

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 4132 of 2021**

1. Rajesh Kumar Rajput S/o Shri Tulsi Singh Rajput Aged About 40 Years Earlier Posted As Assistant Teacher Panchayat, At Government Primary School Patiyalpara (T), R/o Village Gohrapadar, Tahsil Mainpur District Gariyaband Chhattisgarh

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Panchayat And Rural Development, Mantralaya, Mahanadi Bhawan, Atal Nagar Nawa Raipur District Raipur Chhattisgarh
2. Secretary, Directorate Of Panchayat, Naya Raipur District Raipur Chhattisgarh
3. Commissioner Raipur Division, Raipur Chhattisgarh
4. Collector Gariyaband District Gariyaband Chhattisgarh
5. Chief Executive Officer Zila Panchayat Gariyaband District Gariyaband Chhattisgarh
6. Chief Executive Officer Janpad Panchayat Mainpur District Gariyaband Chhattisgarh
7. Shiksha Samiti Through Its President Smt. Nurmati Manjhi, Janpad Panchayat Mainpur District Gariyaband Chhattisgarh

---- Respondents

For Petitioners	:	Mr. Ishan Verma, Advocate
For State	:	Mr. Ayaz Naved, G.A.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****12.08.2021**

1. Aggrieved by the order Annexure P/7 dated 28.02.2019, the present writ petition has been filed.

2. Vide the impugned order, the service of the petitioner has been terminated by the District Collector District Gariyaband. The petitioner in the present writ petition was working on the post of Shiksha Karmi Grade-III under Janpad panchayat Mainpur District Raipur. The service of the petitioner initially was terminated vide order dated 29.05.2009.
3. The reason for termination was on the alleged ground of obtaining employment on the basis of false documents. The termination order dated 29.05.2009 was challenged by way of a writ petition before the High Court vide WP(S) No.2759 of 2009. There was a bunch of litigations of identical orders under challenge and all these bunch writ petitions came up for hearing before the High Court on 07.08.2009. The High Court allowed these writ petitions solely on the ground of the same having been issued without granting any opportunity of hearing to any of the petitioners including the present petitioner. The High Court had reserved the right of the department to take appropriate steps after complying the principle of natural justice and fair play while the order of termination was set aside. Pursuant to which the petitioner and other similarly placed persons were taken back in service.
4. The department thereafter in terms of the liberty granted by this Court in its order dated 07.08.2009, after granting an opportunity of hearing, again found that the appointment of the petitioner was on the basis of fake and fraudulent documents. The authorities concerned therefore again terminated the service of the petitioner vide Annexre P/7 dated 28.07.2015. The petitioner thereafter did not challenge the order of termination for a very long time. Finally in the year 2019, after four and a half years, an appeal was preferred to the commissioner, who inturn dismissed/rejected the appeal vide its order dated 31.07.2019. The order of the Commissioner rejecting the appeal on the ground of limitation was put to challenge by way of a revision before Special Secretary in the department. The Special Secretary also vide its order dated

29.12.2020 has rejected the revision petition. Thereafter, the petitioner preferred a writ petition i.e. WP(S) No. 1868 of 2021 which was withdrawn on 06.04.2021 with liberty to file a duly constituted writ petition and thereafter the present writ petition has been filed.

5. The solitary ground on which the petitioner bank his arguments is an order passed by the Division Bench of this Court allowing Writ Appeal No. 126 of 2016 which was decided on 05.07.2019, the said order was in-respect-of a similarly placed person who too was terminated along with the petitioner.
6. The contention of the petitioner is that the order passed by the Division Bench in Writ Appeal No. 126 of 2016 decided on 05.07.2019 have since been complied by the respondents. Therefore, a similar order should be passed in the case of the petitioner also in the present writ petition.
7. Having heard the contentions put forth on either side and on perusal of the records, admittedly after the order dated 28.02.2015, the petitioner did not challenge the order of termination either before the departmental Appellate Authority or before any competent Court of law for reasons best known to him. It is only after more than four and a half years, the petitioner suddenly woke up from his slumber and preferred an appeal before the Commissioner and a revision before the Special Secretary and try to avail the remedy of appeal and other departmental remedies. Both these authorities have not entertained the claim of the petitioner only on the ground of having approached the authorities at a belated stage.
8. It is these two orders which are now under challenge in the present writ petition, this Court also does not find any strong case made out by the petitioner by which the order passed by the Commissioner and also by the Special Secretary could be said to be unreasonable or arbitrary. Four and Four and a half years time for preferring a departmental appeal is

undoubtedly a pretty long time for availing the departmental remedies available for a person particularly when he has been terminated from service.

