

24.04.2026
Item No.3
Court No. 30
Piya

WPA 8488 of 2026

**Bridge and Roof Company (India) Ltd. &
Anr.**

-vs-

**The Assistant Labour Commissioner
(Central), Kolkata and Controlling
Authority & Anr.**

Mr. Soumya Majumder, Ld. Sr. Adv.
Mr. Sudarshan Kr. Agarwal
Ms. Ditsha Dhar
Ms. Debanjana Paul
Mr. Sakshi Singh

... for the Petitioner

Mr. Balai Ch. Paul
Ms. Tithi Roy

.... For the Respondents

1. The writ application has been preferred challenging the certificate dated 9th February, 2026 issued by the respondent no. 1 being the controlling authority herein, in file no. 48/04/2022-E3 and has prayed for quashing of the same along with an order dated 18th August, 2025 also issued by the respondent no. 1 the controlling authority.

2. Learned counsel for the respondent herein submits that the said order dated 18th August, 2025 is an appealable order. But as no appeal has been preferred by the petitioners till date, the same is barred by limitation and the period of limitation cannot be extended beyond the permissible limit as provided in the statute in the present case under Section 7(7) of the payment of gratuity act.

3. Learned counsel for the **respondent** has relied upon the following judgments:-

i. City College, Calcutta vs State of West Bengal and Ors., decided on February 10, 1986.

ii. Ali Hossain vs M/s. Budge Budge Co. Ltd. & Ors. in FMA No. 3595 of 2015 decided on 13.07.2018.

4. The **petitioner** on the other hand has relied upon the following judgment:-

(i) City College, Calcutta vs State of West Bengal and Ors., decided on February 10, 1986 (Para 3).

(ii) C.D. Steel Pvt. Ltd. vs Assistant Provident Fund

**Commissioner, 2019 SCC
OnLine Cal 9277.**

5. On hearing the parties and on perusal of the materials on record, it appears that admittedly the **employee herein has already received the admitted amount of gratuity.** It is for the balance amount that the order has been passed by the controlling authority.
6. Mr. Paul, learned counsel for the respondent relies upon Section 7(7) of the payment of gratuity act and submits that there is no scope for extending the period of limitation, beyond the period as provided under the statute/Act.
7. On the other hand, Mr. Majumder, learned senior counsel appearing for the petitioner submits that the petitioner is not at fault for not preferring an appeal within the statutory period in view of the following pleadings made in the writ application:-
 - “(i) *During the course of the hearings before the respondent no. 1 authority, the petitioner company authorized one of its employees to take appropriate steps to defend such application. Accordingly he was taking all*

necessary steps. The petitioner company has placed their submissions vide a reply and other submissions to defend the interest of the petitioner company.

(ii) To the utter shock and surprise, the petitioners received a certificate issued under section 8 of the said Act of 1972 dated February 18, 2026 issued by the respondent no. 1 directing the respondent to pay a sum of Rs. 4,03,044/- (Rupees Four Lakh Three Thousand Forty-Four Only) to the respondent no. 2 along with 10% simple interest per annum w.e.f. 31/10/2016 till the actual date of payment plus 15% compound interest per annum w.e.f. 01/12/2016 till the date of recovery.

(iii) The petitioner company further learned that the said representative did not take the appropriate steps after the said order was passed by the respondent no. 1 authority and further the said representative failed to apprise the respondent no. 1 authority of the correct

factual circumstances. Due to such major lapse on behest of the said representative, the petitioner company could not prefer an appeal against the said order dated August 18, 2025, within the time limit prescribed under Section 7(7) of the Payment and Gratuity Act, 1972. It is pertinent to mention herein that the petitioner company has taken necessary steps against the said representative for the said lapses, to avoid any repetition of such conduct.”

- 8. It is thus submitted by Mr. Majumder** that there was no fault on the part of the petitioner, who have only gained knowledge about the disposal of the proceedings before the controlling authority, on receiving the certificate under Section 8 of the payment of gratuity act, issued on 09.02.2026.
- 9. Mr. Majumder**, further argues that the petitioner cannot be made to suffer, as there are no fault for being unable to prefer an appeal because of the fact that they had no knowledge about such proceedings being concluded by the

controlling authority due to the laches of their representative.

