

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3274 OF 2015

(Deputy Conservator of Forest vs. Assistant Commissioner of Labour/Controlling Authority and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Shri K. Shukul, Advocate for the petitioner.

Ms. T. Khan, Assistant Government Pleader for the
respondent no.1.

CORAM : SMT. VASANTI A NAIK, J.

DATED : OCTOBER 10, 2016

By this writ petition, the petitioner – Deputy Conservator of Forest, Chandrapur challenges the order of the appellate Authority, dated 17/7/2014, dismissing his application for condonation of delay in filing the appeal under the Payment of Gratuity Act.

On an application filed by the respondent nos.2 and 3 – claimants, the competent Authority under the Payment of Gratuity Act had passed an order on 21/7/2011. Though the petitioner was aggrieved by the order of the competent Authority, the petitioner did not file a statutory appeal before the appellate Authority under the Act and instead filed a writ petition on 15/1/2014. The writ petition was disposed of by an order dated 8/4/2014 after observing that the petitioner is at liberty to prefer a statutory appeal. The petitioner filed the appeal before the appellate Authority on 4/7/2014 along with an application for condonation of

delay in filing the appeal. The application for condonation of delay in filing the appeal was dismissed by the order dated 17/7/2014.

On hearing the learned Counsel for the petitioner and the learned Assistant Government Pleader for the respondent no.1, it appears that there is no scope for interference with the impugned order in exercise of the writ jurisdiction. The competent Authority had passed an order under the Payment of Gratuity Act in favour of the respondent nos.2 and 3 on 21/7/2011. Though an appeal could be preferred against the order of the competent Authority before the appellate Authority under the Act within 60 days and the appellate Authority is entitled to condone the delay upto 120 days, the petitioner did not file an appeal before the appellate Authority and instead filed the writ petition in this Court on 15/1/2014 challenging the order of the competent Authority. The said writ petition was disposed of on 8/4/2014 after granting liberty to the petitioner to file appropriate proceedings. Though this Court had disposed of the writ petition on 8/4/2014, the appeal was not filed before the appellate Authority till 3/7/2014. The appellate Authority rightly held that there was negligence on the part of the petitioner in filing the statutory appeal.

The appellate Authority held that though the competent Authority had passed an order under the Payment of Gratuity Act on 21/3/2011, the petitioner had belatedly filed the writ petition on 15/1/2014, i.e. more than two and half years from the order of the

competent Authority. The appellate Authority rightly held that this Court had not directed the appellate Authority to consider the appeal without dealing with the aspect of delay. It was rightly observed that the question of delay was not considered by the High Court and hence, there was no reference in the order dated 8/4/2014 in respect of condonation of delay. The appellate Authority found that the appeal was presented by the petitioner nearly three years after the order was passed by the competent Authority and the appellate Authority, in view of the well settled position of law, could not have condoned the delay beyond the period of 120 days. The order of the appellate Authority appears to be just and proper and calls for no interference.

In the result, the writ petition fails and is dismissed with no order as to costs.

JUDGE

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