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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP No. 26155 of 2017
Date of Decision : September 20, 2018

National Projects Construction Corporation Ltd. Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**
....Respondents.

2. CWP No.26165 of 2017

National Projects Construction Corporation Ltd. Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**
....Respondents.

3. CWP No.26168 of 2017

National Projects Construction Corporation Ltd. Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**
....Respondents.

4. CWP No.26172 of 2017

National Projects Construction Corporation Ltd. Petitioner.

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Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

5. CWP No.26173 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

6. CWP No.26176 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

7. CWP No.26178 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

8. CWP No.26181 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

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**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

9. CWP No.26184 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

10. CWP No.26216 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

11. CWP No.26217 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

12. CWP No.26218 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act,

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1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

13. CWP No.26219 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

14. CWP No.26220 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

15. CWP No.26221 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

16. CWP No.26222 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

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17. CWP No.26223 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

18. CWP No.26257 of 2017

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

19. CWP No.1962 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

20. CWP No.19709 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

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21. CWP No.1855 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

22. CWP No.1879 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

23. CWP No.1919 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

24. CWP No.1974 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

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25. CWP No.4680 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

26. CWP No.19416 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

27. CWP No.19457 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

28. CWP No.19605 of 2018

National Projects Construction Corporation Ltd.Petitioner.

Versus

Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others

....Respondents.

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29. CWP No. 23538 of 2018-

National Projects Construction Corporation Ltd.Petitioner.

Versus

**Appellate Authority under Section 7(7) of the Payment of Gratuity Act,
1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya
Sadan, Sector 9A, Chandigarh and others**

....Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Lokesh Sinhal, Advocate
for the petitioner-Corporation.

Mr. Piyush Khanna, Advocate,
for respondents No.1 and 2.

Ms. Abha Sharma, Advocate and
Mr. Budh Ram and Mr. Anupam Maurya, Advocates
for respondent-workmen.

SHEKHER DHAWAN, J.

As common questions of law and facts are involved in these above titled 29 writ petitions filed by National Project Construction Corporation Ltd. (for short, “**the petitioner-Corporation**”) and the matter in controversy relates to the payment on account difference of gratuity to the employees of the petitioner-Corporation, with the consent of learned counsel for the parties, all these writ petitions are taken up together for disposal.

2. For facility of reference, facts are being taken from CWP No. 26155 of 2017 - **National Projects Construction Corporation Ltd. Vs.**

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Appellate Authority under Section 7(7) of the Payment of Gratuity Act, 1972-cum- Deputy Chief Labour Commissioner (Central), Kendriya Sadan, Sector 9A, Chandigarh and others.

3. The petitioner-Corporation has filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 20.06.2017 (Annexure P/8) passed by the Appellate Authority, respondent no.1 and order dated 14.10.2016 (Annexure P/6) passed by the Controlling Authority, respondent no. 2, whereby the respondent No.3 (Shyam Lal) was held entitled to receive Rs. 80502/- towards balance amount of gratuity along with interest at the rate of 10% per annum w.e.f. the date, the gratuity became due till it is finally paid.

4. As per respondent No.3, he had preferred claim under Rule 10 of the Payment of Gratuity (Central Rules), 1972 (for short, "**the Rules**") read with Section 7(4) of the Payment of Gratuity Act 1972 (for short, "**the Gratuity Act**") on application in Form 'N' on account of superannuation alongwith application for condonation of delay. Respondent No. 3 superannuated on 31.07.2010, but full payment was not made to him as per his entitlement under the Gratuity Act. As per respondent No. 3, payment of gratuity was to be made within one month from the date of superannuation, but the same was not paid.

5. Petitioner-Corporation contested the claim before respondent No.2 taking the plea that application was time barred as the same was not filed within 90 days and the claim was filed after more than 5-1/2 years.

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The petitioner-Corporation also took the plea in the reply that as per resolution passed by the Board of Directors (BOD), employees of the petitioner-Corporation were to be paid gratuity @ 15/26 days emoluments for each completed year of service or part thereof in excess of six months subject to a maximum of 16-1/2 times of emoluments or Rs.10.00 lakhs whichever is less. Accordingly, the gratuity was calculated. Out of total amount due, i.e. Rs.6,77,160/-, a sum of Rs.3,50,000/- was paid to the applicant/respondent no. 3 on 24.09.2010 and the remaining amount of Rs.3,27,160/- was paid vide order dated 15.5.2012 and the same was accepted by the applicant/respondent No. 3 without any demure and as such, respondent no. 3 is estopped from challenging the same.

