
(2010) 04 CHH CK 0020
In the Chhattisgarh High Court
Case No : Writ Appeal No. 44 of 2010

K.M. Khare

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 04 CHH CK 0020

Hon'ble Judges : Prashant Kumar Mishra, J; I.M. Quddusi, J

Bench : Full Bench

Judgement

I.M. Quddusi, J.—Heard on admission.

2. With the consent of the parties, we dispose of this appeal at the admission stage itself, as we feel that it will be unnecessary to keep this writ appeal as well as issue pending any more.

3. Since the question involved in this case is regarding disposal of the departmental appeal preferred by the writ appellant before the Governor of Madhya Pradesh before its reorganization and thereafter before the Governor of Chhattisgarh and that the order passed by the Under Secretary, Govt. of Chhattisgarh dated 13.4.2007 (Annexure P- 2) on the subsequent appeal preferred by the writ appellant before the Governor of Chhattisgarh was passed after the order passed by this Court on 04.12.2006 in W.P.(S) No. 6592/06, we feel that there is no need of filing any return in that regard as this Court is not going to adjudicate the matter related to the writ appellant and only considering the question of taking decision in the appeal on merits by the appellate authority as per rules.

4. This writ appeal has been filed against the impugned order dated 06.1.2010 passed by the learned Single Judge in W.P. (S) No. 3639/09 dismissing the writ petition.

5. Brief facts of the case which are relevant for the purposes of disposal of this

writ appeal are that the petitioner/writ appellant, who was working as Executive Engineer in Bannasagar Project, Water Resources Department, Sagar (MP), was awarded punishment pursuant to department proceedings to the effect of withholding of five increments with cumulative effect vide order dated 29.5.2000 passed by the erstwhile State of Madhya Pradesh against which he preferred an appeal before the Governor of Madhya Pradesh. However, thereafter M.P. Reorganization Act, 2000 came into force w.e.f. 1.11.2000 and consequently, the services of the writ appellant have been allocated to the State of Chhattisgarh. His suspension was revoked vide order dated 16.5.2002 and he was reinstated in service and posted as Executive Engineer in the office of Superintending Engineer, Minimata Bango Canal, Division-2, Janjgir.

6. After the reorganization of the State of M.P., it is not known as to what has happened to the appeal pending before the Governor of Madhya Pradesh. However, learned Counsel for the writ appellant had drawn the attention of this Court towards the letter No. 665/Ra.Sa./2000 dated 10.10.2000 issued by the Governor Secretariat to the Principal Secretary, Govt. of Madhya Pradesh, Water Resources Department, Bhopal referring the said appeal for necessary action. Copy of this letter was also sent to the writ appellant with an endorsement as Sr. No. 666/Ra.Sa./2000 dated 10.10.2000 with the direction that he should contact the Water Resources Department. According to the writ appellant, he tried to contact the Water Resources Department between 2000 and 2001 but no action was taken on his appeal.

7. Thereafter, the writ appellant preferred representation before the Secretary, Water Resources Department, State of Chhattisgarh, Raipur on 30.9.2003 mentioning that his date of retirement is near and he should be exonerated so that he may not get financial loss. Thereafter, again when he was to retire in next two months, he filed another representation on 25.5.2004 before the Governor, State of Chhattisgarh, Raipur mentioning the aforementioned facts and reference of the letter dated 10.10.2000 issued by the Governor Secretariat of M.P. to the Water Resources Department, Bhopal. With this representation he had also filed certain documents including copy of appeal preferred before the Governor of Madhya Pradesh and the letter dated 10.10.2000 sent by the Deputy Secretary to the Governor with regard to that appeal.

8. Ultimately, he filed writ petition bearing W.P. (s) No. 6592/06, which was dismissed in limine vide order dated 4.12.2006 which is quoted herein below:

4.12.2006

Shri Vijay Deshmukh, counsel for the petitioner.

Smt. Anju Ahuja, Dy. Govt. Advocate for the State/ respondents No. 1 & 2.

None for respondent No. 3.

Heard.

Petitioner has filed this petition against the impugned order dated 29-5-2000 (Annexure P-7) passed by the State Government for its quashment. It is not disputed that on disciplinary proceedings final orders imposing penalty passed by the State Government are appealable and without taking recourse of the appeal, petitioner has come before this Court to step in under Article 226 of the Constitution of India.

In view of the above, the petition is liable to be dismissed summarily and is accordingly dismissed in limine. However, petitioner, if advised, may prefer an appeal before the appropriate authority in accordance with law and after disposal of the said appeal, if exigency arises, may approach this Court to step in under

Article 226 of the Constitution of India.

9. After the order of this Court, the writ appellant preferred another appeal on 23.1.2007 before the Governor of State of Chhattisgarh, but unfortunately that appeal was not tagged with his representation dated 25.5.2004 addressed to the Governor of Chhattisgarh enclosing his initial appeal filed before the Governor of Madhya Pradesh and copy of letter dated 10.10.2000 issued by the Governor Secretariat in that regard, and without considering the earlier documents and without seeing that the petitioner/writ appellant acted in accordance with the direction issued by this Court on 4.12.2006, his appeal was rejected on the ground of delay vide order dated 13.4.2007 (Annexure P-2)

10. In view of above, we feel that atleast the writ appellant's grievance should be heard at any stage and it should not remain unheard and if the same remain unheard, it will be an injustice to him as he has actively acted in preferring the appeal in the year 2000 itself before the Governor of the Madhya Pradesh which remained undecided.

11. It is set principle of natural justice that a person should not be left remediless, therefore, considering the facts and circumstances of the case, we quash the impugned order dated 13.4.2007 (Annexure P-2) passed on behalf of the Governor of Chhattisgarh mentioning that the appeal is not maintainable being barred by time as the same is preferred after 5-6 years. It is further directed that appeal of the writ appellant along with all previous documents shall be processed and decided afresh by the appellate authority in accordance with law.

12. The order dated 06.1.2010 passed by the learned Single Judge in W.P. (S) No. 3639/09 stands modified to the above extent. However, we may make it clear that we have not considered the merits of the case or the validity or justification of the punishment awarded to the writ appellant.

13. The writ appeal is disposed of accordingly. No order as to costs.

Certified copy as per rules.