10. Mr. Majumder further submits that the writ Court has ample powers to relegate the petitioner before the appellate authority and as it is the writ Court, which shall direct so, the question of limitation shall not arise. Reliance is placed upon the judgment of the Supreme Court in ***Hari Krishna Mandir Trust vs State of Maharashtra and Ors. (2020) 9 SCC 356, decided on August 7, 2020.***

11. Mr. Paul, learned counsel for the respondent relies upon the judgment in ***Ali Hossain (Supra)***, wherein the Division Bench of this Court held as follows:-

“In view of the above, the order impugned to this appeal is not sustainable in law on the following grounds:

(1) The order impugned to the writ application was an order passed under sub-section (4) of Section 7 of the said Act, 1972 on March 10, 2015, the learned Single Judge granted liberty to the respondent-company to prefer an appeal against that order within

August 21, 2015, i.e., beyond 120 days, overreaching the provisions of sub-section (7) of Section 7 of the said Act, 1972 as also 1^a proviso to the above provision;

(ii) The learned Single Judge allowed the respondent-company to proceed with the appeal subject to depositing of 50% of the amount ordered by the controlling authority in its order dated March 10, 2015, it was contrary to the provisions of 2nd proviso to sub-section (7) of Section 7 of the said Act, 1972.

Therefore, the above order cannot be sustained in law in view of the provisions of sub-section (7) of Section 7 of the said Act, 1972.

It will not be out of context to observe that in the event the period of limitation in initiating of a proceeding expires during the pendency of a writ proceeding there is no scope to initiate a statutory proceeding or to prefer an appeal to condone such delay on the

ground of pendency of a lis before the Writ Court.

Reference may be made to the decision of City College, Calcutta vs. State of W.B. & Ors. reported in 1986(52) FLR 547 and operative portions of the above judgment is quoted below:

"7. In his impugned order of the Appellate Authority has rightly pointed out that in view of the sub-section (7) of Section 7 of the Payment of Gratuity Act, 1972, appeals must be filed within 60 days from the date of the receipt of the order by the Controlling Authority. Under proviso to sub-section (7) of Section 7 of the said Act the Appellate Authority may extend the said period of 60 days by a further period of 60 days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period of 60 days. In the above view, after expiry of 120 days from the date of the receipt of the order passed by the

Controlling Authority there could be no scope for further extending under Section 5 of the Limitation Act the period prescribed by the law for preferring an appeal under Section 7(7) of the Payment of Gratuity Act against the order passed under sub-section (4) of Section of the said Act.

8. For the foregoing reasons, we hold that the Appellate Authority did not commit any jurisdictional error by refusing to condone the delay beyond 120 days in preferring the appeal of the petitioner. The appeal provided under Section 7 of the Payment of Gratuity Act, 1972 is not before any Court. The Act has vested an executive authority with juridical quasi judicial powers in order to enable it to act as the Appellate Authority. In view of the decisions of the Supreme Court mentioned hereinbefore it is no longer open to us to consider whether or not by force of Section 29(2) of the Limitation Act, 1963, the

provisions of Sections 5 to 25 of the said Act have been made applicable only in case of appeal and applications under any special presented to Courts of law and not to persoma designata or administrative authorities.

We therefore dismiss this Revisional Application without any order as to costs."....."

12. In view of the said judgment of the Division Bench in ***Ali Hossain (Supra)*** which has relied upon the judgment of ***City College, Calcutta (Supra)***, learned counsel for the respondent submits that even a writ court cannot extend the period of limitation beyond the period as provided under the statute.
13. Similar view has also been taken by the Supreme Court in the judgment of ***Assistant Commissioner (CT) LTU, Kakinada & Ors. vs Glaxo Smith Kline Consumer Health Care Limited, (2020) 19 SCC 681***, wherein the Supreme Court has categorically held that the High Court in its exercise of **powers under article 226 shall act with self imposed restraint even though an act cannot bar the**

jurisdiction of Courts under Article 32 or 226, constitutional Courts who take note of the legislative intent and exercise power consistent with provision of statute and such power under article 226 cannot be exercised when invoked to under mind or defeat the applicable statutory regime.

14. The Court has further held that complete mechanism is provided under the act and only that mechanism is to be followed and a writ petition is not maintainable so as to defeat statutory scheme. It has been categorically held that an appeal cannot be preferred beyond the period as prescribed under the act and delay cannot be condoned by exercising power under article 142 or under article 226 of the constitution. Nor can such delay be condoned by invoking Section 5 of the limitation act 1963.

