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State of Kerala vs the Controlling Authority Under the Payment of Gratuity

State of Kerala vs the Controlling Authority Under the Payment of Gratuity

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Court : Kerala

Decided On : Feb-01-2023

Judge : Honourable Mr. Justice Amit Rawal

Appeal No. : WP(C)/14721/2012

Appellant : State of Kerala

Respondent : The Controlling Authority Under the Payment of Gratuity

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE AMIT RAWAL WEDNESDAY, THE 1ST DAY OF FEBRUARY 2023 / 12TH MAGHA, 1944 WP(C) NO. 14721 OF 2012 PETITIONERS: 1 STATE OF KERALA REP.BY THE SECRETARY TO GOVERNMENT, HIGHER EDUCATION DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM. 2 THE SUPERINTENDENT OF GOVERNMENT PRESSES THIRUVANANTHAPURAM. BY ADVS. SRI.ASHOK M CHERIAN, ADDL. ADVOCATE GENERAL SMT.SABEENA P ISMAIL, GOVERNMENT PLEADER RESPONDENT: 1 THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT (DISTRICT LABOUR OFFICER),

THIRUVANANTHPRUAM.PIN 695 014. 2 THE APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT (THE JOINT REGIONAL LABOUR COMMISSIONER, KOLLAM) PIN 691 001 3 SMT. C LEELA, ARCHANALAYAM, PALOTTUVILA, MALAYINKEEZHU P.O, THIRUVANANTHAPURAM. PIN 695 014 4 SRI. K.K. CHANDRA BABU, MANOJAM, TC 42/117, VALLAKKADAVU P.O SREEVARAHAM, THIRUVANANTHAPURAM. PIN 695 036 5 SRI. B THULASEEDHARAN, ARCHANA, TC 61/12691, THOTTAM, MANACAUD P.O, THIRUVANANTHAPURAM. PIN 695 036 6 SRI. G. SIVADASAN, NISHA NIVAS, TC 62/2654, KAMALESWARAM, MANACAUD P.O, THIRUVANANTHAPURAM. PIN 695 036

7 SRI. S. RAMACHANDRAN, SARALA NIVAS, TC 75/228, BANK ROAD, ANAYARA P.O, THIRUVANANTHAPURAM 695 012 8 SRI. B SAMBASUVAN, THAMARA, SREEKARIYAM P.O, WP(C) NO. 14721 OF 2012 -2- THIRUVANANTHAPURAM. PIN 695 011 9 SRI. N. SATHYANANDAN, PATTUVILAKAM, ANAYARA P.O, THIRUVANANATHAPURAM, PIN 695 011 10. 10 SRI.T.PREMNATH, SUPREETHAM, TC 03/1316, PATTOM P.O., THIRUVANANTHAPURAM, PIN 695 011 (DIED) 11 SRI. J. FRANCIS, TC 53/1053, MADATHUVILA LISA HOUSE, SRA-C3, SANTHIVILA, NEMOM P.O, THIRUVANANTHAPURAM 695 020. 12 SRI. P. PRABHAKARAN NAIR, VEENA GARDENS, VANDANOOR, PERUMPAZHUTHOOR P.O, NEYYATTINKARA, PIN 695 121. 13 SRI. K. VIJAYAN, VILAYIL VEEDU, MANNANTHALA. P.O, THIRUVANANTHAPURAM, PIN 695 015 14 SRI. V. BALAKRISHNAN NAIR, PULIMOOTTU VEEDU, THACHANCODE, VINOBA NIKETHAN P.O, ARYANAD, PIN 695 542 15 SMT.B.AMBIKA DEVI, AMBADI, ANNOR, MANGAD, THIRUMALA PO, THATVANANTHAPURAM, PIN 695 014 16 SRI.A.SAMBAN, MAFNAS, CHAVADIMUKKU, KADAKKAVOOR P.O., THIRUVANANTHAPURAM, PIN 695 306 17 SRI. K. SIVASANKARAN NAIR, KAMALA NIVAS, PANDIKKAD P.O, MANJERI, MALAPPURAM, PIN 676 505 (DIED) 18 SRI. V.

