

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 291 of 2020**

*{Arising out of order dated 29.02.2016 passed by the learned Single Judge in Writ
Petition (S) No. 392 of 2005}*

- Sukhiram Satnami, son of Late Badlu Ram, aged about 70 years, Retired Head Master, Resident of Village, Post and Tahsil Nawagarh, District Janjgir-Champa (C.G.)

---- Appellant

Versus

1. State of Chhattisgarh, Through: The Secretary, Department of Tribal Welfare, Vallabh Bhawan, Bhopal (C.G.)
2. State of Chhattisgarh, Through the Secretary, Department of Tribal Welfare, Mantralaya Naya Raipur, District Raipur (C.G.)

---- Respondents

For Appellant	:	Shri V.K. Pandey, Advocate.
For Respondent/State	:	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**Per P. R. Ramachandra Menon, Chief Justice****13.07.2020**

1. This appeal arises from a judgment which was passed about 4 years ago, granting substantial relief to the writ Petitioner/Appellant by restoring the seniority and promotion notionally with effect from the retrospective date when the juniors were promoted and also partially allowing the monetary benefits to the extent as specific therein. Grievance is against non-granting of full monetary benefits for the subsequent events of promotion.
2. The inordinate delay of 1433 days in filing the appeal is sought to be condoned by filing an I.A. and the only reason stated therein is that the Appellant was in

fear of the consequences; despite the fact that, the Appellant had already moved this Court by filing Contempt of Court proceedings for getting the judgment implemented. Now, the Appellant has turned around seeking to challenge the verdict, to the extent as stated above.

3. Heard Shri V.K. Pandey, the learned counsel appearing for the Appellant as well as the Shri Vikram Sharma, the learned Deputy Government Advocate representing the State.
4. The factual matrix reveals that the Appellant was appointed as a Lower Division Teacher ('LDT') who joined the service on 17.03.1973. Though a DPC was held in the year 1977, the Appellant was left out from being considered for promotion to the post of Upper Division Teacher ('UDT'). However, in response to a direct recruitment notification to the post of UDT in the year 1981, the Appellant participated in the process after getting permission and got selected and appointed to the post of UDT; pursuant to which he joined the service as UDT on 07.04.1981.
5. While so, a DPC was convened in the year 1983, whereby some of the juniors of the Appellant (initially impleaded in the party array and subsequently got deleted) who were also left out from being considered for promotion to the post of UDT, were considered and they were promoted as UDT from November 1977 *i.e.* with effect from the date their names were wrongly left out of consideration in 1977. But, the said benefit was not given to the Appellant herein for the reason that his name had already been removed from the gradation list of LDT, having joined the post of UDT on 07.04.1981 in a fresh recruitment/direct recruitment process. Since the representation preferred by the Appellant for redressal of the grievance to restore his seniority and to get promotion and consequential benefits came to be turned down as per Annexure A/11 order dated 20.11.1990, it was sought to be challenged by filing O.A. No.

680 of 1991 in the State Administrative Tribunal of the erstwhile State of Madhya Pradesh. Subsequently, after formation of State of Chhattisgarh, the case was transferred to this Court, where it was renumbered as Writ Petition (S) No. 392 of 2005.

6. After hearing the rival contentions, a learned Judge of this Court arrived at a finding that the Appellant was placed in the provisional gradation list of LDTs above the juniors concerned and since the said juniors who were wrongly left out from being considered for the post of UDT in the year 1977 by were given the benefit of retrospective promotion in the subsequent DPC held in 1983, it was held that the Appellant who was all the more senior to the above persons was also entitled to have restoration of seniority and consequential benefits.
7. While granting the prayers, the relief was molded by the learned Single Judge, to the extent of restoring the seniority and the subsequent promotions over the juniors. The monetary benefits were ordered to be granted in the post of UDT from the date on which the promotion was given to the juniors, till 07.04.1981 (the date on which the Appellant had joined the post of UDT, though by fresh/direct recruitment process). It was also made clear that, if the aforesaid juniors were given promotion to still higher posts, it was also ordered to be extended to the Appellant/writ Petitioner with effect from the date on which the juniors were given such promotion; however, declining the monetary benefits in respect of such notional promotion and ordering specifically that the notional promotion as above would count for granting the pensionary benefit. According to the Appellant, all consequential benefits including the monetary benefits for subsequent promotions also ought to have been awarded by the learned Single Judge and hence the grievance in the appeal.
8. As mentioned already, the verdict under challenge was passed by the learned Single Judge way back on 29.02.2016. It was only after above '4 years', that the

