

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP No. 2432 of 2005**

- Municipal Corporation, Korba, Through its Commissioner, Municipal Corporation, Saket Bhawan, Korba, District Korba, Chhattisgarh

---- Petitioner**Versus**

1. D.S. Bais, S/o Shri Gohr Singh, R/o Podi Bahar, Korba, District: Korba, Chhattisgarh.
2. The Controlling Authority under the Payment of Gratuity Act, 1972, - cum -Assistant Labour Commissioner, Korba, Chhattisgarh.
3. The Appellate Authority under the Payment of Gratuity Act, 1972 – cum – Deputy Labour Commissioner, Office of the Labour Commissioner, Raipur, Chhattisgarh.

---- Respondents

For Petitioner : Shri HB Agrawal, Sr. Advocate with Shri Pankaj Agrawal, Advocate
For Respondent No1: Shri Vinod Deshmukh with Shri KPS Gandhi, Advocates.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****11/05/2015**

1. On an application filed by respondent No.1 (henceforth 'the respondent'), the Controlling Authority under the Payment of Gratuity Act passed an order on 5.1.2002 directing the petitioner to make payment of gratuity amount of Rs.1,42,193/- along with interest to the respondent.
2. The petitioner deposited 50% of the amount on 6.6.2002 and thereafter

preferred WP No.410/2002. The said writ petition was disposed of on 5.1.2004 directing the Appellate Authority under the Payment of Gratuity Act to sympathetically consider the petitioner's application for condonation of delay. The Controlling Authority informed the petitioner on 21.1.2004 for depositing the balance amount, on which the petitioner deposited the remaining 50% amount on 5.3.2004. By another communication dated 13.5.2004, the petitioner was informed by the Appellate Authority that the appeal memo is to be accompanied with the amount under award, therefore, the petitioner should deposit the entire amount so that the appeal can be processed.

3. It is submitted that despite deposit of the entire amount on 5.3.2004, the Appellate Authority dismissed the appeal on 4.9.2004 and informed the petitioner by communication dated 22.9.2004 (Annexure-P/13).
4. Learned counsel for the respondent would submit that the order dated 4.9.2004 by which the appeal has been dismissed is not assailed before this Court, therefore, the petitioner is not entitled for any relief.
5. In the earlier writ petition i.e. WP No.410/2002, the following order was passed by this Court on 5.1.2004:-

“It is however, submitted by the learned counsel for the petitioner that as the limitation for the appeal is 60 days, and, for some time the authority itself was not notified and because of prosecuting this petition, time for filing appeal has lapsed, therefore, he prayed that some direction may be issued so that the petitioner is not prejudiced.

As prayed, permission is granted.

Having considered the facts and circumstances of the case and material on record, it is directed that in case suitable application for condonation of delay is made the same shall be considered by the Authority sympathetically keeping in view the fact that for some time the Authority itself was not notified and for such the petitioner had prayed this court and petition was

pending.

Accordingly this writ petition stands disposed of as withdrawn with the liberty aforesaid.”

6. After the said order, the petitioner preferred an appeal before the Appellate Authority under the Payment of Gratuity Act, 1972 on 16.3.2004, as is mentioned in Annexure-P/12. Admittedly, the petitioner has deposited the entire amount on or before 5.3.2004 i.e. much before dismissal of appeal on 4.9.2004, therefore, the Appellate Authority was not justified in dismissing the appeal on the ground of non deposit of the amount of gratuity.
7. For the foregoing, the writ petition is disposed of with a direction to the Appellate Authority under the Payment of Gratuity Act, 1972 to consider and decide the petitioner's appeal on merits. However, it is made clear that if the amount deposited by the petitioner has already been disbursed to the employee, the same shall be subject to final order passed by the Appellate Authority.

J U D G E

Barve