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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 25th November, 2021

+ **W.P.(C) 13330/2021 & CM APPL. 41999/2021**
MANAGEMENT OF CPWD Petitioner
Through: Ms. Sarika Singh, Advocate.
versus

SH BHORI LAL & ORS. Respondents
Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present writ challenges the impugned order passed by the Appellate Authority under the Payment of Gratuity Act, 1972 (*hereinafter* “*Gratuity Act*”) dated 23rd February, 2021 in ***Gratuity Appeal No. 36(08)/2021 P.A.DYV***. The said appeal was dismissed on the ground of delay as being beyond limitation in terms of Section 7(7) of the Gratuity Act. The original impugned order by the Controlling Authority, bearing No. ALC II 36(25)/2016 dated 25th August, 2020, awarded a sum of Rs.2,38,430/- along with simple interest at 10% to the Workman, from the exact date of retirement of the Workman till the date the amount of gratuity actually paid.
3. The submissions of Ms. Sarika Singh, Id. Counsel appearing for the Petitioner are three-fold:
 - (i) that the delay ought to have been condoned and the matter ought to be heard on merits;
 - (ii) that the Gratuity Act would not apply and the Central Civil

Services (Pension) Rules, 1972 (*hereinafter* “CCS Rules”), would be applicable to the Workman; and

(iii) that there is no evidence of the Workman having worked with the Petitioner for a period of eight years and eight months.

Thus, she submits the award of the said amount by the Controlling Authority is untenable.

4. This Court has in *Union of India v. Ramesh Chand [W.P.(C.) 6115/2021, decided on 6th July, 2021]*, taking into consideration the decision in *Union of India v. Manik Lal Banerjee, (2006) 9 SCC 643*, held that in the case of workmen who are governed by the CCS Rules, the applicability of the Gratuity Act would have to be considered by the Authorities concerned. The observations in the said judgment are set out below:-

“9. The issue relating to non-applicability of the provisions of the Payment of Gratuity Act, 1972 and the applicability of CCS Rules to the Respondents, has not been considered either by the Controlling Authority or the Appellate Authority. The Appellate Authority has simply rejected the appeal as being barred by limitation. A perusal of the Appeal filed shows that there is a specific ground that the Respondent is governed by the CCS Rules. The relevant provision of the Payment of Gratuity Act, 1972 is extracted below:

“Section 2. Definitions.

In this Act, unless the context otherwise requires, -

...

(e) "employee" means any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are

express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

10. The Supreme Court in **Union of India v. Manik Lal Banerjee, (2006) 9 SCC 643**, in a case concerning an employee of the Railways, considered the applicability of Section 2(e) of the Payment of Gratuity Act, 1972 and held as under:

“10. The 1972 Act was enacted to provide for a scheme inter alia for payment of gratuity to employees in relation to railway companies.

11. Section 2(e) of the 1972 Act defines “employee” to mean

“any person (other than an apprentice) employed on wages, in any establishment, factory, mine, oilfield, plantation, port, railway company or shop, to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work, whether the terms of such employment are express or implied, and whether or not such person is employed in a managerial or administrative capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity”.

The definition, thus, excludes an employee holding a civil post under the Central Government and governed by another Act or Rules providing for gratuity.

...

Thus, the Supreme Court held that a Railway employee would be governed by the specific Rules applicable to employees of Railways and not by the Payment of Gratuity Act, 1972, in view of the express exclusion in Sec. 2(e) of the Act.

“11. Considering the fact that the jurisdiction of the Controlling Authority itself is being disputed by the Union of India, this Court is of the opinion that the said issue deserves to first be considered by the Appellate Authority as it goes to the root of the matter itself. If the Controlling Authority did not have jurisdiction under the Payment of Gratuity Act, 1972, the order would be liable to be challenged by the Union of India and the period of limitation prescribed under the Act may not apply. In these circumstances, the issue of jurisdiction having been raised, this Court is of the opinion that the said issue ought to be adjudicated by the Appellate Authority under the Payment of Gratuity Act, 1972 and the Appeal ought not to be rejected simply on the ground of being barred by limitation. In view of the above discussion, the following directions are issued:

*(i) The matters are remanded back to the Appellate Authority under the Payment of Gratuity Act, 1972. The delay in filing the appeal by the Union of India before the Appellate Authority shall stand condoned and shall not come in the way of the issue as to applicability of the Act from being adjudicated. The appeals shall be heard on the issue of jurisdiction raised by the Union of India considering the legal position as held in **Union of India v. Manik Lal Banerjee (supra)**. The Authority shall hear all parties concerned and decide the said issue.”*

5. This objection as to the applicability of the Gratuity Act has also been raised as a ground by the Petitioner in the appeal in paragraph 6 which reads as under:

“6. That section 2(a) of the payment of Gratuity Act, 1972 (39 of 1972) excludes the employees of the Central Government and State Government receiving pension and gratuity under the Pension Rules but not an employee of the Municipal corporation of Delhi.”

6. These are legal issues which go to the root of the matter. The legal

issues raised by the Petitioners deserve to be adjudicated upon by the Appellate Authority. The delay of approximately four months in filing the appeal before the Appellate Authority is accordingly condoned.

7. Notice is not being issued to the Workman in this matter as that would lead to further costs to the Workman. Accordingly, the delay is condoned with payment of Rs.10,000/- as costs to the Workman by the Petitioner, on the first date of hearing before the Appellate Authority.

8. Subject to such payment being made to the Workman in time, the appeal shall be adjudicated upon by the Appellate Authority on merits keeping in mind the grounds raised by the Petitioner and the facts discussed herein above, as also the judgment cited above. The Appellate Authority to dispose of the matter within a period of three months from the first date of hearing, after dealing by the all ground raised by the Petitioner. Let the Petitioner and Workman appear before the Appellate Authority on 6th January, 2022.

9. Copy of this order be communicated to the Appellate Authority under the Payment of Gratuity Act, 1972 & Dy. Chief Labour Commissioner (Central), Government of India, Ministry of Labour & Employment, 4th Floor, Jeevandeep Building, Parliament Street, New Delhi-110001.

10. Copy of this order be communicated to the Workman by the Registry, as also by the Petitioner.

11. With these observations, the petition with all pending applications is disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 25, 2021/MR/MS