Appellant chose to approach this Court, challenging the correctness of said verdict, by filing this appeal. The only reason stated in I.A. No. 1 of 2020 to condone the inordinate delay of 1433 days in filing the appeal, as given in paragraph 2, is as follows:

“2. That, the appellant is a retired employee was not granted the benefit even after the order passed by the Hon'ble Single Bench till November 2019, when he filed contempt petition then the respondents have finalized the pension and other benefits of the appellant/petitioner, due to this reason because of the fear of the respondents not to finalizing the pension and other consequential benefits, he has not filed the appeal within limitation. The Copy of the letter dated 13.11.2019 which was filed alongwith the reply to the contempt petition is the evident of the same, which is enclosed and marked herewith as **Annexure A-2**, for its kind perusal of the Hon'ble Court.”

The above reason of alleged apprehension/fear of the Appellant is not at all explanation for the inordinate delay, much less any satisfactory explanation. It is also worthwhile to note that, the Appellant, after passing the verdict by the learned Single Judge, had sought to get it implemented and the lapse/delay on the part of the Respondents was sought to be acted upon by filing Contempt of Court proceedings bearing No. 444 of 2016. The benefit, as ordered by the learned Single Judge, has admittedly been given to the Appellant and there is no grievance in this regard.

9. After getting the judgment implemented, the Appellant attempts to take a somersault and contend that the judgment is inadequate and the entire monetary benefits ought to have been granted to him. If the Appellant was having any grievance with regard to the adequacy and inadequacy of the relief given, that should have been brought to the notice of this Court then and there. More so, when the Appellant was very much vigilant in pursuing his remedy with reference to the alleged non-compliance with the direction and the alleged contumacious action, by filing the Contempt of Court proceedings.

10. The course and conduct of the Appellant clearly reveals that he was having no such grievance for the past about 4 years; who found it necessary to file an appeal only at this stage; which displays an experimental attempt. We are of the firm view, that the Appellant has not given any explanation, much less any satisfactory explanation, to condone the inordinate delay of 1433 days in filing the appeal. The power and jurisdiction of this Court is never to extend any relief to such person who was taking rest on armchair unmindful of his rights and liberties, if any. We find support from the ruling rendered by the Supreme Court in ***Rabindra Nath Bose & Others v. Union of India & Others*** reported in **AIR 1970 SC 470**.

11. Coming to the merit as well, it is to be noted that the juniors were promoted in the year 1983 with retrospective effect from 1977. By that time, the Appellant had already undergone a fresh recruitment process and joined the post of UDT on 07.04.1981. The representation preferred by the Appellant with a claim for seniority in the post of UDT from November 1977, came to be rejected as per Annexure A/11 order dated 20.11.1990; in turn leading to filing O.A. No. 680 of 1991. The prayer, with regard to the restoration of seniority and promotion with effect from the date when the juniors were promoted, has been granted by the learned Single Judge; notwithstanding the fact that the Appellant was recruited to the post of UDT through a fresh/direct recruitment process in the year 1981. The learned Judge was also pleased to grant the arrears of salary in the post of UDT from November 1977, the date on which the juniors (by name C.L. Tiwari and Jaganath Ram) were promoted as UDTs, till 07.04.1981 – when the writ Petitioner/Appellant had actually joined the post of UDT in the fresh recruitment process. The operative portion of the judgment as contained in paragraph 8 of the judgment reads as follows:

“8. For the foregoing, the writ petition deserves to be and is hereby allowed. The petitioner shall be entitled

to the arrears of salary on the post of UDT from November, 1977 from the date the respondent No.3, C.L. Tiwari and respondent No.5, Jaganath Ram were promoted till 07.04.1981 when he actually joined the post of UDT. If the said respondents have thereafter been promoted on any other higher post, the petitioner shall also be entitled to notional promotion without any consequential benefit. The petitioner's pay etc. for the purpose of pension be accordingly refixed, however, except for the salary from November, 1977 to March, 1981, the petitioner shall not be entitled to any other monetary benefit except recalculation of his pensionary benefit."

12. After hearing both the sides and after going through the materials on record, we find that the relief granted by the learned Single Judge is quite adequate and appropriate; which does not suffer from any infirmity and warrants no interference. The appeal and the petition to condone the delay are not liable to be entertained; being devoid of any merits. They are dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge