



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 8302 of 2023

[The State of Maharashtra, thr. Dean, Indira Gandhi Medical College
& Hospital, Nagpur and ors. ..vs.. Mala D/o Bajirao Kale]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. K. P. Marpakwar, AGP for the petitioners
Mr. N. S. Warulkar with Mr. M. S. Sukhdeve, Advocates for respondent

CORAM : ANIL L. PANSARE J.

DATED : 05-02-2025

The petitioners are aggrieved by order dated 27-9-2022 passed by the Controlling Authority/Labour Court, Nagpur under the Payment of Gratuity Act, 1972.

2. Having heard both sides, it transpires that the appropriate remedy that was available to the petitioners was to file appeal under Section 7(7) of the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act of 1972').

3. Section 7(7) of the Act of 1972 provides that appeal may be filed within 60 days which period can further be extended by the appellate authority by 60 days upon showing sufficient cause.

4. Thus, the outer limit to file appeal is 120 days. The petitioners failed to approach the competent authority and, therefore, are now invoking writ jurisdiction on the count that they could not file appeal within stipulated time.

5. The coordinate Bench in the case of *Nanded Zilla Dekhrehk Sahakari Sanstha Maryadit Vs. Narhar Pralhadrao Kulkarni [2017(3) ALL MR 827]* held that where the legislature did not prescribe entertaining of an appeal or proceedings particularly beyond number of days, the said period cannot be enlarged even by the Court. The Court further observed that

legislature had not applied Sections 5 and 12 of the Limitation Act, 1963 to the Act of 1972.

6. Further the coordinate Bench of this Court in the case of the ***Municipal Council, Achalpur Vs. Jagannath s/o Vishwanath Tathod (Writ Petition No. 911/2017) dated 27-9-2019*** was required to examine the order passed by the controlling authority as also the appellate authority in the facts and circumstances of the case, which are identical to the case in hand. In the said case also, the employees were continued for years together on daily wages and were later on regularized with a condition that the previous service will not be counted for financial benefits. The argument was made, like is made in the present case that the employee, having accepted the order of regularization, cannot challenge the condition. The Court, after having considered the rival contentions and having taken recourse to various judgments on the point, upheld the finding rendered by the controlling authority and the appellate authority and held that the employee is entitled to get gratuity for the entire period of service until his/her retirement on superannuation along with interest as awarded by the controlling authority.

7. Similar will be the fate of the present petition. The petition is accordingly dismissed for the reasons stated hereinabove so also the reasons stated in the order dated 27-9-2019 passed by the coordinate Bench of this Court in Writ Petition No. 911/2017. No order as to costs.

(Anil L. Pansare, J.)