

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 168 of 2016**

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 The 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, Minimata Bango Canal, Division No.5, Kharsiya, District Raigarh (Chhattisgarh)

---- Petitioner**Versus**

1. Shri Ram Singh Nishad S/o Shri Sonauram, R/o Bade Katekoni, Post Chote Katekoni, P.S. Tahsil Dabhra, District Janjirm Champa, (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissionr, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur, (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972, Janjgir, District Janjgir Champa, (Chhattisgarh)

---- Respondents

For Petitioner:	Mr. S.P. Kale, Advocate
For Respondent No.1 :	Mr. B.M. Roy, Advocate

Hon'ble Shri Justice P. Sam Koshy**Judgment on Board****16.02.2017**

1. The present petition has been preferred by the Petitioners under Article 226/227 of the Constitution of India challenging the order dated 30.03.2016 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal Case No. 74/PGA/2015. Vide the said order the Respondent Appellate Authority has rejected the appeal of the State Government preferred against the order of the Controlling Authority under the Payment of Gratuity Act, 1972 dated 13.05.2015 passed in Case No. 17/PGA/2014 on the ground of limitation.
2. Learned Counsel for the Petitioner submits that the impugned order is

bad in law for the reason that the Appellate Authority has not properly appreciated the provisions of the Payment of Gratuity Act, 1972. According to the State Counsel the limitation would start from the date of receipt of the order of the Controlling Authority and it would not be from the date of passing of the order. He referred Section 7(7) of the Payment of Gratuity Act, 1972 in this regard.

3. For deciding the issue the facts relevant for deciding the case is that the Respondent No.1 in the instant case was working as a Choukidar under the Petitioners and he superannuated on 31.03.2011. He was paid an amount of Rs. 29,000/- only as gratuity. The Respondent employee subsequently moved an application for grant of payment of gratuity considering the entire length of service right from the date he has rendered service as daily wage employee. The said case was registered as Case No. 17/PGA/2014 and was ultimately decided on 13.05.2015 by which the Controlling Authority allowing the application assessed the gratuity payable to the Respondent No.1 to the tune of Rs. 1,51,212/- and ordered for payment of balance amount of Rs. 1,22,212/- to the Respondent employee within a period of 30 days.
4. The record shows that the said order dated 13.05.2015 was served upon the Petitioner on 01.07.2015. Immediately thereafter the Petitioner No.2 preferred an appeal before the Appellate Authority on 06.08.2015 i.e. on the 36th day. However, the Appellate Authority vide the impugned order dated 30.03.2016 rejected the appeal holding it to be barred by limitation as the appeal has been preferred beyond 60 days of limitation from the date of order of the Controlling Authority and that no application for condonation of delay was filed by the Petitioner, thus the Appeal was not tenable.
5. At this juncture it would be relevant to refer to the observation made by

the Appellate Authority while passing the impugned order:

“यह अपील नियंत्रण प्राधिकारी के आदेश दिनांक १३.०५.२०१५ के विरुद्ध दिनांक ०६.०८.२०१५ को प्रस्तुत हुआ है, जो कि अधिनियम में दशायि समय-सीमा ६० दिवस के भीतर नहीं है। विलंब से अपील प्रस्तुत करने का पर्याप्त एवं उचित कारण नहीं बताया गया है और न ही प्रत्येक दिन के विलंब के कारणों को उल्लिखित किया गया है।”

6. Once when the finding of the Appellate Authority is that the appeal has been filed on 06.08.2015 and from the order of the Controlling Authority it clearly reflects that the copy of the order was received in the office of the Petitioner establishment only on 01.07.2015, it establishes that the appeal has been filed within a period of 36 days i.e. within the prescribed limit of 60 days.

7. For ready reference provisions of Section 7(7) of the Payment of Gratuity Act, 1972 is herein under:-

“(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.”

8. A plain reading of the aforementioned provision clearly stipulates that the limitation would start from the date of receipt of the order under challenge. The proceeding before the Court below would also reflect

from the endorsement made on the last page of the order dated 13.05.2015 in respect of the order being received to the office of the Petitioner establishment is on 01.07.2015. Therefore for all practical purposes the period of limitation would start from 01.07.2015 and if that be so the appeal was preferred on 36th day i.e. well within 60 days time which has been envisaged under Section 7(7) of the Payment of Gratuity Act, 1972. The observation made by the Appellate Authority in calculating the period of limitation from 13.05.2015 is therefore not proper, legal or justified and is not sustainable.

9. Accordingly, the order of the Appellate Authority stands set aside / quashed. The case is remitted back to the Appellate Authority for reconsideration of the Appeal on its merits considering the appeal to be within limitation.
10. It is further directed that the Appellate Authority shall decide the case on merits preferably within a period of 4 months from the presentation of the certified copy of this order by the Petitioners.
11. With the aforesaid observation the present Writ Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE