

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 233 of 2020***(Arising out of order dated 18/02/2020 passed by learned Single Judge in WPS No. 1071 of 2020)***Judgment reserved on 05.03.2020****Judgment delivered on 18.05.2020**

- Kajal Sharma W/o Ajay Sharma aged about 33 years earlier posted as Shiksha Karmi Grade-III, at Government Girls Primary School Binjhra R/o Bandhawapara Bilaspur C.G.

-----Appellant**VERSUS**

1. State of Chhattisgarh through the Secretary Panchayat & Rural Development Department, Mantralaya Mahanadi Bhawan Naya Raipur, District Raipur C.G.
2. Commissioner, Bilaspur Division Bilaspur C.G.
3. Collector Korba, District Korba C.G.
4. Assistant Commissioner Tribal Welfare Department Korba, District Korba C.G.
5. Chief Executive Officer, Zila Panchayat Korba, District Korba C.G.
6. Chief Executive Officer, Janpad Panchayat Pondi-Uproda District Korba C.G.
7. Block Education Officer, Block Pondi-Uproda, District Korba C.G.

-----Respondents

For Appellant	:	Mr. Ishan Verma, Advocate
For Respondent-State	:	Mr. Ghanshyam Patel, Government Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****CAV Order****Per Parth Prateem Sahu, J.**

1. Correctness and sustainability of the order dated 18-02-2020 passed in WPS No. 1071/2020 is put to challenge in this appeal.
2. Facts of the case in nutshell are that the appellant was initially appointed on the post of Shiksha Karmi Grade-III on 15-10-2007 and posted at Government Girls Primary School Binjhra, Janpad Panchayat Pondi-Uproda, District Korba C.G. The services of the appellant came to be terminated *vide* order dated 31-08-2009. The order of termination was challenged by the appellant before the

Collector, District Korba, which came to be dismissed *vide* order dated 11-01-2010. Against the order of dismissal of appeal by the Collector, the appellant further challenged it before the Additional Commissioner, Bilaspur Division by way of revision petition which was dismissed on 31-05-2011 by a detailed order. The dismissal order of revision was further challenged by the appellant before the Secretary, Panchayat and Rural Development Department which also came to be dismissed on 18-11-2013. As the termination from services was on account of submission of false and forged certificate in procuring employment was reported to concerned police station, a criminal case was registered against 37 persons including the appellant bearing No. 1092/2012. The Criminal case was decided by the Judicial Magistrate, 1st Class, Katghora district Korba on 09-12-2019 and the appellant along with others have been acquitted of the charges levelled against her. After getting the decision of acquittal in the criminal case by the competent Court, the appellant approached this Court by way of filing Writ Petition(S) No. 1071/2020 with the following reliefs:

“10.1 That this Hon'ble Court may kindly be pleased to direct the respondent State to reconsider the case of the petitioner for appointment on the post of Shiksha Karmi Grade-III/ Assistant Teacher (P) on the basis of acquittal order passed by the learned trial Court.

10.2 grant any other writ(s), order(s), relief(s) in favour of the petitioner, which the Hon'ble court deemed fit & just in the facts and circumstances of the case, including award of the costs to the petitioner.”

3. The writ petition filed by the appellant was dismissed by the learned Single Judge *vide* impugned order, observing that any order passed in the writ petition will amount to setting aside the order passed by the Collector and Commissioner which stands against the appellant which is not under challenge in the writ petition.
4. The learned counsel for the appellant submits that the termination of services of the appellant is on the ground that she has submitted forged documents during the recruitment proceedings and by getting benefit of those documents, she was

appointed. The acquittal of the charges under Sections 420, 468, 471 & 119 of the I.P.C. would show that the prosecution could not prove the charges levelled against her of submitting forged documents. The order of acquittal came only in the month of December, 2019 and therefore, the direction ought to have been issued to the Respondents for considering the case of the appellant on the basis of the acquittal order passed by the learned Magistrate. It is also pointed out that the charge on which the order of termination of service was issued against her and the charges in the criminal case are almost identical, in which the appellant was acquitted after full fledged trial. The termination was without enquiry and therefore the direction of reconsidering the case of appellant is necessitated. The learned counsel for the appellant places his reliance in the case of **M.Paul Anthony v. Bharat Gold Mines Ltd.** reported in **(1999) 3 SCC 679** in support of his contention.

