

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (L) No. 86 of 2017**

1. State of Chhattisgarh, through – Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Naya Raipur (C.G.)

(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 Division Durg, District Durg (C.G.)

---- Petitioners**Versus**

1. Shri Chowaram, S/o Late Shri Rama Sahu, Village Nahar Khapari, Post Tanora, Tahsil Gunderdehi, District Balod (C.G.)
2. The Appellate Authority, Under the Payment of Gratuity Act, 1972 & Deputy Labour Commissioner, Officer of the Labour Commissioner, Chhattisgarh, Indrawati Bhawan, P.S. Mandir Hasaud, District Naya Raipur (C.G.)
3. The Controlling Authority, Under the payment of Gratuity Act, 1972 and Office of Assistant Labour Commissioner, Durg P.S. Kotwali, District Durg (C.G.)

---- Respondents

For Petitioners: Mr. Arun Sao, Dy. Advocate General.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****06/04/2017**

(1) The Controlling Authority under the Payment of Gratuity Act passed an order for payment of gratuity on 28.09.2015 in favour of respondent No. 1. The petitioner preferred appeal before the

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972 (for short 'Act, 1972') there-against with a delay of 149 days. The Appellate Authority relying on the provisions contained in sub-Section 4 of Section 7 of the Act, 1972 dismissed the appeal holding that delay of more than 60 days cannot be condoned, against which instant writ petition has been filed questioning the same.

(2) I have heard learned counsel appearing for the appellant and perused the order impugned with utmost circumspection.

(3) The Division Bench of this Court in Writ Appeal No. 349/2016 (**Kirtan Ram Thakur Vs. State of Chhattisgarh & others**) has clearly held that delay can be condoned only up to sixty days and no further delay can be condoned and the appellate authority is powerless to condone the delay when the delay is beyond sixty days. Paragraphs 17, 18 & 19 of the judgment states as under:-

“(17) The Apex Court in the above stated judgment in dealing with this provision and held as under:-

“20. Section 29(2) of the Limitation Act inter alia provides that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period of limitation prescribed by the Schedule, the provisions of Section 3 shall apply as if such period was the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 shall apply only insofar as, and to the ex-

tent, they are not expressly excluded by such special or local law. When any special statute prescribes certain period of limitation as well as provision for extension up to specified time-limit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the intention of the legislature in enacting sub-section (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.”

(18) Justice R.V. Raveendran in his concurring judgment held as under:-

“53. Sub-Section (3) of Section 34 of the AC Act prescribes the period of limitation for filing an application for setting aside an award as three months from the date on which the applicant has received the arbitral award. The proviso thereto vests in the Court discretion to extend the period of limitation by a further period not exceeding thirty days if the Court is satisfied that the applicant was prevented by sufficient cause for not making the application within three months. The use of the words “but not thereafter” in the proviso makes it clear that even if a sufficient cause is made out for a longer extension, the extension cannot be beyond thirty days. The purpose of proviso to Section 34 (3) of the AC Act is similar to that of Section 5 of the Limitation Act which also relates to extension of the period of

limitation prescribed for any application or appeal. It vests a discretion in a court to extend the prescribed period of limitation if the applicant satisfies the Court that he had sufficient cause for not making the application within the prescribed period. Section 5 of the Limitation Act does not place any outer limit in regard to the period of extension, whereas the proviso to sub-Section (3) of Section 34 of the AC Act places a limit on the period of extension of the period of limitation. Thus the proviso to Section 34 (3) of the AC Act is also a provision relating to extension of period of limitation, but differs from Section 5 of the Limitation Act, in regard to period of extension, and has the effect of excluding Section 5 alone of the Limitation Act.”

(19) The issue involved in the present case is identical though in the context of a different Act . Therefore, we have no hesitation in holding that the appeal under Section 7(7) of the PG Act has to be filed within sixty days and at best, the Appellate Authority can condone the delay of further sixty days i.e. total 120 days in all.”

(4) In view of above legal position, this Court is of the opinion that the Appellate authority is absolutely justified in dismissing the appeal filed by the petitioner and there is no illegality in the same warranting interference by this Court in the instant writ petition.

(5) Accordingly, the writ petition fails and is hereby dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

