

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (L) No. 31 of 2016**

1. State of Chhattisgarh through the Secretary, Department of Water Resources, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh)

(The petitioner no. 1 was not a party before the learned Labour Court but has been impleaded as petitioner no.1 in the instant petition as the proper course is to implead the state government through the secretary of the concerned department).

2. The Chief Engineer, Minimata (Hasdeo) Bango Project, Bilaspur (Chhattisgarh).
3. Executive Engineer, Hasdeo Canal Water Management Division, Janjgir, P.S. Janjgir-Champa, Tahsil & District Janjgir-Champa (Chhattisgarh).

---- Petitioners**Versus**

1. Smt. Urmila Sahu W/o Late Shri Dinesh Kumar Sahu, R/o Dewangan Kirana Stores, Ward No. 06, Ramnagar, Rajnandgaon, P.S. Rajnandgaon Tahsil and District Rajnandgaon (Chhattisgarh).
2. Ku. Dinila Sahu D/o Late Shri Dinesh Kumar Sahu, Through Smt. Urmila Sahu, Guardian For Ku. Dinila Sahu, R/o Dewangan Kirana Stores, Ward No. 06, Ramnagar, Rajnandgaon, P.S. Rajnandgaon Tahsil and District Rajnandgaon (Chhattisgarh).
3. The Controlling Authority, under the Payments of Gratuity Act, 1972/Labour Officer Janjgir, Civil and Revenue District Janjgir-Champa (Chhattisgarh).
4. The Appellate Authority, under the Payments of Gratuity Act, 1972/Deputy Labour Commissioner, Indrawati Naya Raipur, Civil and Revenue District, Raipur (Chhattisgarh).

---- Respondents

For State/petitioners : Shri S. P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

Order On Board

16/11/2016

The present petition has been preferred assailing the order dated 18.08.2015 passed by the Appellate Authority i.e. the Deputy Labour Commissioner, Raipur under the Payment of Gratuity Act, 1972 in Appeal Case No. 05/P.G.A./2015. The Appellate Authority vide the impugned order has rejected the Appeal of the State Govt. on the ground that the same is barred by limitation.

2. The facts of the case in brief are that respondent no.1 is wife and respondent no.2 is daughter of late Dinesh Kumar Sahu (hereinafter referred as "the employee") who was working as a contingency paid worker with the State Govt. since 1987 till 24.09.2009. The respondents 1 & 2 had filed an application under the Payment of Gratuity Act before the Controlling Authority claiming for gratuity amount payable to the employee i.e. husband and father of respondents 1 & 2 respectively. According to the claimants, the employee had served with the State Govt. around 21 years and the last wage of the employee was Rs.7,289/- and therefore, he was entitled for the amount of gratuity for the period he had served with the State Govt.. Though the notice was issued to the employer but in spite of service of notice, there was no representation on their part. Therefore, the Controlling Authority proceeded *ex parte* against the State Govt. and passed an order on 06.12.2013 allowing the application for payment of gratuity and

ordered that the respondents 1 & 2 shall be entitled for gratuity amount of Rs. 88, 309/- with simple interest @ 10% from the date the amount fell due.

3. The said *ex parte* order dated 06.12.2013 was challenged by the State Govt. before the Appellate Authority i.e. the Deputy Labour Commissioner, Raipur under the Payment of Gratuity Act. The Appellate Authority vide impugned order dated 18.08.2015 dismissed the appeal holding that the appeal was barred by limitation and the appeal was not filed supported with an application for condonation of delay.

4. Shri Kale, learned Dy. Advocate General appearing for the State submits that the appeal was preferred on 06.12.2014 i.e. after about one year time from the date of the order of the Controlling Authority, supported with an application under Section 5 of the limitation Act seeking for condonation of delay. However, the Appellate Authority, vide impugned order dated 18.08.2015 rejected the appeal holding that the appeal was filed beyond the period of limitation and it was not supported with an application for condonation of delay. According to him, since the respondents 1 & 2 are not legally entitled for the payment of gratuity, the two orders passed by the Authorities are not sustainable and deserve to be set aside.

5. A perusal of the writ petition would show that it has been filed challenging the impugned orders only on the merit of the case while deciding the entitlement of the gratuity to the claimants. It is also reflected from the petition that the State has not taken any serious plea whatsoever with regard to the petition being decided

on the question of limitation except for a bald objection raised in the grounds of the petition.

6. A bare perusal of the impugned orders clearly reflect that in the instant case, the Controlling Authority had allowed the claim application of the respondents 1 & 2 on 06.12.2013 against which the appeal is to be filed within a period of 60 days i.e. by 6th February, 2014 in the instant case. Sub-section 7 of Section 7 of the Payment of Gratuity Act clearly provides that the Appellate Authority can also condone the delay in filing the appeal provided the appeal being filed within a further period of 60 days i.e. the Appeal thus has to be filed within 120 days. Though an application appears to have been filed but the fact remains that the Appellate Authority does not have the power to condone the delay beyond 120 days from the order of the Controlling Authority i.e. not beyond further 60 days from the initial 60 days time of filing of the appeal. It appears that the State has deliberately not raised that issue in the present petition. The State in the entire petition has taken a bald ground of they having moved an application for condonation of delay which was lost sight of the Appellate Authority. Even if the Appellate Authority is accepted to have lost sight of the application for condonation of delay but the fact still remains that the appeal admittedly was filed much beyond the period of 120 days and as per the provisions of sub section 7 of Section 7 of the Payment of Gratuity Act, the Appellate Authority could not have in any case condone the delay which has occurred in filing of the appeal.

7. If the State has not been able to establish its case before the two authorities, they cannot be permitted to contest the case on merits by invoking the Writ Jurisdiction.

8. What is primarily to be seen is the fact that the petition basically has been filed challenging the order of the Controlling as well as the Appellate Authority. But there is no material shown on record by the petitioners to show as to the two Courts below were wrong while passing the order or the decision or the decision making process was in any way bad in law.

9. This issue stands fortified from the decision of the Supreme Court in the case of **Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department & others**¹. The Division Bench of this Court has also made reference to the case of Consolidated Engineering (supra) while deciding this issue in Writ Appeal No. 349 of 2016 on 22.08.2016 in the case of Kirtan Ram Thakur Vs. State of Chhattisgarh & Others. In addition, the said issue has also been decided by the co-ordinate Bench of this Court in W.P. (L) No. 203 of 2015 in the case of State of Chhattisgarh & Ors. vs. Shatruhan Prasad Dubey & Ors. and also in WPL No. 119 of 2016 in the case of State of Chhattisgarh & Ors. v. Virendra Singh Thakur & Ors.

10. In view of the aforesaid factual matrix of the case, this Court does not find any strong case made out by the State Govt. calling for interference with the impugned order under challenge. Thus, the present writ petition being devoid of merit deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
JUDGE

1 (2008) 7 SCC 169