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HIGH COURT OF CHHATTISGARH, BILASPUR

WPL No. 40 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, Water Resources Construction Division Kasdol, District Balodabazar Bhatapara (Chhattisgarh)

---- Petitioner

Versus

1. Shri Kalas Ram S/o Shri Padumnath Shriwas, R/o. Village, Post And Tahsil Nagar Panchayat, Bilaigarh, Dharshiv Road, District Balaudabazar Bhatapara (Chhattisgarh)
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 & Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, Naya Raipur (Chhattisgarh)
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 District Balaudabazar Bhatapara (Chhattisgarh)

---- Respondent

For Petitioner: Mr. S.P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy

Order on Board

03.02.2017

1. The present petition has been preferred by the Petitioners under Article 226/227 of the Constitution of India challenging the order dated 23.09.2016 passed by the Appellate Authority under the Payment of Gratuity Act, 1972 in Appeal Case No. 113/PGA/2015. Vide the said order the Respondent Appellate Authority has rejected the appeal of the State Government under Payment of Gratuity Act on the ground of limitation.

2. A brief fact in the present case is that Respondent No.1 was engaged with the Petitioners initially as daily wager since 28.02.1977. Subsequently, services of the Respondent No.1 was brought under work-charged contingency paid employee in the 1988 and he continued as work-charged contingency paid employee till his retirement on 28.02.2013. As such indisputably Respondent No.1 has worked as the contingency paid employee for around 25 years but was not granted gratuity. The Respondent employee filed application before Respondent No. 3 / the Controlling Authority under Gratuity Act, 1972 seeking for gratuity for the service he has rendered with the Petitioners. The said case was registered as 35/PGA/2014 and the Controlling Authority vide its order dated 28.02.2015 allowed the application and ordered for payment of gratuity and also awarded interest on the amount till its realization vide Annexure No. P/2.

3. Though the order of the Controlling Authority was passed on 28.02.2015 the appeal against the said order was preferred by the Petitioners only on 26.11.2015 with a delay of 270 days. The Payment of Gratuity Act provides for filing of the appeal against the order of the Controlling Authority under Section 7(7) of the Gratuity Act within a period of 60 days from the date of passing of the order. Further the Act empowers the Appellate Authority to condone the delay if the appeal along with an application for condonation of delay is filed within a further period of 60 days i.e. in all a person intending to challenge the order of the Controlling Authority he should file the appeal within a maximum period of 120 days from the date of order passed by the Controlling Authority. In the instant case indisputably the appeal has been preferred much beyond the maximum period of 120 days i.e.

appeal in the present case was preferred after 270 days. The Act itself does not permit the Appellate Authority to condone delay of more than 120 days and therefore, the Appellate Authority relying upon the decision of this Court in **Writ Petition no. 1431/2003** decided on **24.02.2015** reported in **2016/148/FLR-789,** vide its order dated 23.09.2016 rejected the appeal. It is this order which has been challenged in the instant case.

4. The view of the Appellate Authority further gets fortified from the decision of the Division Bench of this Court in a bunch of Writ Appeals **Writ Appeal No. 349 of 2016 (in case of Kirtan Ram Thakur v. State of Chhattisgarh and others) along with other Analogous Writ Appeals decided on 22.08.2016.**

5. From the perusal of the pleading in the Petition it does not disclose any strong ground made out by the Petitioners for interfering with the order passed by the Appellate Authority so far as the appeal being dismissed on the ground of delay. Neither have the Petitioners been able to satisfactorily explain the reasons for the delay caused. In view of the above in any circumstances it cannot be said that the Appellate Authority has committed any illegality or the order passed by the Appellate Authority suffers from any infirmity in law. Thus, the Petition being devoid of merits deserves to be rejected.

6. Thus, the Petition totally being devoid of merits, the same deserves to be and is accordingly dismissed.

Sd/-

(P. Sam Koshy)
JUDGE

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