

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 544 of 2017

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Chhattisgarh
(Petitioner No. 1 Was Not A Party Before The Learned Appellate Authority And Learned Labour Court, But Has Been Impleaded As Necessary To Implead The State Govt. Through The Secretary To Concerned Department.)
2. The Executive Engineer, Tandula Water Resource Division Durg, District Durg Chhattisgarh

---- Appellants

Versus

1. Smt. Sona Bai Wd/o Late Shri Chinta Ram R/o Village Nahar Khapari, Post Tanora, Tahsil Gunderdehi, District Balod Chhattisgarh
2. The Appellate Authority, Under The Payment Of Gratuity Act, 1972 And Deputy Labour Commissioner, Office Of The Labour Commissioner, Chhattisgarh, Indrawati Bhawan, P. S. Mandir Hasaud, District Naya Raipur Chhattisgarh
3. The Controlling Authority, Under The Payment Of Gratuity Act, 1972 And Office Of Assistant Labour Commissioner, Durg P.S. Kotwali, District Durg Chhattisgarh

---- Respondents

For Appellant/State	:	Shri Rajnish Singh Baghel, Deputy Advocate General
For Respondent No.1	:	Shri Shashank Thakur, Advocate

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Judgment on Board

Per, Ajay Kumar Tripathi, Chief Justice

21.01.2019

1. Heard Counsel for the State and the private Respondent.
2. This writ appeal has been preferred against the order dated 18.04.2017 passed by the learned Single Judge dismissing the writ petition wherein the appellants have assailed the order dated 20.12.2016 passed by the appellate authority under the Payment of Gratuity Act, 1972 (henceforth 'the Act of 1972') by which the appeal of the appellants herein has been dismissed as barred by limitation in view of the provisions of Section 7 (7) of the Act of 1972.
3. Apart from challenging the dismissal of appeal on the ground of delay, the appellants have also raised a ground before the learned Single Judge that the

period of service rendered by respondent No.1 as 'daily wager' prior to his regularization could not be treated as qualifying service for the purpose of Gratuity.

4. Learned Single Judge has considered the period of limitation as provided in Section 7 (7) of the Act of 1972 and after relying upon the judgment on this issue has dismissed the writ petition vide order impugned.
5. Learned counsel appearing on behalf of the appellants has urged a ground that respondent No.1 is not entitled for the payment of Gratuity as he has not completed the requisite period of service making him entitled to claim Gratuity. He relied on Annexure A-2 which is a judgment rendered by this Court in WA No.240/2014, parties being Netram Sahu vs. State of CG & ors.
6. The law is well settled now that after regularization in the work charged establishment, while calculating the period of service for payment of gratuity the service rendered even as daily wager is required to be considered.
7. The issue no longer being *res integra*, the appeal is a misplaced exercise trying to assail the order of the learned Single Judge dated 18.04.2017.
8. Reliance placed on a Division Bench decision, a copy of which is Annexure– A/2, may not reflect the true position since the Hon'ble Supreme Court has set aside the decision of the Division Bench on which reliance has been placed by the State.
9. Apart from above, no other ground is raised.
10. Appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge