

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**M.C.C. No. 960 of 2019**

- Atul Prakash Lader S/o Shri S.P. Lader Aged About 57 Years Presently Working As Commandant 17 Special I.R. Battalion, Kawardha, District Kabirdham, Chhattisgarh.

---- Applicant**Versus**

1. State Of Madhya Pradesh Through The Secretary, Ministry Of Home, Mantralaya, Vallabh Bhawan, Bhopal, Madhya Pradesh.
2. The Inspector General Of Police District Balaghat, Madhya Pradesh.
3. The Secretary, Department Of Home, Ministry Of Home, Mantralaya At Present Atal Nagar, New Raipur, Chhattisgarh.
4. Superintendent Of Police District Rajnandgaon, Chhattisgarh.
5. Director General Of Police State Of Chhattisgarh, Police Headquarters, Raipur, Chhattisgarh.

---- Non-applicants

For Applicant:

Shri H. S. Patel, Advocate.

For Non-Applicants No. 1 & 2:

Shri Manish Nigam, Advocate

For Non-Applicants No.3 to 5:

Shri Udhaw Sharma, G. A.

Single Bench: Hon'ble Shri Sanjay S. Agrawal, J**Order On Board****04.01.2021**

1. This petition has been filed for restoration of Writ Petition being WP(S) No. 4032 of 2005, which was dismissed in default vide order dated 01.08.2011.
2. Learned counsel for the Applicant submits that the matter was earlier instituted before the State Administrative Tribunal and after abolition of the said Tribunal, it was transferred to this Court, where it has been registered as WP(S) No. 4032 of 2005. It is contended further that the said Writ Petition was listed on 01.08.2011 and since no one had appeared on the said date,

therefore, it was dismissed in default. However, upon checking the cause list, the aforesaid Writ Petition could not be located in the cause list, and therefore, no one had appeared on the said date. It is submitted further that the counsel for the Applicant, who was not aware regarding the listing of the said petition has inquired about the status of the said case in the month of September, 2019 then only he came to know that it was dismissed for want of prosecution on 01.08.2011. Immediately thereafter, an application for obtaining the certified copy of the same was made on 30.09.2019 and in pursuance thereof, it was delivered on 03.10.2019 and on the next date, i.e., on 04.10.2019, the present petition has been filed. He, therefore, prays that the aforesaid mistake was not deliberate and occurred bona fide and prays for restoration of the said Writ Petition in its original number.

3. On the other hand, Counsel for the Non-applicants opposed the same by saying that the delay of more than eight years in filing this restoration application has not been explained properly nor it has been stated anywhere as to why the step was not taken from 2011 upto 2019 and merely on this bald statement, the instant application as framed deserves to be rejected

4. I have gone through the reasons stated in the application for restoration of the said Writ Petition dismissed in default on 01.08.2011, which is duly supported by an affidavit of the Applicant and upon going through the reasons assigned therein, I am satisfied with the cause pleaded in the application. It, thus, appears to be a bona fide mistake which constitutes a sufficient cause for recalling the impugned order of dismissal as passed on 01.08.2011. It is to be observed at this juncture, the observation made by the Division Bench of this Court in the matter of **Mohan Lal and others** vs. **Smt. Brihspati Bai and others** passed on 22.01.2013 in MCC/999 of 2012 for restoration of the

Section Appeal which was dismissed around 6 years prior to its filing, wherein it has been observed at paragraph 5 as under:-

(5) Indeed, restoring the case to its original file for being heard on merits always satisfy the principle of doing substantial justice to the parties because dismissal of any case in default of any party deprive such person of his right of hearing his case on merits. Indeed, this is what was held by the Supreme Court in one of its locus classic decision reported in **AIR 1955 SC 425** (Sangram Singh Vs. Election Tribunal), wherein it was inter alia laid down that no one should be condemned unheard and no decision should be taken behind his back and he must always be afforded with an opportunity of being heard before passing final order. We follow and apply this principle laid down by the Supreme Court in **Sangram Singh's** case (supra) for recalling of the impugned order, in this case.

5. In the light of the aforesaid observations made by the Division Bench of this Court and in view of the reasons assigned in the application for its restoration, I am inclined to allow the same. The application is accordingly allowed and the Writ Petition is hereby directed to be restored to its original number for its hearing on merits in accordance with law.

6. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
JUDGE