

HIGH COURT OF CHHATTISGARH, BILASPUR**WPL No. 40 of 2020**

- Bilaspur Refectory Old Power House Torwa, Bilaspur, District Bilaspur Chhattisgarh

---- Petitioner**Versus**

- Smt. Resham Bai W/o Shri Sakhar Ram Dongre, R/o Village And Post Mahmand, Lalkhadan, Rs, Bilaspur, District Bilaspur Chhattisgarh

---- Respondent

For Petitioner : Shri S.P. Kale, Advocate

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****16/03/2020**

1. Heard.
2. A short issue is involved in this case is that order under the Payment of Gratuity Act, 1972 (for short 'the Act, 1972') was passed on 02.12.2019 and the order was ex-parte. Subsequently, the petitioner filed an application on 31.12.2019 to set aside the order of ex-parte on the ground that no proper service was earlier effected along with this other grounds were also raised. The controlling authority by order dated 13.02.2020 dismissed the application on the ground that the original case was pending since long, therefore, the ex-parte application was dismissed.
3. Rule 11 (5) of The Payment of Gratuity (Central) Rules, 1972 reads as under:-

11. Procedure for dealing with application for direction. -

- (5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application *ex parte*. If the

applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application :

Provided that an order under this sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application reheard after giving not less than fourteen days' notice to the opposite party of the date fixed for rehearing of the application.

4. Reading of the proviso clause purports that if any application is filed and good cause is shown within 30 days of the order to be reviewed the application is to be reheard. The Rule mandates that authority shall issue notice within specified time to the opposite party and may rehear the application. Prima facie it appears that the order dated 13.02.2020 is non-speaking and cryptic and no reasons have been assigned. It is only been dismissed on the ground that the original case is pending since long, therefore, there is no reason to set aside the ex-parte order. In the considered opinion of this Court when the application to set aside the order of ex-parte has been filed, the Controlling Authority should have heard the opposite party and should have applied its mind to the facts and the averments made in the application to set aside the order, thereafter was obliged to pass this order. For the reason that the original case for payment of gratuity is pending since long, therefore, the rejection of the application cannot be allowed to sustain. In a result, the order dated 13.02.2020 is set aside and the matter is remitted back to the Controlling Authority to decide afresh in accordance with the existing rules as early as possible.

5. With the aforesaid observation, the writ petition stands disposed of.

Sd/-
Goutam Bhaduri
Judge

Ashu