

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 84 of 2021***(Arising out of order dated 17.12.2015 passed by the learned Single Judge in WPS No. 3621 of 2013)*

- Puniya Bai W/o Late Shri Chintaram Sahu Aged About 54 Years R/o Hasda Near Manik Chowk, P.S. Abhanpur, Tahsil Raipur, District Raipur (Chhattisgarh).

---- Appellant**Versus**

1. Chhattisgarh State Power Distribution Company Ltd. Daganiya, Raipur (Chhattisgarh)
2. Manager Finance / Pension, Chhattisgarh State Power Distribution Company Ltd., Daganiya, Raipur (Chhattisgarh)
3. Chief Executive Engineer (S/s) Division Chhattisgarh State Power Distribution Company Ltd., Raipur (Chhattisgarh)
4. Assistant Engineer Chhattisgarh State Power Distribution Company Ltd., Mana Raipur (Chhattisgarh)

---- Respondents

For Appellant : Ms. Renu Kochar, Advocate.

For Respondents : Shri K.R. Nair, 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**17.03.2021**

1. Dismissal of the writ petition filed by the Appellant more than five years ago, is sought to be challenged in this appeal, filed with a petition to condone the delay of 1845 days.
2. We heard the learned counsel appearing for the Appellant at length. The 'so called reason' stated in the application to condone the delay is as given in paragraphs 4 and 5 of I.A. No. 01 of 2021, which is to the following effect:

“4. That petitioner was not aware that the petition has been decided, she was of the impression that the case is pending before the Hon'ble Court.

5. That petitioner came to Bilaspur in the month of February, 2021 and enquired about her case, then she came to know that the petition has been dismissed by order dated 17.12.2015 in the absence of petitioner counsel. That petitioner then applied certified copy of the order in to file writ appeal against order dated 17.12.2015. That due to bonafide reason, delay is caused in filing appeal.”

3. What is stated by the Appellant is that, after filing the case in the year 2013, she was under the impression that the matter was still pending, in respect of which, she made an enquiry only on coming to Bilaspur in February, 2021, coming to know about the disposal of case on 17.12.2015. Absolutely no explanation is given; much less anything satisfactory, to condone the inordinate delay and as such, the appeal is liable to dismissed on this score alone.
4. With regard to the merits, the Appellant / Writ Petitioner had approached this Court with the following prayers:

“10.1 That the respondent may kindly be pleased to produce the entire record of the case for kind perusal of this Hon'ble Court.

10.2 That the Hon'ble Court may kindly be pleased to issue writ in the nature mandamus commanding the respondents to decide the case of retrial dues and the salary of petitioner's husband with interest.

10.3 That this Hon'ble Court may be further pleased to pass any other consequential and other orders/writs which this Hon'ble Court deems just and proper in the facts and circumstances of the case.

10.4 That the Hon'ble Court may kindly be pleased to direct the respondents to pay cost of petition.”

5. The pleadings and proceedings reveal that the husband of the Appellant, by name, Chintaram Sahu who joined the service of the Respondent in the Cadre of Attendant Grade-I (L) and was working as a Lineman, having

commenced the service from 05.03.1982, was arrested on 29.10.2001 and was convicted and sentenced by the Competent Court imposing the punishment of life imprisonment. This led to the dismissal of the employee from the service as per order dated 06.03.2002. Criminal Appeal No. 290/2002 filed before this Court by the husband of the Appellant, came to be allowed and the conviction and sentence imposed upon him were set-aside as per judgment dated 30.11.2009. Pursuant to this, the order of dismissal was withdrawn and the husband of the Appellant was permitted to join duty as per order dated 20.04.2010 and he joined the service accordingly on the very next day. While continuing in service as above, the husband of the Appellant took his last breath on 05.02.2011. According to the Appellant, the service benefits payable to her husband were never released, which made her to approach the Court by filing the writ petition with the prayers, as mentioned already.

6. It is seen from the proceedings that the Respondents had filed a return dated 28.11.2013 pointing out that, all the retiral benefits payable to the deceased employee had already been released. It is stated that the Gratuity amount of Rs. 8,70,203/- was paid by Cheque No.103908 dated 01.06.2012 and GPF amount of Rs. 2,01,651/- was paid by Cheque No.497810 dated 30.06.2011. It is stated that no other payment is due to be released to the Petitioner or any other Respondents, on account of the deceased employee.
7. With regard to the claim for payment of salary for the period during which he kept out of the service, it is pointed out that the order of reinstatement itself was quite categoric that the absence from duty would be treated as extraordinary leave without pay and allowances, which was accepted by the deceased employee who joined the service. After joining the service, no dispute was ever raised by the deceased employee in this regard till the date of his death. This being the position, it is not open for the Appellant/Writ

Petitioner to have put up a case for payment of salary during the period of absence. In the absence of any such claim for the deceased employee while he was in service, after the reinstatement ordered and more so when, the order of reinstatement specifically stipulated that the period of absence would be treated as extraordinary leave without wages, is not put to challenge.

