
(2011) 09 MP CK 0046
In the Madhya Pradesh High Court
Case No : W.A. No. 783 of 2011

Munni Shrivastava (KU.)

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-09-2011

Acts Referred:

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 29

Citation : (2011) ILR (MP) 2326

Hon'ble Judges : Sushil Harkauli, Acting C.J.; Keshav Kumar Trivedi, J

Bench : Division Bench

Judgement

Sushil Harkauli, Ag. C. J.

1. By the impugned order dated 6.7.2011, the learned Single Judge has dismissed the writ petition of the petitioner/appellant on the ground of laches.
2. The order under challenge by the writ petitioner before the learned Single Judge was dated 17.8.2004 by which a departmental punishment of stoppage of two increments has been inflicted and the appeal had been dismissed by order dated 30.9.2005. The writ petition was filed in 2011 and therefore the learned Single Judge was of the impression that the writ petition, which was filed after six years from the date of appellate order, suffered from laches.
3. In paragraph No.4 of the writ petition filed before the learned Single Judge, it was mentioned that a review petition has been preferred by the writ petitioner on 12.10.2005 before the appellate authority which had dismissed the appeal by order dated 30.9.2005. It was also stated in the said paragraph of the writ petition that the review is still pending and therefore there was no delay in filing the writ petition.
4. Filing of a review and its pendency would be a justifiable excuse for delay provided such review is permissible under the relevant service rules. A review application filed without any legal provision for filing of review cannot provide an

excuse for delay or laches.

5. Under Rule 29 which is to be found in Part VIII of the Madhya Pradesh Civil Services (Classification, Control & Appeal) Rules, 1966, the appellate authority has been conferred with a power of entertaining review application within six months from the date of the order.

6. In the circumstances, we are unable to accept the reason given in the impugned order of learned Single Judge that the writ petition was barred by laches.

7. Accordingly, we set aside the order of learned Single Judge dated 6.7.2011 passed in W.P. No. 10123/2011 (S) after hearing learned counsel for the appellant as well as learned counsel for the State. Further, we dispose of this appeal with the direction to the appellate authority to examine the pending review petition and, if it has not been decided so far, to decide the same within three months from the date on which a certified copy of this order is presented before the appellate authority alongwith full particulars of the pending review petition. A copy of the order so passed in the review petition will be communicated to the petitioner.

The appeal is disposed of.