

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5655 OF 2012

KESHAV BALIRAM TAWARE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS.

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Advocate for Petitioners : Ms.M.S.Shendge.
AGP for Respondents 1 and 2 : Shri N.T.Bhagat.
Advocate for Respondent 3 : Shri Parag Shahane.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 27th February, 2017

Per Court:

1 The Petitioners are aggrieved by the order dated 09.02.2012 by which the Controlling Authority (the then Assistant Commissioner of Labour) under the Payment of Gratuity Act, 1972 has dismissed the claim of the Petitioners for gratuity.

2 There is no dispute that the Petitioners have not challenged the judgment of the Controlling Authority before the Appellate Authority under Section 7(7) r/w proviso there below, of the Payment of Gratuity Act, 1972.

3 It is trite law that an appeal can be preferred before the

Appellate Authority against any order passed under Section 7(4) of the Payment of Gratuity Act, 1972. The proviso below sub-section (7) of Section 7 entitles the Appellate Authority to condone the delay to the extent of 60 days beyond the limitation of 60 days.

4 For challenging the impugned judgment dated 09.02.2012, the Petitioners have approached this Court on 25.04.2012 which is within a period of about 75 days. Since then this petition has been pending in this Court.

5 Considering the effect of Section 7(7) and the proviso thereunder, I deem it proper to dispose of this Writ Petition so as to enable the Petitioners to approach the Industrial Court, which is the Appellate Authority under the Payment of Gratuity Act, 1972.

6 In the light of the above, this Writ Petition is disposed of. The Petitioners would be at liberty to prefer an appeal before the Industrial Court at Latur within a period of FORTY FIVE (45) days from today, keeping in view that this petition was filed after 75 days of the impugned order.

7 The time spent by the Petitioner in this Court would be a

good ground for condonation of delay and as such, the application which shall be filed by the Petitioners seeking condonation of delay, shall be considered by the Appellate Authority and taking into account the pendency of this Writ Petition before this Court, the said delay can be condoned.

8 All the contentions of the litigating sides are kept open so as to enable the Appellate Authority, namely, the Industrial Court to decide the appeal on its own merits.

9 The record from the Office of the Assistant Commissioner of Labour shall be returned forthwith.

kps

(RAVINDRA V. GHUGE, J.)