5. Per contra learned counsel appearing for the Respondent-State submits that the appellant was terminated from services on 31-08-2009 on account of submission of forged documents. The appeal was dismissed by the Collector. The Revision Petition filed by the appellant also came to be dismissed by the Commissioner and further proceedings filed before the State Government also came to be dismissed much earlier on 18-11-2013. The order of the State Government affirming the order passed by the Collector and Commissioner has not been challenged by the appellant before any forum and the same became final. The opportunity of hearing to the appellant was granted by issuing notice to her to which no explanation was offered. The acquittal is not honorary but on benefit of doubt. The allegation is not found to be baseless. The reliefs sought for by the appellant in the writ petition can not be granted, the learned Single Judge was justified in dismissing the writ petition.
6. We have heard the learned counsel for the appellant as well as the learned Government Advocate representing the State.

7. The appellant was appointed as Shiksha Karmi Grade-III on 08-10-2007 by the Chief Executive Officer, Janpad Panchayat, Pondi-Uproda, District Korba. The appointing authority *vide* order dated 31-08-2009 removed the appellant from service on the ground that the experience certificate submitted by her during the recruitment proceedings was not valid and on account of which, she had been awarded 08 marks. The order of removal from service is filed as Annexure P-3 in the writ petition. Perusal of Annexure P-3 would show that before passing the order of removal from service, the appellant was given an opportunity of hearing but the appellant failed to substantiate her case before the competent authority by rebutting the allegations levelled against her. The order of removal from services of the appellant was affirmed by the appellate as well as revisional authority and ultimately the State Government also upheld the order of removal from services of the appellant on 18-11-2013.

8. The order passed by the State Government affirming the order of removal from services of the appellant has been accepted and did not put to challenge before any other forum or before this Court hence it became final. The Supreme Court in the matter of **Bhoop Singh v. Union of India and others** reported in **(1992) 3 SCC 136** has dealt with the issue, wherein the order passed by the authorities attained it finality by being not challenged the order before the appropriate forum and held as under:

“7. It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. During the interregnum those who have been working gain more experience and acquire rights which cannot be defeated casually by lateral entry of a person at a higher point without the benefit of actual experience during the period of his absence when he chose to remain silent for years before making the claim. Apart from the consequential benefits of reinstatement without actually working, the impact on the administrative set-up and on other employees is a strong reason to decline consideration of a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. ...

8. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. ...”

9. In the light of the aforementioned ruling of the Hon'ble Supreme Court, if the facts of the case are considered, it reveals that the appellant being satisfied with the proceedings initiated by her and ultimately the last order passed by the 3rd authority i.e. the Secretary of State Government, dismissing her case, whereby the departmental action taken against her of removal from services, became final.
10. The case law relied by the learned counsel for the appellant in support of his contentions that in view of the order of the acquittal passed in criminal case, the case of the appellant can be reconsidered by the appointing authority who is Respondent No. 6, is on different set of facts. In the said case, the employee was found to be in unauthorized or illegal possession of Gold bearing sand, the criminal case was registered against him and the disciplinary proceedings were also initiated against him. The continuation of disciplinary proceedings was challenged by the delinquent employee on the ground that the criminal case is also pending on the same charges in which the High Court has passed certain orders granting liberty to the employer to defer the disciplinary proceedings if it was found expedient so to do. The department did not defer the disciplinary proceedings and ultimately concluded *ex parte* as the delinquent employee was suffering from illness during that period. The charges levelled against the employee were found to be proved and his services were terminated shortly within a period of 7 months. The judgment of criminal case came in his favour and he was acquitted of the charges and on that basis, the employee therein approached the authorities for his reinstatement. The order passed by the

department was challenged before the appellate authority, which came to be dismissed. The appellate authority order, affirming the order of dismissal of the employee, was challenged by way of filing writ petition before the High Court and the writ petition was allowed, however, the judgment passed by Single Bench was set aside by Division Bench. The Hon'ble Supreme Court considering that the petitioner therein due to illness could not participate in departmental enquiry, no subsistence allowance was paid, held the enquiry proceeding vitiated.

11. Reverting back to the present case, the order of removal from services of the appellant is not under challenge, in fact, after losing the battle before the appellate authority as well as revisional authority and further before the State Government, the appellant accepted her removal from services, being not challenged any further, it became final. In view of the above, the appellant can not get any benefit from the aforementioned ruling of the Hon'ble Supreme Court in the matter of **M.Paul Anthony (supra)**.
12. The prayer made by the learned counsel for the appellant that a direction might be issued for filing a representation by the appellant before the Respondents-authorities is also not sustainable, when apparently the appellant is not entitled for getting any relief under the law.
13. For the foregoing reasons, we do not find any infirmity or illegality in the impugned order passed by the learned Single Judge. The appeal being devoid of any substance which is liable to be and is hereby dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
 Chief Justice

Sd/-
(Parth Prateem Sahu)
 Judge