

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPL No. 72 of 2019

Cement Corporation Of India Ltd. Through General Manager,
Cement Corporation Of India Ltd., Mandhar Cement Factory, District
Raipur Chhattisgarh. 493111

---- Petitioner

Versus

1. Shri Ganeshu Ram Sahu, At And Post Mandhar, District Raipur Chhattisgarh.
2. Shri G.P. Kashyap Contractor, Cci Mandhar Cement Factory, Village And Post Barbanda, District Raipur, Chhattisgarh.
3. Appellate Authority, Under The Payment Of Gratuity Act, 1972 And Deputy Chief Labour Commissioner (Central) Raipur, Chhattisgarh.
4. Controlling Authority, Under The Payment Of Gratuity Act, 1972 And Assistant Labour Commissioner (Central) Raipur, Chhattisgarh.

---Respondents

For Petitioner	:	Mr. Vinod Deshmukh, Advocate
For Respondents No. 3 & 4	:	Mr. Rajkumar Gupta, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

18/03/2019

1. The challenge in the present writ petition is to the order passed by the Appellate Authority under the Payment of Gratuity Act dated **09.11.2018**, affirming the order passed by the Controlling Authority dated **19.04.2018**. The appeals preferred by the appellants have been rejected on the ground that the appeals were barred by limitation.
2. The counsel for the petitioner relying upon a judgment of the Gujarat High Court reported in the case of "**G.S.R.T.C., through Divisional Controller v. Anwarhusain Mamhadbhai Kadri**" 2009(121) FLR

581 submitted that though the Appellate Authority do not have the power to condone the delay beyond a period of 120 days, but the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, if sufficient and adequate justification has been provided for the delay caused, the same can be condoned and thus prayed for the setting aside of the order passed by the Appellate Authority and to remit the matter back for a decision on merits after condoning the delay.

3. What is relevant at this juncture to take note of is the fact that the Controlling Authority's order in the instant case was passed on **19.04.2018**. The order was a bi-party order, wherein the petitioners also were duly represented both by their officer incharge as also by their lawyer. Against the said order, the appeals have been preferred by the petitioners only on **05.09.2018** i.e. much after the lapse of 120 days as is prescribed under the provisions of Section 7(7) of Payment of Gratuity Act.
4. It would be relevant at this juncture to refer to the provision of Section 7(7) of the Payment of Gratuity Act dealing with the filing of the appeal and the proviso clause to the said sub-section:

“7. Determination of the amount of gratuity—

(1) xxxxxxxxxxxx

(2) xxxxxxxxxxxx

(3) xxxxxxxxxxxx

(4) xxxxxxxxxxxx

(5) xxxxxxxxxxxx

(6) xxxxxxxxxxxx

(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.”

5. From the plain perusal of the aforesaid provisions of the Payment of Gratuity Act, it clearly reflects that once when an order is passed by the Controlling Authority, the aggrieved person can prefer an appeal within a period of 60 days at the first instance and in case if the same could not be filed within 60 days with justified reasons for not filing the same, the appeal could be filed within a further period of 60 days i.e. in all 120 days. Beyond the period of 120 days, the Appellate Authority automatically becomes *functus officio* and the Appellate Authority under no circumstances has the power to condone the delay.
6. In the instant case, though the appellant had enclosed the memo of appeal along with an application under Section 5 of the Limitation Act seeking condonation of delay, but the ground of challenge raised by the petitioner in the said application is also the same lame excuse, which is usually taken by all the employers time and again, of the delay being caused in the course of searching of the relevant records at the head office of the Department and also in obtaining the approval from the head office. Both these grounds cannot be accepted to be adequate delay for condoning the delay, as from the application for condonation of delay, it appears that the searching of the records and the documents as also the approvals were to be

obtained from the same office and it was being searched in the same office and that cannot be a ground for the delay in the filing of the appeal.

7. Once when the statutes prescribe for a specific period of limitation, the officers concerned are expected to take a prompt decision enabling the appeal to be filed at the earliest. The reason assigned by the Appellate Authority while rejecting the appeal, cannot be termed in any manner, bad in law, arbitrary or illegal.
8. Moreover, what also has to be seen is that while rejecting the appeals, the Appellate Authority has also considered various judgments of the different High Courts passed on the subject and which further would show that it is not a case where the Appellate Authority has not given any justification or reasons in reaching to the said conclusion.
9. That under Article 226 of the Constitution of India while deciding a case in respect of the veracity of an order passed by the Appellate Authority under the statute this Court would only look into the decision making process and not the decision itself. In the decision making process, the Appellate Authority does not seem to have taken a view, which in any manner could be said to be a perverse finding or is contrary to law or contrary to the legal position as it stands.
10. The Division Bench of this Court in the case of ***“Kirtan Ram Thakur v. State of Chhattisgarh & Ors.”*** **WA No. 349/2016** dealing with the similar issue in paragraphs No. 19 to 23 has held as under:

“(19) The issue involved in the present case is identical though in the context of a different Act. Therefore, we have no hesitation in holding that the appeal under Section 7(7) of the PG Act has to be filed within sixty days and at best, the Appellate Authority can condone the delay of further sixty days i.e. total 120 days in all.

(20) In those cases where the appeals have been filed beyond 120 days, the delay cannot be condoned by the Appellate Authority.

(21) As far as present cases are concerned, these were disposed of by the learned Single Judge only on the ground that in another judgment rendered in W.P. (L) No. 178/2013 (State of Chhattisgarh & Anr. Vs. Netram Sahu & Anr.), in which the Court had held that period of service rendered as daily wages will not be counted for any purpose under the PG Act. Judgment passed by learned Single Judge in Netram Sahu's case was upheld by the Division Bench in Writ Appeal No. 240/2014 and against which SLP filed by the workmen is pending before the Apex Court.

(22) It appears that attention of the learned Single Judge was not brought to the fact that the appellate authority could not condone the delay beyond 120 days and, therefore, the Writ Court passed an order sending the matter back to the appellate authority to decide the appeal on merits. In case the appellate authority itself had no jurisdiction to condone the delay, then the writ court could not have also condoned the delay.

(23) Therefore, the only option for us is to set aside the order of the learned Single Judge where the direction has been given to the appellate authority to decide the appeal on merits, therefore, it is directed that the Appellate Authority shall examine each of the cases and where the delay is sixty days or less then the delay shall be deemed to be condoned. However, where the delay is more than sixty days, since the Appellate Authority has no jurisdiction to condone the delay beyond that period, it shall dismiss the appeal as time barred.”

11. The decision of this Court stands fortified from the decision of this Court in WPL No. 21/2015 decided on 26.08.2016, whereby the writ petition preferred under similar circumstances has been dismissed.
12. Under the circumstances, this Court does not find any strong case, so far as the impugned order in the present writ petition is concerned, the writ petition therefore stands dismissed.

Sd/-
(P. Sam Koshy)
Judge

Sumit