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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 1405/2020 & CM APPL.4874/2020**

EXECUTIVE ENGINEER, C P W D, CD-IV Petitioner

Through: Mr. Sanjay Kumar Patnaik with
Ms. K.K. Kiranpatnaik, Mr. Sunil
Kumar Jha and Mr. M.S. Akhtar and
Mr. R.V. Tegga, Advocates.

versus

NEPAL SINGH Respondent

Through: Mr. Rajesh Kumar with Mr. Harshit
Garg, Advocates.

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Date of Decision: 11th July, 2022.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present petition has been filed with the following prayer:-

“(i) issue a writ of mandamus or any other appropriate writ, order or direction in the like nature to call for the record of the following two cases:-

(a) Gratuity Appeal No.36(41)/2019 P.A.DYC titled Executive Engineer, C.P.W.D., CD- IV Vs Shri Nepal Singh, Ex.Carpenter through General Secretary, All India CPWD (MRM) Karmchari Sangthan decided vide impugned final order dated 24.10.2019 by learned Appellate Authority under Payment of Gratuity Act, 1972 & Dy. Chief Labour Commissioner (Central), New



Delhi at Jeevan Deep Building, Parliament Street, New Delhi-110001; AND

(b) Claim Application. No. ALC-HQTB/36(97)/15 titled Shri Nepal Singh, Ex. Carpenter through General Secretary, All India CPWD (MRM) Karmchari Sangthan Vs. Executive Engineer, C.P.W.D., CD-IV decided, vide impugned final order dated 09.05.2019 by the Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central) at 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi- 110001; AND

(ii) issue a writ of mandamus or any other appropriate writ, order or direction in the like nature thereby setting aside/quashing the impugned final order dated 24.10.2019 passed by learned Appellate Authority under Payment of Gratuity Act, 1972 & Dy. Chief Labour Commissioner (Central), New Delhi in Gratuity Appeal No.36(41)/2019 P.A.DYC titled Executive Engineer, C.P.W.D., CD- IV Vs. Shri Nepal Singh, Ex. Carpenter through General Secretary, All India CPWD (MRM) Karmchari Sangthan; and consequently,

(iii) issue a writ of mandamus or any other appropriate writ, order or direction in the like nature thereby setting aside/quashing the impugned final order dated 09.05.2019 passed by the Controlling Authority under Payment of Gratuity Act, 1972 and Assistant Labour Commissioner (Central) in Claim Application No. ALC-HQTB/36(97)/15 titled Shri Nepal Singh, Ex. Carpenter through General Secretary, All India CPWD (MRM) Karmchari Sangthan Vs. Executive Engineer, C.P.W.D., CD- IV and all subsequent acts of the Controlling Authority seeking compliance of



impugned order dated 09.05.2019, the same being without, jurisdiction and authority of law and a nullity”

2. Impugned order passed in Gratuity Appeal No.36(41)/2019 in Claim Application No. ALC-HQTB/36(97)/15 was decided by the Appellate Authority under the Payment of Gratuity Act, 1972 and Dy. Chief Labour Commissioner (Central), New Delhi.
3. Perusal of the impugned order indicates that the appeal was dismissed on the point of limitation as the same was filed after the expiry of statutory provision of 120 days.
4. Learned counsel for the respondent submits that on the similar facts, this Court in WP(C) 4900/2022 titled *Public Works Department vs. Sh. Budhi Ram & Anr.* has passed the following order:-

“4. Mr. Sisodia by conceding to the fact that against the order of Controlling Authority, the petitioner has a remedy to file an appeal but the appeal provision contemplates the same to be filed within 60 days with a provision for condonation of delay of 60 days. In other words, beyond the period of 120 days, the appeal shall not be maintainable. He has relied upon an order of this Court dated July 06, 2021 in batch of writ petitions lead petition being Union of India v. Ramesh Chand W.P.(C) No.6115/2021 wherein this Court had, by condoning the delay remanded the matter to the Appellate Authority under the Act. He seeks similar directions in this petition as well, provided the recovery notice, which has been issued by the concerned Tehsildar is not given effect to.