8. When the matter came up for final hearing before the learned Single Judge, though there was no representation on behalf of the writ Petitioner, the merit was considered and it was observed that, the claim for arrears of wages was for the period the deceased husband of the writ Petitioner remained out of service due to conviction in Criminal Case was not liable to be entertained. It was also observed that the particular facts with regard to payment of retiral benefits, as pleaded in the return filed from the part of the Respondents, were not denied by filing any rejoinder. It was in said circumstance that, interference was declined and the writ petition was dismissed as infructuous.
9. The learned counsel for the Appellant submits that husband of the Appellant having been acquitted from the criminal charges and having been reinstated in service, the Respondents are liable to effect payment of salary for the period of absence. We do not find any merit in the said submission for more than one reason. Admittedly, the husband of the Petitioner / Appellant was put out of service because of operation of law, when he came to be convicted and was sentenced with punishment of life imprisonment by the Competent Court. It was only on setting aside the said order of conviction as per judgment dated 30.11.2009 passed by this Court in Criminal Appeal No.290 of 2002, that the order of dismissal was withdrawn and reinstatement was ordered; making it clear that, the period of absence would be treated only as extraordinary leave without wages. There was no case that the dismissal / termination from the service was ever due to any fault or

lapse attributable to the Respondents / employer, but because of the deeds and mis-deeds on the part of the deceased / husband of the Appellant. Though he came to be acquitted by this Court, enabling him to get back his employment, the husband of the Appellant had rendered no work during that period and as such, the principle of 'no work no pay' will be attracted. Whatever possible under law has already been done by the Respondents, by immediately reinstating him in service and treating the period of absence as extraordinary leave without payment of wages. More over, the order of reinstatement, which categorically stipulated that the period of absence will be treated as extraordinary leave without payment of wages, was never chosen to be challenged by the employee, during his life time. This being the position, no claim for salary for the period of absence could be validly made by the Appellant / Widow of the deceased. As such, there is no merit in the case as well.

10. With regard to payment of retirement dues, the amount due in respect of the service of the husband of the Petitioner has already been released, as given in paragraphs 2 and 3 of the return dated 28.11.2013, which are extracted below:

“2. Brief facts of the case are: (a) that the petitioner's husband, Chinta Ram Sahu, while working as Line Man, was convicted and sentenced to life imprisonment by order dated 9/10/2002 of the court of competent jurisdiction. Since a convicted employee cannot continue to be an employee of the answering Respondents, he was dismissed from service by order dated 6/3/2002. (b) He had preferred criminal appeal No.290/2002 before this Hon'ble Court for quashing the conviction and sentence and this Hon'ble Court was pleased to accept his appeal and to set aside the conviction and sentence imposed on him, by its order dated 30/11/2009. (c) The Answering Respondent immediately withdrew the dismissal order and took him back in service treating his period of absence as extra-ordinary leave without pay and allowances. A copy of the order dated 19/3/2010 is filed herewith as Annexure R/1. The petitioner's husband had reported for duty on 21/4/2020. (d) He died on 5/2/2011. After his death, Pension, Ex-gratia, GSLS, all were paid. Gratuity amounting to Rs.8,70,203/- was paid by cheque

No.103908 dated 1/6/2012, GPF final payment amounting to Rs.2,01,651/- was paid by cheque No.497810 dated 30/6/2011. There is no other payment due to be released to the petitioner or any of the dependents of the deceased employee.

3. The allegation of the petitioner that her husband was entitled to receive pay and allowance for the period of his absence between the period of his dismissal and reinstatement in service is not true. The reinstatement order itself said that his absence from duty would be treated as extra ordinary leave without pay and allowances. Late Chinta Ram had accepted the said order and reported for duty. He never raised any dispute or objection to the said order at the time of or after reporting for duty. Therefore the petitioner is not entitled to claim that salary for the said period was due but not paid. The further allegation of the petitioner that gratuity, GPF, etc were not paid is also not true. Gratuity, GPF and all other dues have already been paid by cheques as stated above and nothing is due and payable to the petitioner in respect of the service rendered by her late husband.”

The above specific averments have not been rebutted by the Appellant by filing any rejoinder. In the said circumstance, we are of the view that there is absolutely no merit in the challenge raised against the verdict passed by the learned Single Judge.

11. In the above circumstances, the appeal stands dismissed, both on the ground of inordinate delay and also for want of merit.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge