

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (S) No.2155 of 2009**

MP State Mining Corporation Limited Jail Road, Paryavas Bhawan,
Bhopal (MP) through its Managing Director.

---- **Petitioner**

Versus

- 1.Smt. Brijbai, wife of Shri Sakharam Post Sakeridih via Baradwara, District Bilaspur (CG).
2. Appellate Authority under the Payment of Gratuity Act, 1972 (Regional labour commissioner), Jabalpur.
3. The Mining Manager, MP State Mining Corporation Baraduar, District Janjgir Champa.
4. Sukhram son of Shri Lalluram Village and post Sakreli, Tahsil Sakti, District Bilaspur.
5. Rukmani Bai, wife of Krishanalal Chouhan Village and post Sakreli, Tahsil Shakti, District Bilaspur.
6. Chamru Ram, son of Bhagirathi, village and post Sakreli, Tahsil Shakti, District Bilaspur.
7. Radheshyam son of Shri Punau Ram, village and post Sakreli, Tahsil Sakti, District Bilaspur
8. Krishna lal, son of Shri Atmaram, village Sakroli, Tahsil Sakti, District Bilaspur.
9. Mehar Singh, son of Samaru, village and post Sakreli, Tahsil Sakti, District Bilaspur.
10. Santra Bai, wife of Shri Meghnath, Ex-P/R Mines, village Sakeli, District Bilaspur.
11. Upasini Bai, wife of Meghnath, village Sakreli, Tahsil Sakti, District Bilaspur.
12. Meghnath, son of Chhatan, village Sakreli (Baraduar), Tahsil Sakti, District Bilaspur.
13. Biharin Bai, wife of Chamaru Ram, village Sakreli, District Bilaspur.

14. Bhagwantin Bai, wife of Shri Radheshyam, Ex.P/R Mines, Village Sakeli, District Bilaspur.

---- Respondents

For Petitioner : Mr. Sourabh Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

30/01/2018

(1) The appeal preferred by the appellant before the appellate authority under the Payment of Gratuity Act, 1972 has been dismissed by the appellate authority for non-compliance of provisions contained in second Proviso to sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972.

(2) Learned counsel appearing for the petitioner would submit that later on deposit has been made and application for recalling was made that has also been dismissed.

(3) I have heard learned counsel for the petitioner and perused the record with utmost circumspection.

(4) It is relevant to refer here the provisions of sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972 which reads as follows:

"7.Determination of the amount of gratuity.-

- | | |
|-------------|-----|
| (1) XXX XXX | XXX |
| (2) XXX XXX | XXX |
| (3) XXX XXX | XXX |

(4) XXX XXX XXX

(5) XXX XXX XXX

(6) XXX XXX XXX

(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.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under sub-section (4), or deposits with the appellate authority such amount."

(5) A careful perusal of the second Proviso to sub-Section (7) of Section 7 reproduced herein above, would show that a certificate of the controlling authority to the effect of depositing an amount equal to the amount of gratuity is mandatory at the time of preferring the appeal. Since the provision is mandatory in nature, the appeal of the petitioner has rightly been dismissed by the appellate authority for non-compliance of the provisions contained in second Proviso to sub-Section (7) of Section 7 of the Payment of Gratuity Act, 1972.

(6) Consequently, the writ petition deserves to be and is accordingly dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-