

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (L) No. 3 of 2016**

1. State of Chhattisgarh, Through: the Secretary, Department of Water Resources, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)

(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 (C.G.)

---- Petitioner

Versus

1. Shri Mukhilal Sahu, S/o Radheshyam Sahu, R/o Village & Post Rasouta, Tahsil Pamgarh, Police Station Pamgarh, District Janjgir-Chama (C.G.)
2. The Controlling Authority, Under the Payments of Gratuity Act, 1972/Labour Officer Janjgir, Civil and Revenue District Janjgir-Champa (C.G.)
3. The Appellate Authority, under the Payment of Gratuity Act, 1972/Deputy Labour Commissioner, Indrawati Bhavan, Naya Raipur, Civil and Revenue District Raipur (C.G.)

---- Respondents

For Petitioner : Shri Dhiraj Kumar Wankhede,
Dy. Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****08/01/2016**

- (1) Heard on admission.
- (2) The Controlling Authority, by its order dated 19.05.2014,

directed payment of gratuity to respondent herein in exercise of power conferred under Section 4, sub Section 7 & Rule 10 of the Payment of Gratuity Act, 1972 (for short 'the Act, 1972').

(3) Feeling aggrieved & dissatisfied against this order, petitioner herein preferred appeal before the appellate authority after 152 days. The appellate authority, by its order dated 1.7.2015 dismissed the appeal holding it barred by limitation; and further by virtue of proviso to sub-Section 7 of Section 7 of the Act, 1972 only delay of 60 days can be condoned by the appellate authority, against which, the instant writ petition has been filed challenging the same.

(4) Learned counsel for the petitioner would submit that the appellate authority has committed legal error in dismissing appeal holding it to be barred by limitation.

(5) I have heard counsel for the parties and perused the material available on record with utmost circumspection.

(6) The Controlling Authority passed order granting gratuity on 19.05.2014; copy was delivered to the petitioner on 26.05.2014 and, thereafter, in accordance with sub-section (7) of Section 7 of the Act, 1972, appeal could have been preferred within 60 days from the date of receipt of copy of the order. Here, in the instant case, copy was received by the petitioner on 26.05.2014 and the appeal was preferred on 28.10.2014 i.e. after the delay of 152 days.

(7) 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.

(8) 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

¹ 2015(3)B.L.J.239

7 of Section 7 of the Act, 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.”

(9) 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 19.05.2014, order was communicated to the petitioner on 26.05.2014 and the appeal was preferred on 28.10.2014 that is admittedly beyond the period of 152 days and, as such, the Appellate Authority is absolutely justified in dismissing the appeal holding it to be barred by limitation.

(10) 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 petition and it is accordingly dismissed at the motion stage without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-