

(2018) 04 CHH CK 0152
In the Chhattisgarh High Court
Case No : Writ Petition (S) No.5548 of 2012

Soumitree Naik And Anr. Appellant @Hash State Of Chhattisgarh

Date of Decision : 12-04-2018

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2018) 04 CHH CK 0152

Hon'ble Judges : P. SAM KOSHY, J

Bench : Single Bench

Advocate : Ajay Shrivastava, Shashank Thakur

Final Decision : Disposed of

Judgement

1. The challenge in the present writ petition is the orders passed in revision by the Additional Collector on 07.06.2012 (Annexure P/14) and rejection of

review of the order of revision dated 31.10.2012 passed by the Secretary, Panchayat Department, Govt. of Chhattisgarh, Raipur.

2. The brief facts of the case are that, the petitioner was appointed as Panchayat Secretary on 02.07.1999. He continued to work on the said post till

2011. The petitioner is said to have submitted his resignation letter on 21.10.2011. However, before the said resignation letter could be accepted by the

respondents, it is said that the petitioner has withdrawn his resignation letter vide letter dated 02.11.2011 (Annexure P/4). However, without

considering the said withdrawal application which was submitted by the petitioner, the respondent No.3 is said to have passed an order on 05.12.2011

(Annexure P/6) accepting the resignation letter with immediate effect.

3. The said order of respondent No.3 of acceptance of the resignation letter was put to challenge by way of revision petition before the Commissioner,

Bilaspur on 13.04.2012. The Commissioner vide order dated 07.06.2012

(Annexure P/14) rejected the revision petition holding it to be barred by limitation. Subsequently, a review petition was also filed seeking review of the order passed by the Commissioner dismissing the revision petition on the ground of limitation which too stood rejected on 31.10.2012 (Annexure P/15). It is this action on the part of respondents which is under challenge in the present writ petition.

4. The contention of the counsel for the petitioner is that the revisional authority has not applied its mind while deciding the revision petition and have simply rejected holding it to be barred by limitation. According to the petitioner, the limitation period for filing a revision was 60 days. In the instant case 60 days stood completed on 04.02.2012, however, the revision was preferred on 13.04.2012. Thus, there was a delay of around 68 days. Along with revision petition, the petitioner also moved an application for condonation of delay under Section 5 of the Limitation Act. The sole reason assigned by the petitioner for condoning delay was that he could not obtain the certified copy of the order of acceptance of resignation and therefore the delay occurred.

5. According to the petitioner, the authority concerned was empowered to condone the delay, if justified cause has been shown by the petitioner which in the instant case has not been properly appreciated by the authority and on this technical ground of delay have rejected the revision petition. He further submits that subsequently a review which was sought for, again has been rejected on the ground that there is no provision of review against the order of revision.

6. The limited prayer which the counsel for the petitioner seeks is that let the revisional authority decide the revision of the petitioner on merits.

7. The counsel for the petitioner submits that the petitioner had submitted his application withdrawing the resignation letter much before the acceptance of the same vide letter dated 05.12.2011 (Annexure P/6). Therefore, the action on the part of the respondents deserve reconsideration.

According to him, letter dated 05.12.2011 also bears receipt of the withdrawal of resignation application in the office of the respondents on 02.11.2011,

yet the respondents have not cared to take note of the said application filed by him. Thus, prayed that the two orders passed by the revisional authority

be set aside and the matter be remitted back for deciding the revision on merits.

8. The State counsel however opposing the petition submits that there was no justified reasons or plausible explanation provided by the petitioner to justify the delay caused. The explanation of not having the certified copy also is not acceptable for the reason that for filing of an appeal against an administrative decision of the department, certified copy need not be there. Admittedly as the petitioner had a photocopy, he could have easily filed an appeal with the photocopy. Thus, all these facts would easily reflect that there was no proper justification or the justification given was not satisfactory, therefore, the rejection of revision was totally justified and no interference is called for on the same.

9. Having considered the rival contentions put forth on either side and on perusal of records, what clearly reflects is that the department had conducted an enquiry in respect of withdrawal of his resignation letter dated 02.11.2011 and thereafter the revision was decided. Once when the revision was preferred with an application for condonation of delay, the authority also having the power to condone delay, the authority should have decided the condonation application in a more pragmatic manner and should have taken a liberal approach by condoning the same and should have decided the revision itself on merits instead of rejecting it on technicalities.

10. Another aspect which cannot be lost sight of is that allowing the application under Section 5 of the Limitation Act by itself would not have caused any prejudice to the interest of the respondents-department as the authority still would have given a finding based on the enquiry report.

11. In addition, another fact which is reflected is that, there does not seem to be inordinate delay of a considerable period in preferring the revision.

The revision as per the Act ought to have been filed by 4-5th February, 2012, but the same has been filed on 13.04.2012 and as such there seems to be delay of only around 68 days. The authorities could have easily condoned the delay and could have decided the revision on merits.

12. Given the aforesaid facts and circumstances of the case, this court is of the opinion that two orders dated 07.06.2012 (Annexure P/14) and 31.10.2012 (Annexure P/15) are not sustainable. The same deserve to be and are accordingly set aside.

13. The matter stands remitted back to the Commissioner-respondent No.2 to decide the revision of the petitioner on its merits. This court in exercise

of powers under Article 226 of the Constitution of India condones the delay on the part of petitioner in preferring the revision and the respondent No.2

is directed to consider and decide the revision on merits.

14. Needless to mention that this court has not expressed anything on merits of the case, it is expected that while deciding the revision petition, the

authority would consider the contents of revision and shall decide the same objectively taking into consideration the evidence which had been brought

before the enquiry conducted in this regard and shall pass a speaking order. Let the respondent No.2 take a decision on the revision preferred by the

petitioner at the earliest preferably within a period of 90 days from the date of receipt of certified copy of this order.

15. Accordingly, the petition stands partly allowed and disposed of.