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

\+ W.P.(C) 5572/2025

M/S KHYBER SERVICE STATION AND ANR .....Petitioners

Through: Mr. Divanshu Sehgal, Advocate.

versus

KALI CHARAN .....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **09.05.2025**

1. By way of present petition under Article 226 of the Constitution of India, the petitioners challenge the orders dated 08.04.2024 and 18.02.2025 passed by Deputy Labour Commissioner and Appellate Authority under the Payment of Gratuity Act, 1972 (hereinafter, 'The Act'), respectively.

2. Petitioner No.1 is a service station which is managed by petitioner No.2 who is a director. Respondent approached the Deputy Labour Commissioner vide claim petition bearing No. ALC-II/36(43)/2023 alleging that he was employed as a driver with the petitioner No.1 since 01.03.2011 and his last drawn wage was Rs. 24,000/-. It was his case that he was fired from the job on 30.11.2022 and since despite various requests, the petitioners did not keep him on the job, the respondent resigned on 30.03.2023. It is alleged that when the respondent demanded gratuity vide letter dated 01.04.2023, the petitioners neither replied nor paid any gratuity. He further stated that since the petitioners owned several petrol pumps in more than one state where the respondent was made to work, he approached

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the Central Labour Office. In the proceedings, the petitioners were proceeded ex-parte. Vide the impugned order dated 08.04.2024, petitioner No.1 was directed to pay gratuity of Rs.1,66,154/- alongwith simple interest @ 10% on account of delay in payment of gratuity as per the provisions of Section 7(3-A) of the Act from the date of 01.12.2022 till the date of payment of amount.

3. Aggrieved by the aforesaid order, petitioner No.1 challenged the same by way of an appeal under Section 7(7) of the Act which was filed on 07.10.2024. Vide impugned order dated 18.02.2025, the appeal was dismissed by the Appellate Authority on the ground that the same was filed beyond the permitted/extended period of 120 days provided under Section 7(7) of the Act and the petitioner failed to deposit the required gratuity amount in accordance with the second proviso of Section 7(7).

4. For convenience, the provision under Section 7(7) of the Act is provided hereinunder:

> *"(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:*
> *Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.*
> *Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under subsection (4), or deposits with the appellate authority such amount."*

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Even from a prima facie lens, it is evident that the legislature, in its prudence, established a strict limitation period of 60 days from the date of receipt of the order. This timeframe may be extended by an additional 60 days only if the appellant can convincingly justify the delay to the Appellate Authority.

5. The Appellate Authority has cited various judicial decisions including City College, Calcutta vs. State of West Bengal[1]; Indian Bank through Asst. General Manager vs. Baba Sakharam Kharbade and Ors.[2]; Metal Box India Ltd. vs. B.R. Rangari, Assistant Commissioner of Labour and Ors.[3] that align with the aforementioned perspective, that the Appellate Authority, as per the Act, lacks the jurisdiction to consider an appeal filed under Section 7(7) of the Act if it exceeds 120 days from the date of receiving the order from the Controlling Authority.

6. A reference in this regard may be made to the decision of the Division Bench of this Court in Delta Impex v. Commissioner of Customs[4], wherein the Court while dealing with Section 128 of the Customs Act, 1962 noted that the provision provides for extension of the period of limitation in a manner which is akin to that under Section 7(7) of the Payment of Gratuity Act, 1972. It was further held that when the Act provides for a separate period of limitation and the specific period for which the limitation can be extended and delay condoned, the applicability of Section 5 of the Limitation Act, 1963 is excluded. The relevant portion of the decision is extracted below for convenience:

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[1] 1987-I-LLJ-41.
[2] 2008-II-CLR-626.
[3] 2006-III-LLJ-686.
[4] 2004 SCC OnLine Del 100.

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"11. In the case of VAN & Co. v. Babubhai Lallu Bhai, reported in 1981 Gujarat Law Herald 5, a Division Bench of Gujarat High Court, while examining sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972 and the provisions contained in the Limitation Act, pointed out that the provisions in Section 7(7) are inconsistent with Section 5 of the Limitation Act. Sub-section (7) of Section 7 of Payment of Gratuity Act, provides for extension of the period of limitation similar to one which is provided in Section 128 of the Act.
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13. The Court is required to examine the scheme of the special law, and the nature of the remedy provided therein. Considering these aspects, the Court will have to find out whether the Legislature intended to provide a complete code by itself which alone should govern the matters provided by it. On examination of the relevant provisions, if it becomes clear that the provisions of Section 5 of the Limitation Act are necessarily excluded, then the said provisions cannot be called in aid to supplement the provisions of the Act. It is open to the Court to examine whether and to what extent the nature of the provisions contained in Limitation Act in comparison with the scheme of the special law are excluded from operation. When Section 128 of the Customs Act specifically provides the period of limitation and a further period of 30 days only during which the applicant was prevented by sufficient cause from presenting an appeal can be condoned, meaning thereby that the legislature has given a mandate that delay could be condoned only for the specified period, prescribed in the proviso to section 128 of the Act, and not further.

14. In the instant case, a separate period of limitation is provided, as also the period for which delay can be condoned. The Legislature was aware about the provisions contained in Section 5 of the Limitation Act, yet with an intention to curb the delay in taxation matters, it has specially provided that after the statutory period, if there is delay of 30 days, on showing sufficient grounds for delay of 30 days, that can be condoned and no further. Thus, applicability of Section 5 of the Limitation Act is specifically excluded.

15. The expression "expressly excluded" in sub section 2 of Section 29 of the Limitation Act means an exclusion by express words, i.e. by express reference and not exclusion as a result of logical process of reasoning. In the instant case, there is no question of implied exclusion but, it specifically provides a different period of limitation, as also the period during which, if delay has occurred, it could be condoned."

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7. The order of the Controlling Authority was passed on 08.04.2024. The appeal under Section 7(7) of the Act which was filed on 07.10.2024. Evidently, the petitioner has approached the Appellate Authority after a delay of more than 120 days, and the reasons provided by the petitioner in the condonation of delay application have been held to be vague and unsubstantiated by the Appellate Authority. Moreso, no specific or further averments have been made before this Court providing reasons for the delay in approaching the appellate authority.

8. This Court is of the opinion that the Appellate Authority has discussed the issue of limitation in detail and has rightly arrived at the conclusion. This Court does not see any reason to interfere with the order of the Appellate Authority, hence, the same is upheld.

9. Resultantly, the present petition is dismissed.

MANOJ KUMAR OHRI, J

MAY 9, 2025/*rd*

corrected and released on 23.05.2025

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