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HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 78 of 2016**

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (Chhattisgarh).....
(Petitioner No. 1 Was Not A Party Before The Learned Appellate Authority And 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, E/ M, Light Machinery, Tubewell And Gates Division Durg, Tahsil And District Durg (Chhattisgarh).

---- Petitioners**Versus**

1. Shri Murha Ram Nishad S/o. Late Ramcharan Nishad, R/o. Village And Post Baghmara, P.S. Balod Tahsil And District Balod (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)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 & Assistant Labour Commissioner, Durg District Durg (Chhattisgarh)

---- Respondents

For Petitioners : Shri Shashank Thakur, GA for the State.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****09/03/2016**

1. This writ petition under Article 226/227 of the Constitution of India has 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 respondent'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 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. 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.
5. 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.

6. 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, 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

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