

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 169 of 2018**

- Mahtru S/o Late Sunderlal Aged About 77 Years R/o Telibandha Ravigram (Ghasidas Ward) Raipur, District Raipur, Chhattisgarh,

---- Petitioner**Versus**

- R.P. Rathia Deputy Secretary, Chhattisgarh Government, Public Works Department, Raipur, Chhattisgarh,

---- Respondent

For Petitioner : Shri Govind Dewangan, Advocate.
For Respondent : Shri Pranjal Shukla, Advocate.

Hon'ble Shri Deepak Kumar Tiwari, J**Order On Board****22/10/2021 :**

1. Heard on IA No.1/2018, application for condonation of delay in filing the MCC for restoration of Contempt Case (C) No.141/2011 which arose from the order passed by this Court in WPS No.3104/2008, decided on 1st July, 2008.
2. Facts of the case, in brief, are that the applicant had filed the Contempt Case No.141/2011 on 19th April, 2011. The said matter was listed for hearing on 30th October, 2013. On the said date, the matter was called twice, but no-one appeared. Therefore, the petition was dismissed reserving liberty in favour of the applicant to take appropriate steps, if so advised.

3. Learned counsel for the petitioner would submit that the petitioner was not aware about the dismissal of the petition and was under impression that the contempt petition is still pending for consideration. He came to know about dismissal of the contempt petition when he approached for filing the application for urgent hearing and the Registry had informed that the matter has already been dismissed vide order dated 30th October, 2013. Thereafter he applied for getting the certified copy of the order and the same has been received on 8.2.2018. After receiving the certified copy of the order, the applicant had taken advise about restoration of the case. The applicant is aged about 77 years and had retired way back on 31st August, 2000 and is not getting any pension. His earlier counsel did not inform him about dismissal of the petition, therefore, he prays for restoration of the MCC.
4. Indisputably, there is delay of 1538 days in preferring the instant application for restoration. It is well settled law that condonation of delay cannot be claimed as a matter of right and only on genuine reasons, the delay is to be condoned and not otherwise. In the event of condoning the huge delay in a routine manner, the Courts are not only diluting the law of limitation but unnecessarily encouraging this kind of lapses. Therefore, reasons which are all acceptable alone must be a ground for condonation of delay, and flimsy, false and casual reasons cannot be taken for the purpose of condoning the huge delay.

5. In the case at hand, the petitioner had filed WPS No.3104/2008 in which an order was passed on 1.7.2008 in the following terms:-

“1. With the consent of the parties, the matter is taken up for hearing finally.

2. Learned counsel appearing for the petitioner submits that the petitioner was appointed as Daily Wages Employee on the post of Mason in Public Works Department, Raipur on 1.1.1967 (Annexure P/1). According to Shri Pandey, the services of the petitioner was classified as permanent skilled labour by the Labour court vide order dated 03.01.1996 (Annexure P/2) and was entitled for all the benefits of permanent employees from the year 1997. The said order was upheld by the Industrial Court vide order dated 24.04.1997/15.05.1997 (Annexure P/3), therefore the petitioner is entitled to grant of family pension.

3. Shri Pandey further submits that the petitioner does not want to press relief clause 10 (i) and 10(ii) and submits that with regard to the grant of pension, the instant case is squarely covered by the decision of this Court in the matter of M.A. Hakim Vs. State of Madhya Pradesh (now C.G.) and others (W.P. No.4135/2004) wherein, this Court has passed the order on 28.8.2006 allowing the petition. It is next contended that the State Government has preferred Special Leave Petition No.19728/06 before the Supreme Court against the said order dated 28.08.2006 and the same was dismissed on 08.12.2006.

4. Shri Arun Sao, learned Government Advocate appearing for the State/respondents submits that the question of law involved in this petition is identical to that of in the matter of M.A. Hakim (supra). He further submits that the petition may be allowed, subject to verification of the facts.

5. In view of the foregoing, the writ petition stands disposed of in the same terms i.e. admissible pension shall be released expeditiously, as the petitioner has retired long back from the service on 31.08.2000. No order as to costs.”

6. The State Government after considering the order passed by this

Court, passed an order on 6.4.2011 stating that the petitioner is not entitled to get any monthly pension. Therefore, the petitioner contended that the State Government fails to comply with the order passed by this Court deliberately which amounts to contempt of the Court.

7. It is an admitted fact that the petitioner's contempt petition was dismissed for want of prosecution in the year 2013 and for almost 5 years the petitioner was not serious about his case and has been completely negligent and ignorant over his right. Therefore, the explanation offered by the applicant is not acceptable, vague and not convincing. Moreover, the petitioner has a right to challenge the order dated 6.4.2011 passed by the State Government rejecting his claim.
8. Accordingly, the application (IA No.1/2018) for condonation of delay in filing the MCC is dismissed. Consequently, the MCC is also dismissed. However, in view of the submission made by learned Government Advocate in WPS No.3104/2008 that the question of law involved in the said petition is identical to that of in the matter of M.A. Hakim, as mentioned above, the petition may be allowed subject to verification of facts, the Secretary of the concerned Department is directed to re-examine the case of the petitioner within one month, as per rules and pass appropriate speaking order. If the grievance of the petitioner still subsist, the petitioner may avail appropriate remedy as available to him under the law.

Sd/-
(Deepak Kumar Tiwari)
Judge