

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPL No. 16 of 2019**

1. State Of Chhattisgarh Through- Secretary Water Resources Department Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. The Executive Engineer Hasdeo Barrage, Water Management Division, Rampur, District- Korba, Chhattisgarh.

---- Petitioners**Versus**

1. Shri Bramhanand Pandey S/o Late Benimadhav Pandey R/o- Near Conteyer Belt, Jamnipali, P.S. Jamnipali, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh
2. The Appellate Authority Under The Payment Of Gratuity Act, 1972 And Deputy Labour Commissioner, Office Of The Labour Commissioner Chhattisgarh, Indrawati Bhawan, Naya Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. The Controlling Authority Under The Payment Of Gratuity Act, 1972 Office Of Assistant Labour Commissioner, Korba, District- Korba, Chhattisgarh., District : Korba, Chhattisgarh

---- Respondents

For Petitioner/ State	:	Mr. Salim Kazi, Dy. AG
None for the respondents		

Hon'ble Shri Justice P. Sam Koshy
Order on Board

28/01/2019

Ignoring the default pointed out by the Registry with the consent of the counsel matter was heard on admission.

1. The challenge in the present writ petition is to the order passed by the appellate authority under the Payment of Gratuity Act (Annexure P-1) dated 04/11/2016 and also the order passed by the controlling authority P-2 dated 17/09/2015 whereby the controlling authority has passed an order in favour of the respondent employee for releasing all the payment of gratuity to the tune of Rs. 3,14,627/- including interest.
2. Perusal of the record would reveal that the appellate authority vide impugned order (Annexure P-1) has rejected the appeal only on the

ground of delay. The order passed by the controlling authority was on 17/09/2015 and the appeal in the instant case has been filed on 12/02/2016 that is after a period of 151 days calculating the period of limitation from 17/09/2015 onwards.

3. It would be relevant at this juncture to refer to the Section 7 of the Payment of Gratuity Act which deals with the preferring of an appeal. The period of limitation for filing the appeal under Section 7(7) of the Payment of Gratuity Act is 60 days. The proviso Clause to the Sub Section also stipulates that the appellate authority has got power to condone the delay in case if the appeal is preferred within the further period of 60 days. That is to say that the appellate authority can condone the delay only in the event if the appeal is preferred within 120 days from the date of order under challenge before the appellate authority. Fact that the appellate authority has been given an outer limit of period within which the appeal could be entertained by the appellate authority condoning the delay by itself implied that the appellate authority beyond a period of 120 days does not have any power under the Act to condone the delay.
4. Given the said statutory provisions as it stands this Court does not find any strong case made out by the petitioner to hold that the findings of the appellate authority is either bad in law or contrary to the statute. At this juncture it would also be relevant to take note of the fact that on identical set of fact the controlling authority on an earlier occasion in the case of **Netram Sahu** had granted the benefit of gratuity to the employee inclusive of the period that he had rendered service as a daily wage employee.

5. The said case of the Netram Sahu was recently decided by the Supreme Court in the reported judgment in, **Netram Sahu VS. State of Chhattisgarh, 2018 (5) SCC Page 430**, wherein the Supreme Court in Paragraph 14, 16, 17 & 18 has held as under :

“14. We do not agree with this submission of learned counsel for the respondent-State for more than one reason. First, the appellant has actually rendered the service for a period of 25 years; Second, the State actually regularized his services by passing the order dated 06.05.2008; Third, having regularized the services, the appellant became entitled to claim its benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years; Fourth, no provision under the Act was brought to our notice which disentitled the appellant from claiming the gratuity and nor any provision was brought to our notice which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service, which he rendered prior to his regularization for calculating his continuous service of five years.

16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved.

17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering “continuous service” for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.”

6. Fact that in identical case of **Netram Sahu**(Supra), Supreme Court has taken a categorical stand hence this Court is of the opinion that in the light of the aforesaid judgment of the Supreme Court the finding of the controlling authority does not seem to be in any manner

perverse or erroneous and the present writ petition deserves to be rejected in the light of the decision of the Supreme Court in the case of **Netram Sahu**(Supra) also.

7. For both the aforesaid reasons, the present writ petition being devoid of merits deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge

Rohit