was that, Annexure P/3 order passed by the Deputy Director, Panchayat & Social Welfare Department, who was not the competent authority and was having no power or jurisdiction to have passed the said order. But nothing was brought on record, as to any steps if any, taken against the Deputy Director, who was stated as having no power or jurisdiction in passing Annexure P/3 and so also, nothing was stated with regard to the steps taken, if at all, to cancel Annexure P/3 order. Undisputedly, Annexure P/3, order was still there and Annexure P/1 order passed by the 'Joint Director' was admittedly without cancelling Annexure P/3 order and without affording opportunity of hearing, before shifting the writ Petitioners to lower posts. It was for the said reason, that Annexure P/1 order was set aside by the learned Single Judge, however, protecting the rights and interests of the Appellants/State Authorities to take fresh steps in accordance with law, after affording opportunity of hearing in this regard.
7. The observations and directions as given in paragraphs 8 and 9 are relevant, which are extracted below:

“8. Apparently the impugned order, Annexure P-1 has been passed by the respondent-State without recalling the order, Annexure P-3. It is also apparent that the Petitioners were never given an opportunity before issuance of Annexure P-1 whereby the status of the Petitioners appears to be fixed at a lower level. Thus, prima facie, the order has been passed in violation of basic principles of natural justice wherein the least that was required was that, since by virtue of the implementation of Annexure P-1 the Petitioners would be put to loss so far as their status is concerned so also the pay-scale at which they were working, the authorities should have given at least an opportunity of hearing to the Petitioners. The impugned order to that extent so far as the Petitioners are concerned may not be sustainable.

9. Reserving the right of the Respondents in initiating fresh proceedings as far as the status of the Petitioners are concerned after giving an opportunity of hearing, the writ petitioners in its present form stand allowed and the impugned order, Annexure P-1, so far as the posting of the Petitioner is concerned stands set aside/quashed. It

is also directed that since by virtue of the interim order granted by this Court the Petitioner have been discharging the duties that of Antrik Lekha Parikshan Evan Kararopan Adhikari as well as Varishtha Lekha Parikshan Evan Kararopan Adhikari, they would be entitled for the salary and allowances including the revision of pay which are otherwise payable to these two respective posts on which the Petitioners have discharged their duties.”

In the light of the discussion as above, we are of the firm view that there is no merit as well, to call for interference.

8. In the above circumstances, both the I.A. No. 01 of 2019 as well as the appeal stand dismissed. By virtue of the rights reserved in the favour of Appellants, as noted in paragraph 9 of the judgment under challenge, it is open for the Appellants to pursue further steps in accordance with law, if so advised.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge