

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C) No. 1158 of 2014

Samsheer Alam, S/o. Shri Mohammad Samsuddin, Aged About 39 Years, R/o. Village Tikidiri, Gram Panchayat Neelkanthpur, Janpad Panchayat Ramchdrapur, Tahsil Ramanujganj, Distt. Balrampur Ramanujganj, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh, Through The Commissioner, Surguja Division, Surguja Ambikapur, Chhattisgarh
2. Moti Singh, S/o. Late Shri Lagan Singh, Aged About 65 Years, R/o. Gram Panchayat Ramchandrapur, Tahsil Ramanujganj, Distt. Balrampur Ramanujganj, Chhattisgarh
3. Bashidhar Yadav, S/o. Ramdeni Yadav, Aged About 50 Years, R/o. Gram Panchayat Ramchandrapur, Tahsil Ramanujganj, Distt. Balrampur Ramanujganj, Chhattisgarh

---- Respondents

For Petitioner : Mr. Shakti Raj Sinha, Advocate

For State : Mr. P. Acharya, Panel Lawyer.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

23.06.2021

Heard.

1. The present petition is against the order dated 07.04.2014 whereby an application filed by the petitioner for restoration of his revision filed under the C.G. Panchayat Raj Adhiniyam, 1993 read-with C.G. Panchayats (Appeal & Revision) Rules, 1995 was dismissed.
2. The background of this case according to document on record would show the petitioner was appointed on 06.11.1995 as Panchayat Karmi at Gram Panchayat Chargah and he was removed from his post by order dated 02.03.1997. Against such dismissal from service, the petitioner preferred an appeal under the Chhattisgarh Panchayats

(Appeal & Revision) Rules, 1995 (*for short "the Rules, 1995"*) before the S.D.O. against his dismissal, which was allowed by the S.D.O. vide order dated 08.02.2001 (Annexure P-2). The said order, whereby the termination was set aside was challenged by another Panchayat Karmi Banshidhar Yadav before the Collector, District Sarguja, Ambikapur, as the Collector was vested with the appellate jurisdiction. The Collector by its order dated 08.02.2002 set aside the order of S.D.O. (Annexure P-3) for reinstatement to job. The petitioner since was aggrieved by such order whereby the appeal was allowed by the Collector resulting into dismissal from his service, filed a revision before the Commissioner, Bilaspur by Annexure P-4. The Commissioner, Bilaspur had issued the notice of the revision petition and the order sheet Annexure P-5 would show that from 11.03.2002, the revision was pending and eventually order sheet of 09.07.2002 would reveal that the case was transferred to the Director, Panchayat in view of the notification dated 23.04.2003 whereby the revisional power under the Rules, 1995 was notified to be exercised by the Director, Panchayat.

3. It is contended on behalf of the petitioner that without any notice, the revision was dismissed for want of prosecution, therefore the wrong cannot be perpetuated. He would further submit subsequently when the law was amended, again the Commissioner was restored with the revisional power, the petitioner filed an application for restoration of revision. No dates were given and the notice was not served and as such immediately when the dismissal was notified, he filed an application for restoration which too was dismissed. It is stated the earlier application for restoration too was dismissed by wrong recording of fact that two applications for restoration were pending.

4. Per contra, the learned State counsel would submit that the petitioner was not agile of his right as he was informed about the dismissal of his revision petition way back in the year 2012 but he was dormant and never agitated his right; therefore, the two applications were pending before the Commissioner for restoration of revision petition. As such, the order of the Commissioner whereby the application for restoration has been dismissed is well merited and do not call for any interference.
5. After having heard the parties and perusal of the record, the stage of uptill the filing of the revision before the Commissioner, Bilaspur under the Rules, 1995 is not in dispute. The controversy started thereafter. The document Annexure P-5, which is the order sheet of the Commissioner, Bilaspur would show that against the order of the Collector dated 08.02.2002 (Annexure P-3) the petitioner preferred a revision before the Commissioner, which was pending adjudication and the appearance was made on behalf of the petitioner by the counsel. The order sheet of the Commissioner dated 25.11.2002 specially records that no dates are given to the parties and the case is fixed for hearing by the Revenue Board and whenever the hearing commences the notice would be given to the parties. After 25.11.2002 after a long gap, the order sheet of 09.07.2003 is recorded almost about with a gap of eight months wherein the orders were passed by the Member, Board of Revenue, Chhattisgarh instead of the Commissioner. The said order sheet of 09.07.2003 records as under : -

“09.07.2013 प्रकरण समक्ष में प्रस्तुत किया गया छत्तीसगढ़ शासन पंचायत एवं ग्रामीण विकास विभाग, मंत्रालय, रायपुर के पत्र क्रं. 702/प/2003, दिनांक 13-05-2003 के एवं छत्तीसगढ़ राजपत्र [असाधारण] क्रमांक 109 दिनांक 23-4-2003 के पृ. 216, 216(1) के अनुसार छत्तीसगढ़ पंचायत राज अधिनियम 1903 में आयुक्त के अधिकार संचालक पंचायत को सौंपे गये हैं।

अतएव यह प्रकरण निम्न न्यायालय के अभिलेख सहित संचालक, पंचायत एवं समाज सेवा विभाग को स्थानांतरित किया जाता है।

सही
नारायण सिंह
सदस्य
राजस्व मण्डल छततीसगढ़”

6. According to the order sheet, since the power to hear the revision vested with the Director, Panchayat, as such, the case was sent to the Director, Panchayat and the order sheet of the Director, Panchayat was again opened after a long gap of seven months on 13.05.2004 which records that notice be issued to the parties. Thereafter, the case was pending and on different dates, the order sheet records the issuance of the notice but service report was not received back from the office of the Director, Panchayat. Eventually no notice was served to either of the parties, however, eventually by order dated 03.06.2008 the revision was dismissed for want of prosecution.
7. The document Annexure P-6 is an application for restoration, which was filed by the petitioner on 22.05.2012 before the Director, Panchayat. The document Annexuer P-7 is a letter dated 14.09.2012 addressed to the Commissioner, Sarguja with a reference of restoration application filed by the petitioner on 22.05.2012. The said communication was made from the Panchayat & Social Welfare Department of the State through the Joint Director to hear the restoration application of the petitioner. The document Annexure P-8 would show that after 14.09.2012 the communication which was forwarded to Samsher Alam, the petitioner, an application for restoration of the revision was filed again. The said application was preferred before the Commissioner, Sarguja, Ambikapur and the order sheet of Commissioner, Sarguja records that the petitioner since has

filed an application before the Director, Panchayat for restoration of the revision, which has been received to the office of the Commissioner with a communication dated 14.09.2012 it would be considered. It appears that there might have been two application initially filed, one was filed by Annexure P-6 on 22.05.2012 before the Director, Panchayat and another application Annexure P-8 was preferred after the communication was received by the petitioner by a letter dated 14.09.2012 and the application for restoration was immediately filed on 18.09.2012. However, the order sheet, which was opened on 18.09.2012 on the basis of the application for restoration filed by the petitioner would show that even after that application no dates were given to the petitioner to appear on a particular date and it was fixed for argument. Eventually, again on 25.03.2013 the case was presented before the Commissioner and the restoration application was dismissed for want of prosecution for non-appearance, though notice of date of hearing was not made known to parties.

8. Eventually the order dated 07.04.2014 was passed wherein the application for restoration was dismissed on the ground that earlier the application for restoration has been dismissed on 25.03.2013 and it also records the fact that two proceedings were commenced for restoration. The facts would suggest that the authority probably misconceived the entire facts as on earlier date, as one application which was referred before the Director Panchayat by petitioner was already dismissed on 25.03.2013. In any case, the perusal of the order sheet would show that initially when the case was transferred from Commissioner, Bilaspur to Director Panchayat after the jurisdiction was vested with the Director Panchayat, no notice was served from the

office of the Director Panchayat to the petitioner and eventually the case was dismissed for want of prosecution on 03.06.2008. Thereafter, the petitioner filed an application before the Director, Panchayat for restoration of the case initially by Annexure P-6. By the time, it is not in dispute that the jurisdiction of the Director Panchayat was again given back to the Commissioner by notification dated 11.12.2009. Therefore, the Director, Panchayat sent the communication to the petitioner by 14.09.2012 and petitioner immediately moved another application before the Commissioner, Sarguja by Annexure P-8 for restoration of the revision.

9. The order sheet of Commissioner, Sarguja would reflect that after the application was filed no notice or nor any date was given to the petitioner to appear and after few dates, it was dismissed on 25.03.2013 and the order sheet dated 07.04.2014 appears to have been passed on an application which was earlier sent by the office of the Director, Panchayat. In any case, the dismissal was passed without the date of notice to the petitioner. In absence of any date to appear, it cannot be presumed that the petitioner will know the subsequent date of appearance. It is the act of the Court for which the petitioner suffered.
10. It is a trite law that the act of the Court cannot harm any litigant, therefore, the order sheet which shows that the petitioner was not given the date of hearing and the dismissal was passed behind his back cannot be sustained, as illegality cannot be perpetuated for the act of the Court. Furthermore, the Court always promote the decision on the merit instead of following the dismissal procedure on technical ground specially when no deliberate omission comes to fore. Under the

circumstances, the order dated 25.03.2013 and 07.04.2014 are set aside. The application for hearing of the restoration application is remitted back to the Court of Commissioner, Sarguja to hear it on merit after notice is served to the respective parties/ non-applicants who were arrayed in the restoration application under Section 35(3) of C.G. Land Revenue Code by Annexure P-8. The petitioner shall be at liberty to file a copy of Annexure P-8 afresh as if it is not traceable. Thereafter the Commissioner shall decide the same without adhering to the technicalities to advance the cause of justice on merits. The petitioner shall appear before the Commissioner, Sarguja on 15.07.2021.

11. In the result, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge

Aks