

HIGH COURT OF CHHATTISGARH AT BILASPUR**Writ Petition (S) No. 452 of 2013**

1. Chunni Lal Mehar (dead) through LRs. :-

(a) Smt. Sunita Mehar Wd/o Late Chunni Lal Mehar,
Aged about 55 years.

(b) Mukti Mehar S/o Late Chunni Lal Mehar, Aged
about 35 years.

(c) Rakesh Mehar S/o Late Chunni Lal Mehar, Aged
about 32 years.

All R/o Palace Road, Koshtapara, Raigarh, Tahsil
and Distt. Raigarh, Chhattisgarh.

---Petitioners

Versus

1. Chhattisgarh State Power Distribution Company,
through its Chairman, Raipur, Tahsil and Distt.
Raipur, Chhattisgarh.

2. Superintendent Engineer, Chhattisgarh State Power
Distribution Company, Bilaspur Circle, Tifra, P.S.
Tifra, Distt. Bilaspur, Chhattisgarh.

---Respondents

For Petitioner :- Mr. M.K. Sinha, Advocate

For Respondents :- Mr. Varun Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

14/09/2021

1. The original petitioner namely Chunni Lal Mehar was
dismissed from service by order dated 22/05/1976

(Annexure P/1) against which he preferred Civil Suit No. 21A/1977 before the Civil Judge Class – I, Bilaspur which was dismissed on merits on 12/01/1993, being aggrieved by which, he preferred Civil Appeal No. 27-A/1993 which was also dismissed by the first appellate court on 26/7/1994 on merits. Thereafter, the original petitioner preferred Second Appeal No. 743/1994 before this Court which was dismissed as withdrawn on 21/11/2011 with liberty to file appropriate writ petition.

2. The order dated 21/11/2011 passed by this Court in Second Appeal No. 743/1994 states as under :-

“1. By this second appeal under Section 100 of the Code of Civil Procedure the appellant has challenged legality and propriety of the judgment & decree dated 26.7.1994 passed by the Sixth Additional Judge to the Court of District Judge, Bilaspur, in Civil Appeal No. 27-A/93, affirming the judgment and decree dated 12.1.1993 passed by the First Civil Judge Class – I has dismissed the suit filed on behalf of the appellant/plaintiff.

2. After some arguments, learned counsel for the appellant seeks to withdraw this appeal with liberty to file appropriate writ petition.

3. The appeal is dismissed as withdrawn with the aforesaid liberty. Certified copy of the judgment and decree impugned be returned to counsel for the appellant after furnishing duly photostat copy of the same. No order as to cost(s).”

4. A careful perusal of the aforesaid order would show that the second appeal has been withdrawn by the

appellant/original petitioner herein with liberty to file appropriate writ petition.

5. When the instant writ petition is taken up for hearing, Mr. Varun Sharma, learned counsel for the respondents, would submit that the Civil Suit has been dismissed on merits and the appeal preferred against the judgment and decree of the trial Court has also been dismissed by the first appellate Court on merits, therefore, decree of the trial Court against the order of dismissal of the original petitioner herein has merged into the decree of the first appellate Court and it has become final and the second appeal has been dismissed as withdrawn though liberty has been granted by this Court to file appropriate writ petition, but the instant writ petition would not be maintainable as the judgment and decree of the first appellate Court upholding the judgment and decree of the trial Court dismissing the suit holding the order of petitioner's dismissal dated 22/05/1976 to be strictly in accordance with law has become final and would bar this writ petition. He would rely upon the decision of the Supreme Court in the matter of Ramendra Kumar Biswas v. State of Tripura and Others¹ to buttress his submission.

¹ (1999) 1 SCC 472

6. Per contra, Mr. M.K. Sinha, learned counsel for the petitioner, would submit that for bona fide reason, the second appeal was withdrawn and in the matter of Ramendra Kumar Biswas (supra), the Supreme Court has clearly held that it is an erroneous view that civil court does not have jurisdiction to adjudicate on an order passed by disciplinary authority, and that only writ petition can be filed after exhausting departmental remedies and that provisions of the CCS (CCA) Rules, 1965 do not oust the jurisdiction of civil courts.

7. I have heard learned counsel for the parties at length and considered their rival submissions.

8. In the matter of Ramendra Kishore Biswas (supra), it has been held in paragraph 5 as under :-

"5. The opinion expressed by the learned single Judge to the effect that in view of C.C.A. Rules, the jurisdiction of the civil court is ousted from dealing with an order passed by the disciplinary authority which can be questioned under the service rules and that even after recourse is had to the Departmental proceedings recourse can only be to file a writ petition is palpably erroneous. The learned single Judge readily accepted the ouster of jurisdiction of civil courts to deal with service matters without proper consideration of the matter. Indeed, it is appropriate to relegate a person to exhaust Departmental remedies when he approaches the Court without exhausting departmental remedies under the service rules but to hold that the civil court had no jurisdiction while hearing a second appeal, after the matter has been litigated in civil court for more than five years was, to say the least, not proper. The learned single

Judge ought to have decided the case on its own merits and not made a short cut of it. The appellant could not have been non-suited on the ground that he had failed to take recourse to proceedings under the C.C.S. (C.C. & A.) Rules, 1965 against the order of dismissal. "

9. Their Lordships of the Supreme Court in paragraph 6 further held that Service Rules, neither expressly nor by implication, have taken away the jurisdiction of the civil courts to deal with service matters and set aside the order of the High Court allowed the appeal and remitted the second appeal to the High Court for fresh disposal on merits in accordance with law.
10. In view of the aforesaid authoritative pronouncement, since judgment and decree of the first appellate Court affirming the judgment and decree of the trial Court dismissing the suit of the plaintiff/original petitioner herein holding petitioner's dismissal from service by order dated 22/05/1976 to be correct and in accordance with law has become final, therefore, the instant writ petition is held to be not maintainable. However, the LRs. Of the original petitioner are at liberty to proceed in accordance with law. It is made clear that this dismissal of writ petition would not bar the petitioner (now, his LRs.) to avail the remedy available under the law.

11. With the aforesaid observation, this writ petition
is dismissed being not maintainable. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

Harneet