

C.P. 1207

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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR**W. P. (L) No. 1059 /2010****PETITIONER**

: Pradeep Kumar Kesara S/o Shri M. R.
Kesara, age about 39 years,
R/o Sakin Chhote dongar, Teh-Narayanpur
Distt. Narayanpur (C.G.)

11/11/2010
Presented by Vinod Kumar Deshmukh
dated 10/3/2010

VERSUS**RESPONDENTS**

1. State of C.G.
Through-Secretary
Forest Dept. D.K.S. Bhavan,
Raipur (C.G.)
2. Divisional Forest Officer
Forest Dept. (General)
Forest Division, Narayanpur (C.G.)

**WRIT PETITION UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA**



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HIGH COURT OF CHHATTISGARH AT BILASPUR

(Hon. Mr. Justice Pritinker Diwaker)

Writ Petition (L) No. 1059 of 2010

PETITIONER

Pradeep Kumar Kesara

VERSUS

RESPONDENTS

State of Chhattisgarh and another

Shri S.P. Kale counsel for the petitioner.

Shri A.V. Shridhar PL for the respondents/State.

**WRIT PETITION UNDER ARTICLE 226/227 OF THE
CONSTITUTION OF INDIA**

ORDER
(30.08.2011)

Challenge in this petition is to the award dated 26.2.2009 passed by the Labour Court Jagdalpur in Case No. 03/ID Act/Reference/2005.

2. Counsel for the petitioner submits that the Labour Court dismissed the claim of the petitioner only on the ground that the application was made after a period of four years, nine months and twenty eight days. He submits that though on merit the Labour Court has given a finding in favour of the petitioner; it has erred in dismissing the case solely on the ground of delay.

3. This issue was considered by this Court in the matter of **Ramkumar Suryavanshi v. State of C.G. and others** reported in **2006 (III) FLR 946** wherein relying upon the dictum of the Supreme Court in the case of **Ajaib Singh v. Sirhind Co-operative Marketting-Cum-Processing Service Society Limited** and another and other judgments, it has been held that the order of dismissal only on the ground of delay was not justified. Counsel for the petitioner further submits that the delay may be considered while granting the relief in adjudication process provided that the employer is able to establish real prejudice.



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4. On the other hand, counsel for the respondents/State submits that even though there is no specific period prescribed for limitation, the application before the Labour Court was filed after a period of four years, nine months and twenty eight days and therefore, the Labour Court has rightly dismissed the same on the ground that the petitioner did not take recourse to remedy available to him under the law diligently and slept over his right for several years and as such the Labour Court was fully justified in dismissing the claim of the petitioner on the ground of delay. He submits that in the case in hand, the order of the High Court was passed on 12.7.2000 giving liberty to the petitioner to present his statement of claim before the Labour Court, he waited for four years, nine months and twenty eight days and in these circumstances also the Labour Court was fully justified in rejecting the claim of the petitioner solely on the ground of delay.

5. In almost an identical situation, this Court in the case of **Ramkumar Suryavanshi (supra)** has held that dismissal of the case only on the ground of delay is not justified; relying upon the verdict of the Supreme Court in the case of **Ajaib Singh (supra)**, **Gurmaail Singh v. Principal, Government College of Education and others** reported in **2000 (84) FLR 920 SC** and **S.M. Nilajkar and others v. Telecom District Manager, Karnataka** reported in **2003 (97) FLR 608 SC**.

6. The finding recorded by the Labour Court shows that though on merit it seems to be in agreement with the claim of the petitioner yet it has rejected his claim solely on the ground that he has approached the Labour Court after a long delay. The order does not show that the Labour Court has considered his claim from the point view whether the employer has come out with any prejudice. Therefore, in the considered opinion of this Court, the Labour Court has committed an illegality in dismissing the claim of the petitioner solely on the ground of limitation. Applying the principles of law laid down in the cases of **Ajaib Singh (supra)**, **Gurmail Singh (supra)** & **S.M. Nilajkar (supra)** as also order passed by this Court in the case of **Ramkumar Suryavanshi (supra)**, this Court is inclined to allow this petition.

7. Accordingly, the petition is allowed. Order dated 26.2.2009 passed by the Labour Court is hereby set aside. The matter is remanded to the Labour Court for appropriate adjudication on the point of limitation in accordance with law and the observations made by this Court in various judgments as well as by the Supreme Court referred to in the case of **Ramkumar Suryavanshi (supra)**.

8. No order as to cost.

Sd/-
Pritinker Diwaker
Judge