IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (L) No. 6414 of 2024

The Agent, Gopinathpur OCP under Mugma Area of M/s Eastern Coalfields Limited, Post Nirsa, Police Station Nirsa, District Dhanbad through its Chief Manager (M) namely Rewati Raman Kant, aged about 58 years, son of Late Jagdish Prasad, resident of Quarter Number- D-11, Gopalpura Colony, Nirsa, Post Mugma, Police Station Nirsa, District Dhanbad **… … Petitioner**

Versus

1. The Union of India through the Secretary, Ministry of Labour and Employment, Shram Shakti Bhawan, Rafi Marg. Post Rafi Marg, Police Station Rafi Marg, New Delhi
2. Appellate Authority under Payment of Gratuity Act and Deputy Chief Labour Commissioner (Central) Asansol, having its Office at Shramev Jayate Bhawan, Jagjivan Nagar, Asansol, I/C Dhanbad, Post Jagjivan Nagar, Police Station Seraidhela, District Dhanbad
3. Controlling Authority under Payment of Gratuity Act and Assistant Labour Commissioner (Central) Dhanbad- I, having its Office at Shramev Jayate Bhawan, Jagjivan Nagar, Asansol, I/C Dhanbad, Post Jagjivan Nagar, Police Station Seraidhela, District Dhanbad
4. Smt. Jabuna Devi, wife of Late Bishwantah Bhuia, resident of Village Khusuri, Post Nirsa, Police Station Nirsa, District Dhanbad

… … Respondents

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Vikash Kumar, Advocate
For the Respondent :

05/17th December 2024

1. Heard the learned counsel appearing on behalf of the petitioner.

2. This writ petition has been filed for the following reliefs: -

> *"(i) For the issuance of an appropriate writ, order or direction, including writ of Certiorari, for quashing the order dated 16.07.2024 (Annexure-3) passed by Sri. V.K. Trivedi, Deputy Chief Labour Commissioner (Central), Asansol, I/C Dhanbad (Appellate Authority under the provisions of Payment of Gratuity Act, 1972), whereby and whereunder the*

Appeal preferred by the petitioner against the order dated 22/23.11.2023 (Annexure-1) passed by the Controlling Authority under Payment of Gratuity Act, 1972 cum Assistant Labour Commissioner (Central), Dhanbad- I in P.G. Application No. 36/(11)/2022. E.6 has been dismissed and has further been pleased to affirm the order dated 22/23.11.2023 (Annexure-1), directing the petitioner to pay the Respondent No. 4 the total Gratuity Amount of Rs. 14,16,597/- within 30 days from the date of receipt of this order under intimation to the undersigned.

(ii) For the issuance of an appropriate writ, order or direction, including writ of Certiorari, for quashing the order dated 22/23.11.2023 (Annexure-1) passed by the Controlling Authority under Payment of Gratuity Act, 1972 cum Assistant Labour Commissioner (Central), Dhanbad- I in P.G. Application No. 36/ (11)/2022. E.6 whereby and whereunder the petitioner has been directed to pay the Respondent No. 4 the total Gratuity Amount of Rs. 14,16,597/- within 30 days from the date of receipt of this order under intimation to the undersigned.

(iii). For any other relief or reliefs for which the petitioner is legally entitled in the facts and circumstances of the case."

3. The learned counsel for the petitioner submits that the specific case of the petitioner was that the appointment of Bishwanath Bhuia was through impersonation. He has submitted that the controlling authority has passed an order for payment of gratuity in favour of the wife of the ex-employee, Bishwanath Bhuia. The applicant was Smt. Jabuna Devi, W/o late Sri Bishwanath Bhuia. He has submitted that considering the fact that the husband of the applicant obtained employment through impersonation, his appointment was null and void and this aspect of the matter be taken into consideration. However, the petitioner filed appeal before the appellate authority and the appellate authority has dismissed the appeal on the ground of delay. The learned counsel has submitted that the appellate authority ought to have condoned the delay.

4. The learned counsel has referred to paragraph 23 of the writ petition to submit that the petitioner had filed the appeal along with the application for condonation of delay, but the same was not appreciated and the appeal

preferred by the petitioner was dismissed by the appellate authority. He has further referred to paragraph 24 of the writ petition to submit that after receiving the order of controlling authority dated 23.11.2023, the petitioner took steps and initiated a note sheet for taking approval from the competent authority for filing the appeal before the appellate authority. The aforesaid process took some time in finalizing the records for filing appeal and the petitioner being a Central Government/Public Sector undertaking it is essential to take approval from the competent authority for filing appeal. However, such plea was rejected by the appellate authority.

5. The learned counsel submits that there is a provision for preferring appeal within a period of 60 days and there is provision of condonation of delay of further 60 days and the total period for filing the appeal is 120 days.

6. After hearing the learned counsel for the petitioner, this Court finds that the matter was taken up on 09.12.2024 and it was argued by the learned counsel for the petitioner that the appointment of ex-employee, namely, Bishwanath Bhuia was a nullity in the eyes of law as he had impersonated himself and during the course of argument, the learned counsel for the petitioner was not able to satisfy this Court as to whether any disciplinary proceeding was ever initiated against the ex-employee or whether any criminal case was instituted and whether he was convicted in the criminal case with regard to impersonation. The matter was adjourned as the learned counsel prayed for time to file supplementary affidavit in this case. However, neither any supplementary affidavit has been filed nor any prayer for adjournment has been made today while arguing the matter.

7. This Court also finds that one of the grounds which was raised before the appellate authority was that the ex-employee had impersonated himself and the ground on which such plea was raised was that the alleged fact was examined by the police and according to police verification report, Bishwanath Bhuia was actually Bishu Mondal and he had obtained

employment fraudulently. Even in the grounds of appeal, no such plea was taken that the ex-employee was subjected to any disciplinary proceedings or was convicted in any criminal case. Accordingly, the learned counsel for the petitioner has rightly not filed any supplementary affidavit as it was never the ground of the petitioner before the appellate authority that Bishwanath Bhuia was ever found guilty in disciplinary proceedings or criminal case arising out of the allegation of impersonation. This Court finds as per records that that the ex-employee, Bishwanath Bhuia, was never convicted in any criminal case for impersonation or for obtaining fraudulent employment nor he was subjected to any disciplinary proceeding culminating in passing of any order against him.

8. This Court further finds that the appellate authority has referred to the provision of law which empowers the appellate authority to extend the period of limitation only by sixty days in additional to the prescribed period of sixty days for filing appeal from the date of receipt of copy of the order.

9. The perusal of the order of the appellate authority reveals that a finding has been recorded that the petitioner has admitted that he had received the order of the controlling authority on 30.11.2023 and the appeal was preferred on 27.05.2024 and therefore it is not in dispute that the appeal was filed beyond total period of 120 days.

10. In such circumstances, on the face of the records, this Court finds that the order of the controlling authority directing the petitioner to pay gratuity to the wife of the ex-employee does not suffer from any perversity or illegality. This is over and above the fact that the appellate authority has refused to entertain the appeal as the same was barred by limitation and was filed beyond the condonable period of delay by the appellate authority. This Court finds that the appellate authority has passed a well-reasoned order while rejecting the petition on account of delay and has rightly refused to condone delay and the order does not call

for any interference under writ jurisdiction. This is over and above the facts that even on merits the petitioner does not have a case as discussed above.

11. Considering the totality of the facts and circumstances of this case, this Court finds no merit in this writ petition, which is hereby dismissed.

12. Pending I.A., if any, is closed.

(Anubha Rawat Choudhary, J.)

Mukul