

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No. 5052 of 2020**

Rohit Kumar Shesh S/o Hemsingh Shesh, Aged About 35 Years, R/o Barekel, Tahsil And Janpad Panchayat Pithaura, District Mahasamund, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat Avam Gramin Vikas Bibhag, Mantralaya, D. K. S. Bhawan Raipur, District Raipur, Chhattisgarh
2. The Collector, Mahasamund, District Mahasamund, Chhattisgarh
3. Additional Commissioner, Mahasamund, District Mahasamund Chhattisgarh
4. Chief Executive Officer, Janpad Panchayat, Pithaura, District Mahasamund, Chhattisgarh
5. Chief Executive Officer, Zila Panchayat, Mahasamund, District Mahasamund, Chhattisgarh

---- Respondents

For Petitioner	:	Ms. Nand Kumari Kashyap, Advocate
For State	:	Mr. Vivek Ranjan Tiwari, Additional. A.G.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****11.01.2021**

1. The challenge in the present writ petition is to the order of the Collector, District Mahasamund dated 05.10.2020 Annexure P-1. Vide the impugned order the District Collector has rejected the

appeal preferred by the petitioner under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam on the ground of limitation.

2. The facts of the case are that the petitioner was working as a Rojgar Sahayak at Gram Panchayat, Barekel, Janpad Panchayat Pithaura, District Mahasamund. Vide order dated 07.05.2018 the petitioner was removed from service from the post of Rojgar Sahayak alleging serious misconduct in the course of discharge of his duties and also negligence and irregularities in the performance of his duties.
3. The petitioner had initially preferred an appeal before the Additional Commissioner, Raipur. The Additional Commissioner however vide order dated 06.03.2019 held that the appeal preferred before the Additional Commissioner is not maintainable and rejected the same for want of jurisdiction. After the order dated 06.03.2019, the petitioner preferred a regular appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam before the District Collector on 19.12.2019 which was rejected vide order dated 05.10.2020 on the ground of limitation as the same has been preferred after a period of around 9 months from the date of knowledge of the order of the Additional Commissioner. It is this order which has been challenged in this writ petition.
4. Contention of the counsel for the petitioner is that the services of the petitioner stood removed vide order dated 07.05.2018. Inadvertently because of lack of knowledge the petitioner preferred an appeal before the Additional Commissioner which was rejected on the ground of jurisdiction on 06.03.2019. It is the further contention of the petitioner that the order dated 06.03.2019 was brought to the notice

of the petitioner by his counsel at a belated stage and it is only thereafter that a proper appeal could be preferred before the Collector under Section 91 of the Panchayat Raj Adhiniyam and which he did only on 19.12.2019 along with an application for condonation of delay under Section 5 of the Limitation Act. It is the contention of the petitioner that in the condonation of delay application he had specifically given the reason for having approached a wrong forum and the learned Collector ought to have taken a pragmatic view and liberally entertained the same and should have decided the appeal on merits particularly when the challenge in the appeal was an order of removal from service which in other words is a capital punishment.

5. State counsel on the other hand submits that from a plain reading of the impugned order it is clearly reflected that the petitioner was aware of the order of the Additional Commissioner as early as on 14.03.2019 and the appeal thereafter to the Collector was filed only on 19.12.2019 i.e. after a period of 9 months with no plausible and justifiable explanation available and therefore, the impugned order cannot be in any manner said to be bad in law.
6. Having heard the contentions put forth on either side and on perusal of records what has to be appreciated is the fact that the original order under challenge is the order dated 07.05.2018 whereby the petitioner has been removed from the post of Rojgar Sahayak. A plain reading of the order dated 07.05.2018 would show that the same has been issued casting various aspersions, allegations and charges against the petitioner. Thus, it is a stigmatic order which if

not challenged, can have irreparable damage to the petitioner so far as his future prospects are concerned.

7. Another aspect which needs to be considered is that the petitioner had promptly availed the right to appeal though before a wrong forum by engaging a lawyer who preferred an appeal before the Additional Commissioner instead of the Collector. The appeal before the Additional Commissioner also got rejected on 06.03.2019. The appeal thereafter admittedly was filed before the Collector under Section 91 of the Panchayat Raj Adhiniyam after a period of about 9 months but this Court is of the opinion that the learned Collector should have considered the application under Section 5 of the Limitation Act in a more pragmatic and practical manner taking into consideration the entire factual matrix of the case firstly considering the fact that the petitioner is a person who comes from a rural background and who is not fully conversant with his rights particularly in respect of channel of appeals and also the period of limitation for availing the remedy. The petitioner did try to avail the remedies that were available to him though at a belated stage wherein an appeal has been preferred under section 91 of the Panchayat Raj Adhiniyam before the Collector on 19.12.2019. This aspect should have been considered in a sympathetic manner for the reason that the petitioner was in fact fighting against the capital punishment which was imposed upon him i.e. his removal from service casting serious allegations and charges and which needs to be challenged so far as for the future prospects are concerned. Under the circumstances, as regards delay part, the appellate authority could have decided the

appeal and held that the petitioner would not be entitled for the actual benefits for the intervening period in which there was a lapse on the part of the petitioner.

8. For the aforesaid reasons this Court is of the opinion that the rejection of the appeal of the petitioner by the District Collector vide Annexure P-1 was too harsh, therefore not proper and justified. The impugned order Annexure P-1 therefore deserves to be and is accordingly set aside/quashed and the matter stands remitted back to the District Collector, Mahasamund to decide the appeal of the petitioner i.e. Case No. 05A/89/2019-20 on its own merits at the earliest preferably within a period of 6 months from the date of receipt of copy of this order.
9. The writ petition accordingly stands allowed and disposed of.

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