9. The factual backdrop forces this Court to draw a strong inference that at the first instance when the order of termination dated 28.02.2015 was issued, the petitioner accepted the finding of the authorities and never wanted to challenge the same and it also forces this Court to infer that at that point of time the petitioner did not have any strong ground for challenging the order of termination.
10. Given the said circumstances, the petitioner now cannot be permitted to rake up his claim only on the basis of the judgment passed by the Division Bench of this Court in Writ Appeal No. 126 of 2016, The petitioner falls under those category of persons who were sitting on the fence waiting for an outcome of the Writ Petition or Writ Appeal of similarly placed persons thereafter to decide and take appropriate steps, if required by approaching the Court, such an action cannot be appreciable or entertained at this belated stage.
11. The decision of this Court stands fortified by the legal position and the law in this regard settled by a series of decisions of the Hon'ble Supreme Court. The question of delay and laches came to be considered recently by the Supreme Court in case of "**State of Uttaranchal and Another v. Shiv Charan Singh Bhandari and Others**", reported in **2013 (12) SCC 179** in which the court has declined to exercise extraordinary jurisdiction in case the petitioner invokes jurisdiction of Court with inordinate delay, and held as under :

"In State of T.N. v. Seshachalam [8], this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

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..filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government

servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be attracted as it is well known that law leans in favour of those who are alert and vigilant.”

12. Likewise, in the case of **“Uttaranchal Forest Development Corpn. And another v. Jabar Singh and others”** reported in **(2007) 2 SCC 112**, it was observed as under:

“43. The termination order was made in the year 1995 and the writ petitions were admittedly filed in the year 2005 after a delay of 10 years. The High Court, in our opinion, was not justified in entertaining the writ petition on the ground that the petition has been filed after a delay of 10 years and that the writ petitions should have been dismissed by the High Court on the ground of laches.”

13. Further, in the case of **“New Delhi Municipal Council v. Pan Singh and others”** reported in **(2007) 9 SCC 278**, the Supreme Court reiterating the principles relating to interference in cases where the petitioner approached the Court with unexplained delay, held as under:

“16. There is another aspect of the matter which cannot be lost sight of. The respondents herein filed a writ petition after 17 years. They did not agitate their grievances for a long time. They, as noticed herein, did not claim parity with the 17 workmen at the earliest possible opportunity. They did not implead themselves as parties even in the reference made by the State before the Industrial Tribunal. It is not their case that after 1982, those employees who were employed or who were recruited after the cut-off date have been granted the said scale of pay. After such a long time, therefore, the writ petitions could not have been entertained even if they are similarly situated. It is trite that the discretionary jurisdiction may not be exercised in favour of those who approach the court after a long time. Delay and laches are relevant factors for exercise of equitable jurisdiction. (See Govt. of W.B. v. Tarun K. Roy, U.P. Jal Nigam v. Jaswant Singh and Karnataka Power Corpn. Ltd. v. K. Thangappan.)”

14. In the case of **“P. S. Sadasivaswamy v. State of Tamil Nadu”** reported in **(1975) 1 SCC 152**, it has been held as under:-

“It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters. The petitioner’s petition should, therefore, have been dismissed in limine. Entertaining such petitions is a waste of time of the Court. It clogs the work of the Court and impedes the work of the Court in considering legitimate grievances as also its normal work. We consider that the High Court was right in dismissing the appellant’s petition as well as the appeal.”

15.Very recently in the matter of “**Chennai Metropolitan Water Supply and Sewerage Board and Others v. T.T. Murali Babu**” reported in **2014 (4) SCC 108**, the Supreme Court has clearly held that the delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation, and expressed their opinion as under-

“16. Thus, the doctrine of delay and laches should not be lightly brushed aside. A writ court is required to weigh the explanation offered and the acceptability of the same. The court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a constitutional court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may not be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant—a litigant who has forgotten the basic norms, namely, “procrastination is the greatest thief of time” and second, law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis.

In the case at hand, though there has been four years’ delay in approaching the court, yet the writ court chose not to address the same. It is the duty of the court to scrutinize whether such enormous delay is to be ignored without any justification. That apart, in the present case, such belated approach gains more significance as the respondent-employee being absolutely careless to his duty and nurturing a lackadaisical attitude to the responsibility had remained unauthorisedly absent on the pretext of some kind of ill health. We repeat at the cost of repetition that remaining innocuously oblivious to such delay does not foster the cause of justice. On the contrary, it brings in injustice, for it is likely to affect others. Such delay may have impact on others’ ripened rights and may unnecessarily drag others into litigation which in acceptable realm of probability, may have been treated to have attained finality. A court is not expected to give indulgence to such indolent persons – who compete with ‘Kumbhakarna’ or for that matter ‘Rip Van Winkle’. In our considered opinion, such delay does not deserve any indulgence and on the said ground alone the writ court should have thrown the petition overboard at the very threshold.”

16.For all the aforesaid facts and circumstances of the case, this Court does not find any strong case made out by the petitioner calling for an interference with the two orders under challenge and the writ petition fails and is accordingly dismissed.

**Sd/-
P. Sam Koshy
Judge**