

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 35 of 2020**

(Arising out of order dated 14/11/2019 passed by learned Single Judge in WP227 No. 623 of 2014)

- Suratiya Khare W/o Bhuneshwar Khare, aged about 36 years, R/o Tekahardi, Tahsil- Dongargaon, Post Bakal, Dist. Rajnandgaon, C.G.

-----Appellant/Petitioner**VERSUS**

1. Project Officer Integrated Child Development Project, Dongargaon, Dist. Rajnandgaon, C.G.
2. Chief Executive Officer, Janpad Panchayat, Dongargoan, Dist. Rajnandgoan, C.G.

-----Respondents

For Appellant	:	Mr. Rakesh Pandey, Advocate
For Respondents	:	Mr. Ghanshyam Patel, Government Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****Per Parth Prateem Sahu, J.****15/01/2020**

1. By this appeal, the appellant has challenged the impugned order dated 14-11-2019 passed by the learned Single Judge whereby writ petition filed by the writ petitioner/ appellant was dismissed holding that the appellant was unauthorizedly absent from her duties without informing the authorities.
2. Facts of the case in brief are that the appellant was appointed as 'Anganbadi worker' at Anganbadi Centre at gram panchayat Tekahardi as per appointment order dated 09-07-1999 and was performing her duties. The appellant remained absent from 14-01-2013 to 03-07-2013 from her place of work and during that period several notices/ letters have been sent to her to which the appellant refused to receive. Considering the long absence of the appellant from her service without sanction of leave from the competent authority and also

considering the fact that she refused to accept the notices sent by the superior authorities, the order of her removal from service has been passed by the Chief Executive Officer, Janpad Panchayat, Dongargaon on 21-06-2013.

3. The said order of her removal from service was challenged before the Collector, Rajnandgaon by way of appeal. The appeal was dismissed by the Collector considering the fact that the appeal was not filed within the limitation prescribed and it was delayed by 43 days. Dismissal of the appeal by the Collector was further challenged by the appellant in a revision before the Commissioner, Durg which also came to be dismissed and ultimately the writ petition filed challenging the order passed by the Commissioner also came to be dismissed by impugned order.
4. The learned counsel for the appellant submits that the appellate authority has not considered her appeal on merits and the appeal was dismissed only on account of limitation. He submits that the plea taken by the appellant is that she was suffering from medical ailments and she could not attend her duties during that period, in fact, she sent an application to the Sarpanch on 01-02-2013 mentioning that she was unable to attend her place of work since 14-01-2013. The delay in filing appeal was explained which was only of 43 days and should have been considered liberally. The procedure prescribed in guidelines for removing Anganbadi worker under Clause 13 of the guidelines dated 02-04-2008 has not been complied with, no enquiry was conducted. It is also submitted that though the documents filed by the State showing the letters/ notices were sent to her and those letters/ notices were refused by the appellant to accept is not correct, in fact she was never served with any letter or notice. No enquiry as mentioned in Clause 13.1 of the guidelines was conducted to hold the appellant guilty of any misconduct.
5. Per contra, learned counsel representing the State submits that the notice sent to the appellant has been refused to accept by her and therefore no other action except removing her from the service could be passed. He submits that the

appeal itself is not maintainable in view of the proviso to Section 2(1) of the Appeal to Division Bench Act, 2006, as the writ petition was filed under Article 227 of the Constitution of India. He submits that the Collector has not found any sufficient cause to condone the delay. It is further submitted that there is concurrent finding against the appellant from two authorities and also by the learned Single Judge in writ petition.

6. We have considered the submissions made by the respective parties and perused the documents annexed along with the record.
7. The argument raised by learned counsel for the State that the appeal itself is not maintainable against order passed in writ petition under Article 227 of the Constitution of India is concerned is not correct. When the learned Single Judge arrived at a finding that the petition cannot be under Article 227 of the Constitution of India then an opportunity ought to have granted to the appellant permitting her to correct the nomenclature of the writ petition under which it was filed instead of making technical ground for dismissing the writ petition.
8. Annexure P-2 is the order passed by the Collector who is an appellate authority under Clause 11 of the guidelines, but her appeal has been dismissed by the Collector only on the ground of delay, considering the fact that the appeal has been delayed by 43 days and no sufficient cause has been shown for condoning the delay. Merits of the case was not considered. The delay in filing the appeal as recorded by the Collector in its order is 43 days only. Application for condonation of delay is to be liberally construed so that the parties filing the *lis* before any forum can be decided on merits so as to advance substantial justice to them. The Hon'ble Supreme Court in the matter of **State of Bihar v. Kameshwar Prasad Singh**, reported in **(2000) 9 SCC 94** has held as under:

“11. Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in *Collector, Land Acquisition v. Katiji*¹ held that the expression “sufficient cause” employed by the

1 (1987) 2 SCC 107

legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice- that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that: (SCC p. 108, para 3)

“1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so.”

9. In view of the above, we find that the Collector committed an error in dismissing the appeal filed by appellant under the guidelines dated 02-04-2008 only on the ground of delay of 43 days. The other aspect of the case is that the Commissioner though had upheld the order of the Collector in dismissing the appeal on the ground of delay only, but discussed the merits of the case that the letter/ notice was refused which he could not have done. The Commissioner who is a Revisional Authority could have considered only the order under challenge before him, to be correct or not, it is for the reason that the appellant could not get an opportunity to prove the merits of her case before the appellate authority. The learned Single Judge dismissed the writ petition considering the merits of the

case and failed to consider that whether the order of the Collector dismissing the appeal as barred by limitation is proper or not.

10. In view of the above facts of the case, particularly taking into consideration the fact that appeal filed by the appellant before the Collector (first appellate authority) was dismissed only on the ground of delay of 43 days in filing the appeal without considering the merits of the case, the writ appeal is allowed in part and the impugned order (Annexure A-1) passed on 14-11-2019 is set aside; consequently, the order dated 17-07-2014 passed by the Commissioner and the order dated 15-01-2014 passed by the Collector are also set aside.

11. We find it appropriate to condone the delay. It is ordered accordingly. The matter is remitted back to the Collector for deciding the appeal on merit. It is directed that the Collector after providing opportunity of hearing to all the parties shall make all its endeavour to decide the appeal on merit in accordance with law preferably within a period of 4 months from the date of receipt of certified copy of this order.

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

Sd/-
(Parth Prateem Sahu)
Judge