6. The appeal filed by the petitioner-Corporation before respondent No.1 was dismissed vide impugned order dated 20.06.2017 (Annexure P/8).

7. Learned counsel representing the petitioner-Corporation while assailing the said orders contended that no application for payment of gratuity was filed by respondent no. 3 before the petitioner-Corporation as prescribed under Rule 7 of 'the Rules', which is mandatory requirement to be fulfilled before filing application under Rule (10)(1)(i) to the Controlling Authority. Secondly, the application filed by respondent No.3 was barred by limitation. Reliance was placed on the judgment of Hon`ble Calcutta High Court in **Ramdas Naw Vs. Bank of India and another, 2014(11) SCT 805.**

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8. Learned counsel representing respondent No.3/employees contended that all these pleas/contentions were also raised by the petitioner-Corporation before respondent No.1 and 2 and were considered and decided against the petitioner-Corporation as the delay was condoned by the competent authority as per law. The payment of gratuity is payable to respondent No. 3 as per provisions of the Gratuity Act and not as per resolution of BOG of the petitioner-Corporation. Reliance was placed on the judgment of Hon`ble Hyderabad High Court in **Krishna District Milk Producers Mutually Aided Coop. Union Vs. State of Andhra Pradesh and others, 2016 L.A.B. I.C. 755** wherein delay was ranging from 63 to 1095 days in preferring the claim for payment of differential amount of gratuity by respective employees and view was taken by Hon`ble Hyderabad High Court that claim for gratuity would not be treated as invalid, if the same has not been raised within prescribed period of 30 days from the due date and delay in submission of claim for payment of gratuity is not fatal. As such, the present writ petitions filed by the petitioner-Corporation deserve to be dismissed.

9. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact regarding period of employment of respondent No.3 with the petitioner-Corporation. The facts are also not disputed to the extent that respondents/employees have been superannuated, but complete payment was not made to them as per their entitlement under the Gratuity Act and payment of gratuity was to be made

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within one month from the date of superannuation. However, firstly, the amount due as per the Gratuity Act was not paid. Secondly, the same was not paid within the prescribed period as provided under the Gratuity Act.

10. Admittedly, no application was filed under Rule 7 of 'the Rules' before the petitioner-Corporation within a period of 30 days, rather the claim was raised before the Controlling Authority and that too after considerable delay. As per relevant Rule 7 of 'the Rules', such an application was to be moved before the employer from the date when gratuity becomes payable. The application was to be filed on Form-I and the relevant Rule 7 is extracted hereunder:-

“7. Application for gratuity - (1) An employee who is eligible for payment of gratuity under the Act, or any person authorized in writing, to act on his behalf, shall apply, ordinarily within thirty days from the date the gratuity became payable, in Form ‘I’ to the employer:

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply, to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily, within thirty days from the date of gratuity become payable to him, in Form ‘J’ to the employer:

Provided that an application on plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

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(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act before the commencement of these rules, the periods of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within the specified period. Any dispute in this regard shall be referred to the controlling authority for his decision.

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due."

(emphasis supplied)

11. It is also not disputed that as per provisions of the Gratuity Act, application could be moved before the Controlling Authority as per provisions of Rule 10 of 'the Rules' and **such claim could be preferred if the payment made to the employee is less than the amount due or his claim of gratuity has been rejected.** For ready reference, Rule 10 of 'the Rules' is also extracted below:-

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“10. **Application to controlling authority for direction:-** (1) If an employer-

(i) refuses to accept a nomination or to entertain an application sought to be filed under rule 7, or

(ii) issues a notice under sub-rule (1) of rule 8 either specifying an amount of gratuity which is considered by the applicant less than what is payable or rejecting eligibility to payment of gratuity, or

(iii) having received an application under rule 7 fails to issue any notice as required under rule 8 within the time specified therein, the claimant employee, nominee or legal heir, as the case may be, may within ninety days of the occurrence of the cause for the application, apply, in Form ‘N’ to the controlling authority for issuing a direction under sub-section (4) of section 7 with as many extra copies as are the opposite parties:

Provided that the controlling authority may accept any application under this sub-rule, on sufficient cause being shown by the applicant, after the expiry of the specified period.

(2) Application under sub-rule (1) and other documents relevant to such an application shall be presented in person to the controlling authority or shall be sent by registered post acknowledgement due”.

(emphasis supplied)

12. The Controlling Authority while considering these grounds held that though claim was preferred after a delay of 5-1/2 years, but the same was condoned by it by rightly placing reliance upon the judgment of Hon`ble Apex Court in **Collector Land Acquisition Anantnag Vs. Katliji, AIR 1987 SC 1353**, wherein Hon`ble Supreme Court observed as under:-

“ Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice

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being defeated. As against this when delay is condoned, the highest that can happen is that a case would be decided on merits after hearing the parties.”

13. The Controlling Authority had also placed reliance upon the judgment of Hon`ble Andhra Pradesh High Court in **P.Rama Rao and others Vs. Controlling Authority and others, 1998(3) LLJ 114**, wherein view was taken that provisions for limitation in respect of payment of gratuity are just procedural in nature and do not intend to extinguish right of the employee.

14. Similar matter was before Hon`ble Hyderabad High Court in **Krishna District Milk Producers Mutually Aided Coop. Union's case (supra)**, wherein following view was taken :-

“9..... Thus, it was abundantly clear that no claim for payment of gratuity shall be treated as invalid merely because the said claim is not made within the period of 30 days from the date of gratuity becomes payable. Thus clearly bringing out that delay in submission of the claim is not fatal.”

15. In view of the above, the contention raised by learned counsel for the petitioner-Corporation that there was no justified ground for condonation of delay by the Controlling Authority and the matter having not been considered by the Appellate Authority on that count, is not maintainable. The payment of Gratuity Act has been held to be an enactment for the welfare of the workman/employees and is a welfare legislation. The interpretation to such a statute cannot be against the interest of the workmen. For such like procedural delays in moving the

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application before the employer or the Controlling Authority within the specified time, shall not be a valid ground to throw-away and reject the claim of the workman. Otherwise, the very purpose of such a welfare legislation shall frustrate. Such a view as taken by Hon`ble Apex Court in **P.Rama Rao's case (supra)**.

16. As regard to the contention that the petitioner-Corporation had made the payment of gratuity whichever was due and more so, no application was filed before the petitioner-Corporation as required under Rule 7 of 'the Rules', in the present case, the payment has not been made as per the provisions of the Gratuity Act. The petitioner-Corporation cannot take the plea that the payment was made as per resolution of BOD of the petitioner-Corporation at the rate of @ 15/26 days emoluments for each completed year of service or part thereof in excess of six months subject to a maximum of 16-1/2 times of emoluments or Rs.10.00 lakhs whichever is less as the same is not the correct proposition of law, rather the payment is to be made as per the provisions of the Gratuity Act. Such a view was taken by Hon`ble Supreme Court in **Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and others (2007)1 SCC, 663** wherein it was held as under:-

“ A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will mere repetition to state that 'the Rules' framed by Respondent No. 1 or its holding company are not statutory in nature. [the Act](#) provides for a closely neat scheme providing for payment of gratuity. It is a complete code containing detailed provisions covering the essential provisions of a scheme for a gratuity. The provisions contained

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therein must, therefore, be scrupulously observed. Therefore, as per Section 4(2) of P.G. Act for every completed year of service or part thereof in excess of six months the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned and as per Section 4(3) the amount of gratuity payable to the employee shall not exceed ten lacs rupees.”

17. The Gratuity Act lays down that 5 year continuous service is the only condition. Hon`ble Apex Court also observed that the Payment of Gratuity Act is a complete Code and as provisions of Section 4(2) for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned and as per Section 4(3) the amount of gratuity payable to the employee shall not exceed Rs. 10 lakhs. The petitioner-Corporation cannot take the plea that respondent No. 3 had already received the payment whichever was released by the petitioner-Corporation, rather, the correct legal proposition would be that the payment of gratuity is made as per the provisions of the Gratuity Act and Rules, if the provisions of the Gratuity Act are more beneficial and in this case considering the matter in its entirety, the Controlling Authority passed the order declaring that respondent No. 3 was entitled to receive Rs. 80502/- towards balance amount of gratuity along with interest at the rate of 10% per annum w.e.f. the date, the gratuity became due till the date of payment. Thereafter the Appellate Authority also considered the matter on appeals having been preferred by the petitioner-Corporation and rightly decided the same against it. As such, there is nothing available on the file that the Controlling Authority or the Appellate Authority exercised the discretion, vested in them, contrary to the

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legal provisions, rather it stands proved that both these Authorities under the Act have rightly interpreted the provisions of the Gratuity Act, that the application could have been filed before the Controlling Authority if the amount as due under the Gratuity Act has not been paid and the delay in filing the such application shall not be a justified ground to decline the relief to the workmen.

19. In view of the above, there is no merit in the present writ petitions and the same stand dismissed.

(SHEKHER DHAWAN)
JUDGE

September 20, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes