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HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 99 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners**Versus**

1. Shri Gopi Charan S/o. Vishwanath, R/o. Village Gudiyari Post Kanakot, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents**And****WPL No. 102 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners**Vs**

1. Shri Tularam S/o. Bharat, R/o. Village Selud, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)

2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 100 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Shri Shivprasad S/o. Namundas, R/o. Village Ousar, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 101 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 Learned 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, P.S. Kotwali,

Durg, District Durg (Chhattisgarh)

---- **Petitioners**

Vs

1. Smt. Sawana Bai W/o. Shri Narsingh, R/o. Village Loharsi Post Tarra, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- **Respondents**

And

WPL No. 109 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- **Petitioners**

Vs

1. Shri Anandram S/o. Jhaduram, R/o. Village & Post Darbar Mokhli, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- **Respondents**

And

WPL No. 105 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners**Vs**

1. Shri Kedarnath S/o. Latelram, R/o. Village & Post Pauha, Police Station Ranchirai, Tahsil Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents**And****WPL No. 106 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners**Vs**

1. Shri Lakhan Lal Chandrakar S/o. Shri Latel Ram, R/o. Village & Post Pauha, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)

3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 110 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Smt. Sohadra Bai Sahu W/o. Shri Dwarika Prasad, R/o. Village & Post Selud, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 107 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Shri Narsingh S/o. Phul Singh, R/o. Village Loharsi (Wrongly Mentioned As Loharsingh In The Orders Annexure P/1 & P/2), Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 104 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Shri Shishupal S/o. Mehattar, R/o. Village Semri, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 108 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Shri Budhram S/o. Mannu, R/o. Village Masul, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

And

WPL No. 111 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Shri Baraturam Sahu S/o. Brijlal Sahu, R/o. Village & Post Kanakota, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg

(Chhattisgarh)

---- Respondents

And

WPL No. 103 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 Learned 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, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Petitioners

Vs

1. Smt. Anusuiya Bai W/o Shri Chandrika, R/o. Village Loharsi, Tahsil Patan, P.S. Patan, District Durg (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh) P.S. Mandir Hasaud, Distt. Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, P.S. Kotwali, Durg, District Durg (Chhattisgarh)

---- Respondents

For Petitioners : Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

25/04/2016

1. These writ petitions under Article 226/227 of the Constitution of India have been preferred to assail the order passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972'), whereby the appeal preferred by the petitioners have been dismissed on the ground of

limitation as well as on the ground that the appeal has not been presented by a competent officer.

2. The controlling authority under the Act, 1972 allowed the respondents' claim for payment of gratuity by including the services rendered by them in the capacity of daily wager for calculation of qualifying service.
3. It is argued by learned counsel for the petitioners 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 Water Resources Division.
4. In several matters of similar nature bearing WPL Nos.43/2016, 47/2016, 48/2016, 58/2016, 59/2016, 60/2016, 61/2016, 62/2016, 63/2016, 64/2016, 65/2016, 66/2016 etc., this Court has remanded the matter back to the Appellate Authority for deciding the appeals on merits on the ground that the law concerning payment of gratuity to a daily wager having been settled by the Division Bench of this Court in the matter of **Netram** (supra) and substantial legal issues are raised in the matters. Since the present case is also similar, the impugned order is set aside and the matter is remitted back to the Appellate Authority for deciding the appeal on merits keeping in view the law settled by the Division Bench in **Netram** (supra).

5. Having heard learned counsel for the petitioners, this Court is of the considered opinion that substantial legal issues having been raised in the appeal, the appellate authority should have considered the appeal 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 financial stakes are also involved and moreover, this high Court has already decided the issue pertaining to a daily wagers entitlement to gratuity, the delay in filing the appeal should have been condoned.
6. In regard to the filing of appeal by an incompetent officer, it is to be seen that at the level of water resource division all the cases are taken care of by the person who is in-charge of the Division. As stated by learned State counsel, the SDO of the concerned Water Resources Division being in-charge of the Division was competent to prefer an appeal even though in the application preferred before the controlling authority, the non-applicant was referred as Executive Engineer. In any case, if the Government has preferred an appeal by taking a conscious decision in the matter to challenge the order passed by the controlling officer mere signing of a Vaklatnama by a different officer would not make the appeal incompetent.
7. 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 too by the appellate authority, the matter deserves to be remitted back to the appellate authority for consideration on merits. Accordingly, all the writ petitions are 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