15. Finally **the Supreme Court** in the said case held as follows in **paragraph 23:-**

“23.Arguendo, reverting to the factual matrix of the present case, it is noticed that the respondent had asserted that it was not aware about the passing of assessment order dated 21-6-2017 although it is admitted that the same was served on the authorised

representative of the respondent on 22-6-2017. The date on which the respondent became aware about the order is not expressly stated either in the application for condonation of delay filed before the appellate authority, the affidavit filed in support of the said application or for that matter, in the memo of writ petition. On the other hand, it is seen that the amount equivalent to 12.5% of the tax amount came to be deposited on 12-9-2017 for and on behalf of respondent, without filing an appeal and without any demur — after the expiry of statutory period of maximum 60 days, prescribed under Section 31 of the 2005 Act. Not only that, the respondent filed a formal application under Rule 60 of the 2005 Rules on 8-5-2018 and pursued the same in appeal, which was rejected on 17-8-2018. Furthermore, the appeal in question against the assessment order came to be filed only on 24-9-2018 **without disclosing the date on which the respondent in fact became aware about the existence of the assessment order dated 21-6-2017.** On the other hand, in the affidavit of Mr Sreedhar Routh, Site Director of the respondent Company (filed in support of the application for condonation of delay before the appellate authority), it is stated that the Company became aware about the

irregularities committed by its erring official (Mr P. Sriram Murthy) in the month of July 2018, which presupposes that the respondent must have become aware about the assessment order, at least in July 2018. In the same affidavit, it is asserted that the respondent Company was not aware about the **assessment order, as it was not brought to its notice by the employee concerned due to his negligence.** The respondent in the writ petition has averred that the appeal was rejected by the appellate authority on the ground that it had no power to condone the delay beyond 30 days, when in fact, the order examines the cause set out by the respondent and concludes that the same was unsubstantiated by the respondent. That finding has not been examined by the High Court in the impugned judgment and order [Glaxo Smith Kline Consumer Healthcare Ltd. v. CCT, 2018 SCC OnLine Hyd 1985] at all, but the High Court was more impressed by the fact that the respondent was in a position to offer some explanation about the discrepancies in respect of the volume of turnover and that the respondent had already deposited 12.5% of the additional amount in terms of the previous order passed by it. That reason can have no bearing on the justification for non-filing of the appeal within

*the statutory period. Notably, the respondent had relied on the affidavit of the Site Director and no affidavit of the employee concerned (P. Sriram Murthy, Deputy Manager-Finance) or at least the other employee [Siddhant Belgaonker, Senior Manager (Finance)], who was associated with the erring employee during the relevant period, has been filed in support of the stand taken in the application for condonation of delay. **Pertinently, no finding has been recorded by the High Court that it was a case of violation of principles of natural justice or non-compliance of statutory requirements in any manner.** Be that as it may, since the statutory period specified for filing of appeal had expired long back in August 2017 itself and the appeal came to be filed by the respondent only on 24-9-2018, **without substantiating the plea about inability to file appeal within the prescribed time,** no indulgence could be shown to the respondent at all.”*

16. It appears that the facts as stated in paragraph 23 of the said judgment as reproduced hereinabove, comes to the aid of the petitioner in the present case.

17. The petitioner herein has specifically pleaded that it was due to the conduct

of their representative that they did not have the knowledge of the order passed by the controlling authority.

18. The said order has been passed against the petitioners as the said representative did not present their case properly before the authority concerned and as such the same has caused **severe prejudice** to the petitioner herein and that the impugned order has been passed in **violation of the principle of natural justice and there has been clear abuse process of law.**

19. The petitioner has also expressly stated that their date of knowledge as to the order passed by the controlling authority is on the basis of the certificate issued by the controlling authority on 09.02.2026.

20. As such it has been prima facie proved that the petitioner became aware of the controlling authority's order only on 09.02.2026.

21. Accordingly this Court is of the view that not providing an opportunity to prefer an appeal in such circumstances, will cause severe prejudice to the petitioner herein.

22. Thus, in the present case, in the interest of justice, the date of

knowledge to compute the period of limitation be taken as 09.02.2026. The statutory period for preferring an appeal against an order of the controlling authority under Section 7(7) is 60 days from the date of receipt of the order.

- 23.** Herein it is to be held, from the date of receiving the certificate dated 09.02.2026 and the same can be extended for a further period of 60 days thereafter on sufficient cause being shown. In all period of 120 days, which in the present case will expire on 09.06.2026.
- 24.** Accordingly, the writ application is disposed of with liberty granted to the petitioner herein in the interest of justice, to prefer a statutory appeal within 30 days from the date of this order.
- 25.** The period of limitation be computed on and from 09.02.2026, being the date of knowledge and the cause shown being just and sufficient.
- 26.** Thus, the impugned order of the controlling authority dated 18.08.2025 and the certificate dated 09.02.2026, be stayed **till the disposal of the appeal by the appellate authority.**

- 27.** In case, no appeal is preferred within the period as directed by this Court, the order of stay shall stand vacated on expiry of 30 days and the authority concerned shall be at liberty to proceed in accordance with law.
- 28.** It is made clear that this Court has not gone into the merit of this case.
- 29. Writ application is accordingly disposed of.**
- 30.** All connected application, if any, stands disposed of.
- 31.** Interim order, if any, stands vacated.
- 32.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)