



\$~39 to 47, 49 & 50

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

+ W.P.(C) 11494/2022 & CM APPL.33984/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.

versus

PAPPU & ANR. Respondents
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Vineet Dhanda, CGSC for
respondent No.2.

+ W.P.(C) 11501/2022 & CM APPL.33994/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.

versus

RAM PAL & ANR. Respondents
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Vineet Dhanda, CGSC for
respondent No.2.

+ W.P.(C) 11514/2022 & CM APPL.34050/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.

versus

LAL JI & ANR. Respondents
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Mukul Singh, CGSC for
respondent No.2.

+ W.P.(C) 11517/2022 & CM APPL.34054/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner



- Through: Ms. Avni Singh with Mr. Aman Durga, Advocates.
- versus
- LAXMI & ANR. Respondents
- Through: Ms. Richa Sharma, Advocate for respondent No.1.
Mr. Mukul Singh, CGSC for respondent No.2.
- + W.P.(C) 11518/2022 & CM APPL. 34055/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
- Through: Ms. Avni Singh with Mr. Aman Durga, Advocates.
- versus
- SMT. VEENA & ANR. Respondent
- Through: Ms. Richa Sharma, Advocate for respondent No.1.
Mr. Vineet Dhanda, CGSC for respondent No.2.
- + W.P.(C) 11520/2022 & CM APPL. 34059/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
- Through: Ms. Avni Singh with Mr. Aman Durga, Advocates.
- versus
- SMT. PARWATI & ANR. Respondents
- Through: Ms. Richa Sharma, Advocate for respondent No.1.
Mr. Vineet Dhanda, CGSC for respondent No.2.
- + W.P.(C) 11521/2022 & CM APPL. 34060/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
- Through: Ms. Avni Singh with Mr. Aman Durga, Advocates.
- versus
- JAI PAL SINGH & ANR. Respondents



Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Mukul Singh, CGSC for
respondent No.2.

- + W.P.(C) 11524/2022 & CM APPL. 34062/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.
versus
SMT. JAMUNA & ANR. Respondents
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Mukul Singh, CGSC for
respondent No.2.
- + W.P.(C) 11536/2022 & CM APPL. 34162/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.
versus
BHAGWATI & ANR. Respondents
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Mukul Singh, CGSC for
respondent No.2.
- + W.P.(C) 11542/2022 & CM APPL. 34176/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.
versus
RAJBALA & ANR. Respondent
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Vineet Dhanda, CGSC for
UOI.



+ W.P.(C) 11547/2022 & CM APPL. 34182/2022 (stay)
PUBLIC WORKS DEPARTMENT Petitioner
Through: Ms. Avni Singh with Mr. Aman
Durga, Advocates.
versus

RAM DULAREY & ANR. Respondents
Through: Ms. Richa Sharma, Advocate for
respondent No.1.
Mr. Vineet Dhanda, CGSC for
UOI.

% *Date of Decision: 03rd August, 2022.*

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA
J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. Present writ petitions have been filed challenging the order of the learned Controlling Authority under the Payment of Gratuity Act, 1972, wherein the petitioner was held liable to make the payment of gratuity to the respondents/workmen even for the period when they were on the muster roll.

2. Learned counsel for the petitioner has submitted that the Payment of Gratuity Act, 1972 will not be applicable for the period when these respondents were on the muster roll. It has been submitted that the statutory appeal, as provided under the Payment of Gratuity Act, 1972, could not be filed within the prescribed period and there was a delay of about 20 to 30 days. Learned counsel for the petitioner submits that since the prescribed period had expired, they could not file the appeal. It has been submitted that the delay in filing the appeal may be condoned and the petitioner may be



permitted to file an appeal before the Appellate Authority.

3. Learned counsel for respondent No.1/workmen has submitted that the present petitions have been filed just to harass the respondent/workmen. It has been submitted that the impugned orders were passed sometime between January and first week of February, 2022 and that the petitioner did not institute an appeal within the prescribed period without any valid reason and therefore the present petitions are liable to be dismissed.

4. Learned counsel for the respondent No.2 has submitted that the Controlling Authority has passed valid and reasoned orders relying upon the judgment of Hon'ble Supreme Court in **Netram Sahu vs. State of Chhattisgarh**: (2018) 5 SCC 430.

5. Earlier, this Court in W.P.(C) 4912/2022 titled *Public Works Department vs. Nanji Lal And Anr.*, in identical facts, has *inter alia* held as under:-

*“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 / workman.

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.”

6. Further, in W.P. (C) 8701/2022 titled *Public Works Department vs. Ram Pal & Anr.*, this Court has *inter alia* held as under:-

5. Limitation for filing an appeal before the Appellate Authority is 60 days and the Appellate Authority can condone the delay for further 60 days. In the present case, the order is dated 06.12.2021, so there is a delay of little more than 3 months in filing of the petition. Taking into account the totality of the facts and circumstances of the case and the order passed by the Supreme Court condoning the delay during the COVID period, the delay is condoned. Petitioner may file an appeal within four weeks. If such an appeal is filed within four weeks, the



Appellate Authority shall entertain and decide the same in accordance with law. It is made clear that if the appeal is not filed within four weeks i.e. by 30th June, the same shall not be entertained and the respondent No.1 shall be at liberty to approach the Tehsildar for continuance of recovery proceedings.

6. Till such time the appeal is heard, the recovery proceedings shall remain stayed. Considering the fact that the challenge in this petition is to an order passed in favour of the respondent No.1/workman and there being a delay of taking the appropriate proceedings, this Court deem it appropriate to dispose of this petition with costs of Rs.25,000/- to be paid by the respondent No.1/workman on the first date of hearing before the Appellate Court. Learned counsel for the respondent No.1 vehemently opposes the imposition of penalty of Rs.25,000/-. However, this Court considers that in totality of facts and circumstances of the case, it is just and fair to impose the costs.”

7. Thus, in view of the orders passed by this Court in identical facts and on grounds of parity, the petitioner is permitted to file an appeal against the order of the Controlling Authority within four weeks. If such an appeal is filed within four weeks, the Appellate Authority shall entertain and decide the same in accordance with law. The delay in filing the appeal stands condoned. However, it is made clear that if the appeal is not filed within four weeks, i.e., on or before 05.09.2022, the same shall not be entertained and respondent No.1/workmen shall be at liberty to approach the appropriate authority to initiate recovery proceedings against the petitioner.

8. However, till 05.09.2022, the recovery proceedings shall remain stayed. Considering the fact that the challenge in this petition is to an order passed in favour of the respondent/workmen and there being a delay of



taking the appropriate proceedings, this Court deems it appropriate to dispose of this petition with costs of Rs.25,000/- to be paid to the respondent/workmen on the first date of hearing before the Appellate Authority.

9. In view of the above, the present petitions along with pending applications stand disposed of.

DINESH KUMAR SHARMA, J

AUGUST 03, 2022
st

