

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 21 of 2015**

Dena Bank, Through : Chairman and Managing Director, Dena Bank, Dena Corporate Centre, C-10, G- Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051

---- Petitioner**Versus**

1. Arun Kumar Vishwakarma, Ex-Officer – JM-01, Dena Bank, C-19/Phase-II, Kanchan Ganga Colony, Raipur (C.G.)
2. Appellate Authority under the Payment of Gratuity Act 1972, and Regional Labour Commissioner (Central) Raipur, D-6 others Society, Sector – 1 Avanti Vihar Raipur, District Raipur (C.G.)
3. Controlling Authority under the Payment of Gratuity Act 1972 and Assistant Labour Commission (Central) Raipur, D-6 others Society, Sector – 1 Avanti Vihar Raipur, District Raipur (C.G.)

Respondents

For Petitioner	:	Shri Vinod Deshmukh, Advocate.
For Respondent No.1	:	Shri Shivendu Pandya, Advocate
For Respondents 2 & 3	:	None

Hon'ble Shri Deepak Gupta, Chief Justice**Order on Board****26/08/2016**

1. This petition is taken up for hearing today itself with the consent of the parties.
2. The sole question involved is whether the Appellate Authority under the Payment of Gratuity Act could have refused to entertain the appeal filed by the Petitioner on the ground that the appeal is time barred. A Division of

this Court vide order dated 22.08.2016 in the case of *Kirtan Ram Thakur v. State of Chhattisgarh and Others* passed in Writ Appeal No 349 of 2016 and other connected Appeals has clearly held as follows:

“(19) The issue involved in the present case is identical though in the context of a different Act. Therefore, we have no hesitation in holding that the appeal under Section 7(7) of the PG Act has to be filed within sixty days and at best, the Appellate Authority can condone the delay of further sixty days i.e. total 120 days in all.

(20) In those cases where the appeals have been filed beyond 120 days, the delay cannot be condoned by the Appellate Authority.

(21) As far as present cases are concerned, these were disposed of by the learned Single Judge only on the ground that in another judgment rendered in W.P. (L) No. 178/2013 (**State of Chhattisgarh & Anr. Vs. Netram Sahu & Anr.**), in which the Court had held that period of service rendered as daily wages will not be counted for any purpose under the PG Act. Judgment passed by learned Single Judge in Netram Sahu's case was upheld by the Division Bench in Writ Appeal No. 240/2014 and against which SLP filed by the workmen is pending before the Apex Court.

(22) It appears that attention of the learned Single Judge was not brought to the fact that the appellate authority could not condone the delay beyond 120 days and, therefore, the Writ Court passed an order sending the matter back to the appellate authority to decide the appeal on merits. In case the appellate authority itself had no jurisdiction to condone the delay, then the writ court could not have also condoned the delay.

(23) Therefore, the only option for us is to set aside the order of the learned Single Judge where the direction has been given to the appellate authority to decide the appeal on merits, therefore, it is directed that the Appellate Authority shall examine each of the cases and where the delay is sixty days or less then the delay shall be deemed to be condoned. However, where the delay is more than sixty days, since the Appellate Authority has no jurisdiction to condone the delay beyond that period, it shall dismiss the appeal as time barred.”

3. In the present case, admittedly the appeal has been filed more than 120 days after the order of the Competent Authority was served upon the Bank. It may be true, as urged by the learned Counsel for the Bank, that the Appellate Authority should have made specific order on the application

for condonation of delay instead of just giving a finding that the appeal is time barred.

4. Be that as it may, since the Appellate Authority has no jurisdiction to condone the delay of more than 60 days in filing the appeal, I am clearly of the view that no purpose will be served in remanding the matter to the Authority concerned as the appeal is admittedly filed more than 120 days after the order of the Competent Authority was served upon the Bank. The appeal cannot be entertained by the Appellate Authority since it only has power to condone 60 days delay and no more.

5. Therefore, the writ petition is rejected.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE