

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.205 of 2015**

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

(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. Executive Engineer, Hasdeo Canal Water Management Division, Janjgir, P.S. Janjgir-Champa, Tahsil & District Janjgir-Champa.

---- Petitioners**Versus**

1. Tirithram Kashyap, S/o Shri Kanhaylal Kashyap, R/o Village Jarre & Post Pendri, Tahsil Janjgir, District Janjgir-Champa.
2. The Controlling Authority, under the Payments of Gratuity Act, 1972/Labour Officer Janjgir, Civil & Revenue District Janjgir-Champa (CG)
3. The Appellate Authority, under the Payments of Gratuity Act, 1972/Deputy Labour Commissioner, Indrawati Bhawan, New Raipur, Civil and Revenue District Raipur (CG)

---- Respondents

For Petitioners : Shri Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****05/01/2016**

- (1) Heard on admission.
- (2) Vide its order dated 25.11.2013, the Controlling Authority

directed the petitioners to pay amount of gratuity to the respondent No.1.

(3) The petitioners preferred an appeal before the Appellate Authority under sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 on 23.12.2014 after dismissal of payment of gratuity amount on 25.11.2013 and intimation of the said order to the petitioner on 26-11-2013.

(4) The Appellate Authority, vide its impugned order dated 18.08.2015 dismissed the appeal holding that the appeal was barred by limitation and appeal was not filed along with an application for condonation of delay.

(5) Shri Gary Mukhopadhyay, learned Dy. Government Advocate appearing for the State/petitioners would submit that the Appellate Authority conducted illegality in holding that the appeal was barred by limitation and consequently, dismissed the appeal. He would further submit that the application for condonation of delay was filed along with the appeal.

(6) I have heard learned counsel appearing for the petitioner on question of admission.

(7) The fact remains that the Controlling Authority passed an order for grant of gratuity on 25.11.2013 duly communicated to the petitioner on 26.11.2013 and appeal came to be preferred against that order on 23.12.2014.

(8) By virtue of provision contained in sub-section (7) of Section 7 of

the Payment of Gratuity Act, 1972, the appeal against the order of the Controlling Authority may be preferred to the Appellate Authority within a period of 60 days from the date of receipt of copy of order and the Appellate Authority is conferred with power to condone the delay of 60 days and to extend the period of limitation by further period of 60 days by provision of sub-section (7) of Section 7 of the Act of 1972.

(9) This Court has considered the issue in the matter of **Zila Sahkari Kendriya Bank Maryadit Vs. Ram Briksha Singh (since dead) through Lrs. Smt. Shakuntala Singh & Ors.** ¹ observed as under:-

“13. I am in respectful agreement with view taken by Calcutta High Court, Madhya Pradesh High Court and Andhra Pradesh High Court. Bearing in mind the principles of law laid down therein with regard to power of the appellate authority and keeping in view of the provision contained in proviso to sub-section 7 of Section 7 of the Act. It is held that the appellate authority has power and jurisdiction to extend the period of limitation only for sixty days in addition to the prescribed period of sixty days for filing appeal from the date of receipt of copy of the order under Section 7(4) of the Act and he being a statutory/quasi judicial authority has no jurisdiction to extend the period of limitation beyond sixty days in absence of conferment of jurisdiction. If the facts of the present case are examined, it appears that the copy of the order was received by the appellant on 20.06.2002 and the appeal was filed on 31.10.2002 which is beyond the period of 120 days and by virtue of provision contained in 1st proviso to sub-section 7 of Section 7 of the Act,

¹ 2015(3)B.L.J.239

the appellate authority has no jurisdiction to condone the delay and section 5 of the Limitation Act is not applicable to such proceeding, and as such appellate authority has rightly dismissed the appeal and no jurisdictional error has been committed by the appellate authority under the Act of 1972 warranting interference by this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

(10) Thus, the appellate authority has no power and jurisdiction to extend the period beyond sixty days in addition to the prescribed period of sixty days for filing appeal from the date of receipt of copy of the order under Section 7(4) of the Act. Controlling Authority has passed order on 25.11.2013, order was communicated to the petitioner on 26.11.2013 and the appeal was preferred on 23.12.2014 that is admittedly beyond the period of 120 days and, as such, the Appellate Authority is absolutely justified in dismissing the appeal holding it to be barred by limitation.

(11) In view of law laid down by this Court in **Zila Sahkari Kendriya Bank Maryadit Vs. Ram Briksha Singh (since dead) through LRs. Smt. Shakuntala Singh & Ors.**, I do not find any merit in this appeal and it is accordingly dismissed at the motion stage without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-