5. Mr. Manoj Joshi, learned counsel appearing for the respondent No.1 / workman has no objection if the matter is considered by the Appellate Authority provided, the respondent No.1 / workman is compensated for the delay that has taken



place from the passing of the impugned order in the year 2017 as the respondent No.1 / workman is unable to enjoy the fruits of the order passed by the Controlling Authority

6. Having considered the submissions made by the learned counsel for the parties, in **Union of India v. Ramesh Chand (supra)**, the Coordinate Bench of this Court in paragraphs 11 and 12 held as under:-

“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.

(ii) In the meantime, the recovery notice shall be stayed, subject to the workmen being paid the admitted amount of 50% of the muster roll period, in terms of the CCS (Pension) Rules, 1972. The said payment shall be made on or before the first date of hearing before the Appellate Authority. Any payments made or accepted shall be without prejudice to the rights and contentions of the parties concerned.

(iii) The Appellate Authority shall not be affected by any observations made in this order and shall adjudicate the issue of jurisdiction and, if required, on merits, in accordance with law.

12. Considering that these matters relate to amounts of gratuity being claimed by the workmen, the Appellate Authority shall adjudicate the matter on or before 31st October, 2021.”

7. For parity of reasons, granting liberty to the petitioner to file an appeal against the order dated August 08, 2017 within a period of four weeks from today i.e. on or before April 24, 2022, the petition is disposed of.

8. If such an appeal is filed, the Appellate Authority shall entertain the appeal and decide the same in accordance with law. It is made clear, if the appeal is not filed within four weeks i.e. on or before April 24, 2022, the same shall not be entertained and the respondent No.1 shall be at liberty to approach the Tehsildar for continuance of recovery proceedings.



9. Till such time, the appeal is heard, the recovery proceedings shall stand stayed. A copy of the appeal, to be filed, shall be given to the learned counsel for the respondent No.1 before filing the same with the Appellate Authority.

10. Considering the fact that the challenge in this petition is to an order passed on August 08, 2017 in favour of the respondent No.1 / workman and there being a delay of more than four and a half years and the fact that the respondent No.1 / workman has also to contest the proceedings before the Appellate Authority, this Court deem it appropriate to dispose of this petition with cost of ₹25,000/- to be paid to the respondent No.1 / workman on the date of first hearing before the Appellate Authority.

CM APPL. 14655/2022 (for stay)

In view of the order passed in the writ petition, the application has become infructuous.”

5. Learned counsel for the petitioner submits that in the present petition, he has taken other grounds also which includes challenging the jurisdiction of the Controlling Authority and the Appellate Authority under the Payment of Gratuity Act. However, in view of orders passed by this Court in WP(C) 4900/2022, this Court, without going into the merits of the case, directs that the petitioner is granted liberty to file an appeal against the order dated 09.05.2019 of the Controlling Authority and the Assistant Labour Commissioner (Central) – II New Delhi within a period of four weeks from today i.e. on or before 11.08.2022.

6. It is further directed that if such an appeal is filed, the Appellate Authority shall entertain and dispose of the petition in accordance with law. It is made clear that if the appeal is not filed within four weeks i.e. on or before 11.08.2022, the same shall not be entertained and the respondent



No.1 shall be at liberty to approach the Tehsildar for continuance of recovery proceedings.

7. However, till such time, the appeal is heard, the recovery proceedings shall stand stayed.

8. With these observations, the writ petition is disposed of. However, this writ petition is disposed of without any expression on the merits of the case. Both the parties are at liberty to raise their contentions on facts and laws available to them before the Appellate Authority.

9. This Court also grants litigation expenses of Rs.25,000/-. However, the grant of litigation expenses in the present case may not be taken as a precedent in other cases.

DINESH KUMAR SHARMA, J

JULY 11, 2022
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