

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 112 of 2016**

1. State of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, P.S. Mandir Hasaud Raipur (Chhattisgarh) (The 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 Government Through The Secretary Of Concerned Department).
2. The Executive Engineer, Tandula Water Resources Division, P.S. Kotwali, Durg, District Durg (Chhattisgarh)
3. Sub Divisional Officer, Tandula W.R. Division, Division No. 5, Durg, Distt. Durg (Chhattisgarh)

---- Petitioners**Versus**

1. Smt. Tejbai W/o. Shri Jagdish Goswami, R/o. Behind Menka Hotel, Banspara, P.S. Kotwali, 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/State : Shri Shashank Thakur, GA for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****09/05/2016**

1. This writ petition under Article 226/227 of the Constitution of India has been preferred by the State of Chhattisgarh to assail the orders passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972'), whereby the appeal preferred by the petitioners has been

dismissed on the ground of limitation.

2. The controlling authority under the Act, 1972 allowed the respondents/workmen's claim for payment of gratuity by including the services rendered by her 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 appeals was properly explained and the appeals were 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. 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 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.
6. Since the appeals have 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.
7. 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**)