

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 85 of 2016

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, P.S. Mandir Hasaud Raipur Chhattisgarh

(Petitioner No.1 was not a party before the larned Labour Court, But Has Been Impleaded As Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department)

2. The Executive Engineer, Tandula Water Resources Division, Durg, District Durg Chhattisgarh

---- Petitioner

Versus

1. Shri Gore Singh Rajput S/o Late Jagdish Singh Rajput, R/o Sirsabhata, Tahsil Dhamdha, District Durg Chhattisgarh
2. The Appellate Authority, Under The Payment Of Gratuity Act. 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chattisgarh, Indrawati Bhawan, Naya Raipur Chhattisgarh
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, Durg, District Durg Chhattisgarh

---- Respondent

For Petitioner/State
For Respondents

Shri Y. S. Thakur, Dy. AG
None

Shri K. K. Narang, Executive Engineer, Tandula
Water Resources Division, Durg

Shri G. D. Ramteke, Sub Divisional Officer, Water
Resources sub Division, Dhamdha, District Durg

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

07/04/2016

1. This writ petition under Article 226/227 of the Constitution of India has been preferred by the State of Chhattisgarh to assail the order passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972'), whereby the appeals preferred by the petitioners have been dismissed on the ground of limitation.
2. The controlling authority under the Act, 1972 allowed the respondent/workman's claim for payment of gratuity by including the services rendered by him in the capacity of daily wager for calculation of qualifying service.
3. It is argued by learned counsel for the petitioners/State that the law applicable to the issue arising in the matter has been set at rest by this Court in the matter of **State of Chhattisgarh & Anr. Vs. Netram Sahu & Anr. (WPL No.178/2013, decided on 16-12-13)**; affirmed by the Division Bench in WA No. 240/14 (**Netram Sahu Vs. State of Chhattisgarh & Others, decided on 1-8-2014**). He would further submit that the delay in filing the appeal was properly explained and the appeal was duly preferred by the officer authorized by the Government to prefer the appeal for the cases arising out of the concerned Water Resources Division.
4. Having heard learned counsel for the parties, this Court is of the considered opinion that substantial legal issues having been raised in the appeals, the appellate authority should have considered the appeals on merits. True it is that the application for condonation of delay was not properly drafted yet, since the issue concerns large number of employees and the Government's financial stakes are also involved and moreover, this High Court has already decided the issue pertaining to a daily wager's entitlement to gratuity, the delay in filing

the appeals should have been condoned.

5. Since the appeal has not been decided on merits nor the law settled by the Division Bench of this Court in the matter of **Netram (*supra*)** has been adverted to by the appellate authority, the matter deserves to be remitted back to the appellate authority for consideration on merits.
6. Accordingly, the writ petition is disposed of with a direction to the appellate authority under the Act, 1972 to consider and decide the appeal on its own merits by a speaking order.

Sd/-

Judge
(Prashant Kumar Mishra)

Nirala