

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No.132 of 2017**

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 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, Tandula, Water Resources, Sub Division No. 3, Durg, District Durg, Chhattisgarh.
3. The Sub Divisional Officer, Tandula Water Resources, Sub Division No. 3, Durg, District Durg, Chhattisgarh.

---- Petitioners**Versus**

Shri Kamalnarayan Sahu S/o Shri Hirau, Village Parteva, Post Deori,
Police Station And Tahsil- Rajim, District Gariyaband, Chhattisgarh.

---- Respondent

For Petitioner

: Shri B. Gopa Kumar, Dy. A.G.

SB: Hon'ble Shri Justice P. Sam Koshy**Order On Board****29/06/2017**

1. The limited challenge in the present writ petition is the order passed by the appellate authority under the Payment of Gratuity Act, 1972 (for short, the Act) on 03.03.2017 in appeal case No.215/PGA/2014.
2. The facts of the case in brief is that, the respondent who was working under the petitioners stood retired w.e.f. 30.06.2007. Initially he was working on daily wage basis and was subsequently regularized only in the year, 1995. After superannuation, he filed claim application before the controlling authority taking into consideration the services that he has rendered as daily wage employee. The controlling authority i.e. the office

of Assistant Labour Commissioner, Durg, registered a case as Case No.79/PGA/2012 and proceeded to decide the case and reached to the conclusion that the service rendered by the respondent as daily wage worker should also be taken into account and accordingly allowed the application and held that he is entitled for gratuity of Rs.1,91,446/- of which the petitioner-State had already paid an amount of Rs.46,864/- to respondent and thus, ordered for payment of difference amount of Rs.1,44,582. It was this order, which was subjected to challenge before the appellate authority where the appeal was registered as Appeal Case No.215/PGA/2014.

3. The order of the Assistant Labour Commissioner i.e. controlling authority was passed on 23.06.2014. As per Section 7(7) of the Act, the period of limitation for preferring appeal against the order of controlling authority is 60 days. However, the Act itself provides that in the event of appeal being preferred within a further period of 60 days i.e. in all 120 days from the date of passing of order, the appellate authority can condone the delay.
4. In the instant case, admittedly, the appeal was preferred beyond the period of 60 days, but, within the further period of 60 days time within which appeal could be preferred with an application for condonation of delay. In the present case there was delay of only 33 days from the date of the initial 60 days time prescribed for filing the appeal i.e. the appeal was preferred on the 93rd day. Whereas, the appeal could have been entertained within a extended period of 60 days provided the State would have granted sufficient explanation for not filing the same in time.

Another aspect which cannot be brushed aside is the fact that the amount awarded by the controlling authority has already been deposited by the department much earlier i.e. on 21.08.2014 (just within about 65-66 days from the date of order), but the appeal was filed later. However, the appellate authority vide order impugned dated 03.03.2017 had rejected the appeal on the ground of limitation. According to appellate authority, the State has not been able to show justified and cogent explanation for each days delay in filing the appeal. It is this order which is under challenge in this petition.

5. Learned counsel for the petitioners submits that the authority concerned should have been more pragmatic particularly while considering the fact that it was an appeal of the State Govt., it should have taken into consideration the technicalities and procedure that are required in filing of an appeal as the same could only be filed after obtaining necessary approval from the hierarchy of office that are there in the department. He further submits that the authority concerned should have considered the fact that the appeal was preferred within the prescribed period under the Act within which the appellate authority had power to condone the delay. The petitioner, thus, prayed for setting aside the order impugned and for remitting back the matter to decide the same on its merit.
6. Considering the submissions put forth by counsel for the petitioners, this court does not feel it proper to keep this petition pending by issuing notice to the other side. Rather, ends of justice would meet if the writ petition is disposed of at the admissions stage itself. In the opinion of this court, the authority concerned should have been a little more pragmatic

particularly for the reason that the statute provides power to the appellate authority to condone delay if the appeal is filed within a period of 60 days from the date of initial 60 days time within which appeal has to be filed. In the instant case, the appeal was filed within the prescribed extended period. The application for condonation should have been considered liberally without being too technical, moreover for the reason beyond 120 days the appellate authority under no circumstances could condone the delay and the law thereafter is very strict. Therefore, within the permissible period the authority should have been more liberal.

7. Thus, in the opinion of this court, it is a fit case where the impugned order deserves to be and is accordingly set aside and the matter is remitted back to the appellate authority for considering the appeal on its merit. This court at this juncture condones the delay in filing the appeal and directs the appellate authority to consider the appeal on its merit. It is expected that before proceeding with the matter, proper notices shall be issued to the parties concerned.
8. The writ petition thus is allowed and disposed of on the terms mentioned above. No order as to costs.

Sd/-
(P. Sam Koshy)
Judge

inder