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

+ **W.P.(C) 2722/2022**

VISHNU BHAGAT

..... Petitioner

Through: Mr. Maninder Singh, Sr. Adv. with
Ms. Smriti Asmita, Advs.

versus

**THE CONTROLLING AUTHORITY UNDER PAYMENT OF
GRATUITY ACT, 1972 AND ANR** Respondents

Through: Mr. Anuj Aggarwal, ASC, GNCTD
with Mr. Sanyam Suri and Ms.
Ayushi Bansal, Advs. for R-1

Mr. Deepak Jaiswal, Adv. for R-2.

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Date of Decision: 10th November, 2022

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present writ petition has been filed challenging the order dated 29.03.2019, whereby, an application had been moved for restoration of the claim application No.ALC-1/36(472)/2012 titled as *Visnu Bhagat vs. M/s. Reebok India Company*. The claim application was dismissed in default on 08.01.2019. The petitioner moved an application for restoration of this claim application on 19.02.2019.

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2. Learned senior counsel for the petitioner submits that the petitioner came to know of the dismissal of this application only on 19.02.2019 and on the same date, he moved the restoration application. Learned senior counsel submits that this application was wrongly dismissed by the learned Controlling Authority under the Payment of Gratuity Act, 1972 vide order dated 29.03.2019 on the ground that the same cannot be entertained in view of Rule 11(5) of the Payment of Gratuity (Central) Rules, 1972. Learned senior counsel for the petitioner submits that the learned Controlling Authority has misinterpreted the said Rule.

3. Rule 11(5) of Payment of Gratuity (Central) Rules, 1972 reads as under:-

11. Procedure for dealing with application for direction:

“(5) If the employer concerned fails to appear on the specified date of hearing after due service of notice without sufficient cause, the controlling authority may proceed to hear and determine the application ex parte. If the applicant fails to appear on the specified date of hearing without sufficient cause, the controlling authority may dismiss the application:

Provided that an order under this sub-rule may, on good cause being shown within thirty days of the said order, be reviewed and the application re-heard after giving not less than fourteen days' notice to the opposite party of the date fixed for rehearing of the application.”

4. A bare perusal of the Rule makes it clear that on dismissal of the application in default or the respondent being proceeded ex-parte, the Rule confers powers upon the Authority to restore the same or set aside the ex-

parte order. A reading of the Rule does not indicate that the application moved by the petitioner could not have been entertained by the learned Controlling Authority. Even otherwise, the principle of natural justice would require that the claim petition of the petitioner should be adjudicated on merits. The interest of justice would require that the present petition may be allowed and the claim application No.ALC-1/36(472)/2012 titled as *Visnu Bhagat vs. M/s. Reebok India Company* be restored to its original number for disposal in accordance with law.

5. In view of the above, the present petition stands disposed of.

6. Parties are directed to appear before the learned Controlling Authority under the Payment of Gratuity Act, 1972 on 24th November, 2022.

DINESH KUMAR SHARMA, J

NOVEMBER 10, 2022

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