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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11805/2022 & CM APPL.35191/2022 (stay)

PUBLIC WORKS DEPARTMENT

..... Petitioner

Through: Mr. Dinesh Malik with
Ms. Himshweta Sharma, Advocates.

versus

DHARAM PAL

..... Respondent

Through: Ms. Richa Sharma with Mr. Manoj
Joshi, Advocates.

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Date of Decision: 02nd September, 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 petition has been filed with the following prayers:-

- “(i) *Issue a writ of certiorari and / or mandamus, order and / or direction quashing and setting aside the order dated 31.05.2022 passed by the Appellate Authority under the Payment of Gratuity Act, 1972, and consequently allow the Appeal filed by Petitioner before the Appellate Authority, and set aside the order dated 14.02.2022 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and all other proceedings arising therefrom;*



(ii) *Costs be awarded in favour of Petitioner and against the Respondent.*

2. Learned counsel for the petitioner submits that 50% of the muster roll period in terms of the CCS(Pension) Rules, 1972 has already been paid to the respondent/workman.

3. Learned counsel for the petitioner further submits that in identical matters, this Court in a batch of writ petitions bearing numbers W.P.(C) No.6115/2021, W.P.(C) 6122/2021, W.P.(C) 6123/2021, W.P.(C) 6128/2021 and W.P.(C) 6130/2021 has passed the following directions:-

“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.”

4. Learned counsel for the respondent has fairly submitted that this Court in WP(C) No.5971/2022, W.P.(C) 5998/2022, W.P.(C) No.6001/2022, W.P.(C) 6013/2022, W.P.(C) 6015/2022, W.P.(C) 6028/2022 and W.P.(C) 8701/2022 has also relegated the appeal to the Appellate Authority with the similar directions.

5. In view of the submissions made and on the ground of parity, the following directions are passed:-

1. The matters are remanded back to the Appellate Authority under the Payment of Gratuity Act, 1972. The delay in filing



the appeal by PWD before the Appellate Authority shall stand condoned. The Appellate Authority shall hear the petitioner on the issue of jurisdiction raised by the petitioner.

2. The petitioners are directed to file an appeal against the impugned order dated 14.02.2022 within a period of 4 weeks from today, i.e., on or before 30.09.2022. If such an appeal is filed within the prescribed period, then the Appellate Authority shall entertain and decide the same in accordance with law. If the appeal is not filed within the prescribed period, the same shall not be entertained and the respondent/workman shall be at liberty to approach the Assistant Collector for the recovery proceedings.
3. However till such time the appeal is heard, the recovery proceedings shall stand stayed. The workman is also awarded litigation expenses in the sum of Rs.25,000/-. However nothing expresses herein shall tantamount to be an expression on the merits of the case and the parties are at liberty to raise the contentions before the Appellate Authority in accordance with law.
6. Accordingly, the present petition along with pending application stands disposed of.

DINESH KUMAR SHARMA, J

SEPTEMBER 02, 2022/st