

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 210 of 2017**

1. State of Chhattisgarh, through Secretary, Water Resources Department, Mahanadi Bhawan, Naya Raipur, Chhattisgarh.

(Petitioner No. 1 was not a party before the learned Appellate Authority and learned Labour Court, but has been impleaded as Petitioner No. 1 herein as it is necessary to implead the State Govt. through the Secretary of concerned Department).

2. The Executive Engineer, Tandula Water Resources Division Durg, District Durg, Chhattisgarh.

---- Appellants

Versus

1. Shri Chowaram S/o Late Shri Ram Sahu, 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, PS Mandir Hasaud, District Naya Raipur, Chhattisgarh.
3. The Controlling Authority under the Payment of Gratuity Act, 1972 and Office of Assistant Labour Commissioner, Durg, PS Kotwali, District Durg, Chhattisgarh.

---- Respondents

(Cause Title taken from Case Information System)

For Appellant : Mr. H.S.Ahluwalia, Deputy Advocate General.
For Respondent No. 1 : Mr. R.K.Pali, Advocate.

Hon'ble Mr. Arup Kumar Goswami, Chief Justice

Hon'ble Mr. Sanjay Agrawal, Judge

Judgment on Board

Per Arup Kumar Goswami, Chief Justice

14/12/2021

Heard Mr. H.S.Ahluwalia, learned Deputy Advocate General for the appellants as well as Mr. R.K.Pali, learned counsel for the respondent No. 1.

2. This appeal is presented against an order dated 06.04.2017 passed by the learned Single Judge in WP(L) No. 86 of 2017 dismissing the petition filed by the appellants, wherein the orders dated 28.09.2015 passed by the Controlling Authority in Case No. 60/PGA/ 2014 and the order dated 23.12.2016 passed by the Appellate Authority in Appeal Case No. 12/PGA/2016, preferred under Section 7(7) of the Payment of Gratuity Act, 1972 (for short, the 'Act of 1972'), were assailed.

3. The appeal was filed with a delay of 149 days.

4. Placing reliance on Section 7(7) of the Act of 1972, the Appellate Authority held that the Appellate Authority has the power to extend the period of limitation only upto 60 days in addition to the prescribed period of 60 days under Section 7(7) of the Act if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within sixty days, and that it had no jurisdiction to extend the

period of limitation by any further period.

5. The learned Single Judge, relying on a Division Bench judgment of this Court in the case of *Kirtan Ram Thakur v. State of Chhattisgarh & Others* (WA No. 349/2016, decided on 22.08.2016) held that the Appellate Authority was wholly justified in taking the view that it had taken and accordingly, dismissed the writ petition.

6. The learned Division Bench, in *Kirtan Ram Thakur* (supra), observed in paragraphs 7, 8 and 9 as follows:

“(7) The opening portion of Section 7(7) of the PG Act clearly lays down that any person aggrieved by an order of authority passed under Section 7(4) may prefer appeal to the appropriate Government or authority. The Limitation prescribed for filing such appeal is sixty days starting from the date of receipt of order from which the appeal is preferred. Proviso to this Section lays down that the appellate authority, may, if it is satisfied that the appellant was prevented by sufficient cause for preferring the appeal within the said period of sixty days, may extend the period for a further period of sixty days.

(8) It is thus clear that the limitation for filing an appeal is sixty days and the limitation starts to run from the date of receipt of the order of the appropriate authority. If the appeal is not filed within sixty days, then appellant shall have to satisfy the Appellate

Authority that there was sufficient cause for delay in filing the appeal. However, the legislature in its wisdom has clearly laid down in the proviso to Section 7(7) of the PG Act that the appellate authority cannot extend the period beyond another sixty days, which means the outer limitation is $60 + 60 = 120$ days. If the appeal is filed on 121st days, then the appellate authority cannot condone the delay.

(9) We must remember that the appeal is creation of statute. Law makers lay down the period of limitation. In case there was no outer limitation provided in the proviso, we could have taken recourse to the Limitation Act and held that Section 5 of the Limitation Act may be applicable. However, in the PG Act, which is a special piece of legislation, the legislature in its wisdom has clearly laid down that delay can be condoned only up to sixty days and no further delay can be condoned, therefore, the Appellate Authority is powerless to condone the delay when the delay is beyond sixty days.”

7. The learned Single Judge followed the decision in ***Kirtan Ram Thakur*** (supra), which is squarely applicable to the facts of the present case and as such, there is no merit in the appeal.

8. Further more, it will be relevant to state that on merits, the appellants had placed strong reliance on a decision of this Court in ***Netram Sahu v. State of Chhattisgarh & Others*** (Writ Appeal No.

240/2014, decided on 01.08.2014), wherein this Court had taken a view that the daily wages employees like the respondent No. 1 are not at all entitled for gratuity. The aforesaid judgment of this Court was set aside in the case of *Netram Sahu v. State of Chhattisgarh & Another*, reported in *(2018) 5 SCC 430*, wherein the Hon'ble Supreme Court has observed that it would be travesty of justice if the appellant was denied his legitimate claim of gratuity despite rendering continuous service for a period of 25 years, which even according to the State, was regularised. It was also observed that the date from which such service was regularised was of no significance for calculating the total length of service for claiming gratuity amount once the service was regularised by the State.

9. The writ appeal is dismissed. No cost.

Sd/-
(Arup Kumar Goswami)
CHIEF JUSTICE

Sd/-
(Sanjay Agrawal)
JUDGE