KUTTAPPAN NAIR, TC 28/1585, RADHA MANDIRAM, SREEKANTESWARAM,FORT P.O, THIRUVANANTHAPURAM, PIN 695 036 19 SRI. L. SIVANKUTTY, PAZHAVILA HOUSE, TC 39/625, CHADIYARA, POOJAPPURA. P.O, THIRUVANANTHAPURAM-12, PIN 695 014 (DIED) 20 SRI. S.R RAJENDRA PANICKER, SIDHARTHA, NEEROTTUVILAKAM, OOROOTTAMABALAM. P.O, NEYYATTINKARA, THIRUVANANTHAPURAM, PIN 695 WP(C) NO. 14721 OF 2012 -3- 121. 21 SRI. F. KRISHNANKUTTY, PUTHEN VEEDU, TC NANTHANCODE, THIRUVANANTHAPURAM, PIN 695 015 22 SMT. P.P LEKSHMY, REVI NIVAS, PRA-74, KAMALESWARAM, MANACAUD. P.O, THIRUVANANTHAPURAM, PIN 695 036 23 SRI. G. GOPINATHAN, KATTUVILAKOM VEEDU, KAKKOD LANE, BHAGATHSINGH ROAD, PETTAH. P.O, THIRUVANANTHAPURAM, PIN 695 002 24 SRI. K.C YASODHARAN, THUSHARA, KAMALEWARAM,

MANACAUD, THIRUVANANTHAPURAM, PIN 695 036 25 SMT. K. DAMAYANTHI, SIMI BHAVAN, TC 42/896, SREENAGAR - 94, MUTTATHARA, VALLAKKADAVU. P.O. THIRUVANANTHAPURAM, PIN 695 036

26 SMT. C. SREEMATHI, "SIVAPRABHA", PRA-117 (A), PARAVAKKUNNU, AMBALATHARA, POONTHURA P.O, THIRUVANANTHAPURAM, PIN 695 026 27 SMT. J. JULIET, W/O LATE SRI. FRANCIS JOSEPH, THETTIVILAKA, NANTHACODE, THIRUVANANTHAPURAM, PIN 695 015 28 SRI. D, STUART, SR VILLA, RESELPURAM (VIA), BALARAMAPURAM, THIRUVANANTHAPURAM, PIN 695 121 29 SRI. S. ALEXANDER, VAYAL NIKATHIYA VEEDU, TC THIRUVANANTHAPURAM, PIN 695 001 30 SRI. G. RAMACHANDRAN, 'GANGA', MALAYAM P.O, MALAYINKEEZHU P.O, THIRUVANANTHAPURAM, PIN 695 014 31 SRI. R. SASIDHARAN, TC 50589, KOTTAYIL VEEDU, KALADI, KARAMANA P.O., THIRUVANANTHAPURAM, PIN 695 014 32 SRI.

SADASIVAN NAIR, SREEJI NIVAS, SANTHIVILA, NEMOM P.O, WP(C) NO. 14721 OF 2012 -4- THIRUVANANTHAPURAM, PIN 695 020 33 K. SASIDHARAN NAIR, VADAKKE VEEDU, NCC ROAD, PEROORKADA P.O, THIRUVANANTHAPURAM, PIN 695 014 34 SRI. T. BALACHANDRAN NAIR, MANU, TC 30/2605, VAZHUTHACAUD P.O, THIRUVANANTHAPURAM, PIN 695 014 35 SRI. OOMMEN ABRAHAM, GRACE COTTAGE, TC 7/784, MARUTHANKUZHI, KANJIRAMPARA, THIRUVANANTHAPURAM, PIN 695 014 36 SRI. M. SUBRAMANIAN ACHARY, TC 8/1165(1), MANIMANDIRAM, VALIYAVILA P.O, THIRUVANANTHAPURAM, PIN 695 004 37 SRI. G. VIJAYAN, SAJITH NIVAS, TC 48/234, PAZHANCHIRA, POONITHURA P.O, THIRUVANANTHAPURAM, PIN 695 012 38 SRI. J. JOSEPH, SAJI NIVAS, PERURKAVU P.O, THIRUVANANTHAPURAM. 39 SRI. A. SHAMSUDHEEN, SAJITHA MANZIL, MANNOORKONAM P.O, NEDUMANGAD, PIN 695 541 40 SRI. M. SHAMMUGHASUNDRA VADIVU, TC 29/846, 'SIVAM', PALKULANGARA, THIRUVANANTHAPURAM, PIN 695 006 41 SRI. T. AUGUSTIN, BETHEL BHAVAN, JAYAPRAKASH LANE, KUDAPPANAKKUNNU P.O, THIRUVANANTHAPURAM, PIN 695 014 42 SMT. N. NESAMMA, BETHEL BHAVAN, JAYAPRAKASH LANE, KUDAPPANAKKUNNU P.O., THIRUVANANTHAPURAM - 695 043. 43 SMT. S. SHYAMALA DEVI, TC 28/150, SARADAGIRI, ATHANI LANE, KAITHAMUKKEU, THIRUVANANTHAPURAM - 695 035. 44 SMT. R. AVERTHAMMA, MADATHIL HOUSE, MANGATTUKADAVU, THIRUMALA PO, WP(C) NO. 14721 OF 2012 -5- THIRUVANANTHAPURAM - 695 006 45 SMT. A. SUBHASHINI, MANU NIVAS, KADAKAMPALLI LANE, ANAYARA PO, THIRUVANANTHAPURAM - 695 029 46 SMT. T. ELSIE, ROSHINI BHAVAN, THOZHUKKAL, NEYYATTINKARA P.O., THIRUVANANTHAPURAM - 695 121. 47 SRI. S. GAPAN, MADHAVA BHAVAN, KARUMOM P.O, THIRUVANANTHAPURAM - 695002. 48 SRI. P. RAVEENDRAH NAIR, PRIYA NIVAS, TC THIRUVANANTHAPURAM. (DIED) 49 SMT. D. SUKUMARI AMMA, SANKARAMANGALAM, ARASUMMOODU, KULATHOOR P.O,

THIRUVANANTHAPURAM - 695 583. 50 SMT. J. SANTHAMMA, CHANDRAGIRI, KP XVII/313, KUNHAKKATTU LANE, NALANCHIRA, THIRUVANANTHAPURAM - 5. 51 SMT. C. OMANA, ANIL NIVAS, POOZHIKUNNU, ESTATE

P.O, THIRUVANANTHAPURAM- 695 002. 52 SMT. N. CHANDRIKA, KOLLALAKKAL HOUSE, KARICHAL, PULLUVILA P.O, THIRUVANANTHAPURAM - 695 526.

53 SRI. V. CHANDRASEKHARAN NAIR, RADHIKA, KAKKANAM, MARRAYAMUTTOM P.O, NEYYATTINKARA, THIRUVANANTHAPURAM - 695 131. 54 SRI. N. GOPALAKRISHNAN NAIR, SREEVALSAM, SREENAGAR, NCC ROAD, PEROORKADA P.O, THIRUVANANTHAPURAM -695 005. 55 SRI. N. SASIDHARAN NAIR, USHA BHAVAN, PRAVACHAMBALAM, NEMOM P.O, THIRUVANANTHAPURAM - 695 020. 56 SRI. P.M MOHAMMED, TC 35/910, PUTHEN ROAD JN., VALLAKADVU, THIRUVANANTHAPURAM - 8. SRI. B. RAMACHANDRAN NAIR, DEEPAS, VAZHAYILA, WP(C) NO. 14721 OF 2012 -6- KODAPPANAKKUNNU P.O, THIRUVANANTHAPURAM - 695 043. 58 SRI. SIVANANDAN NADAR, JYOTHI NILAYAM, MONVILA, KULATHOOR P.O, THIRUVANANTHAPURAM - 695 583. 59 SMT. B. HANEEFA BEEVI, TC 10/1414(8), HASHIBA, THORANCODE, KAVALLOOR, VATTIYOORKAVU, THIRUVANANTHAPURAM - 695 013. 60 SRI. CYCIL GYPOSON FERNANDEZ, SUDHA BHAVAN, TC WALT'S ROAD, VALLAKADAVU P.O, THIRUVANANTHAPURAM -695 008. (DIED) 61 SRI. V. GOPI, KUTTNADI CHANDRIKA BHAVAN, KEZHKOLLA, AMARAVILA P.O, NEYYATTINKARA - 695 121. 62 SMT. D. MERCY BAI, GLAD VILLA, KAMUKINCHODE, KODAGAVILA P.O, THIRUVANANTAHPURAM - 695 121. 63 SRI. M. SUKUMARAN NAIR, ASHA BHAVAN, SEN NAGAR, VENCODE P.O, THIRUVANANTHAPURAM - 695 028. 64 SMT. S. LATHIKA, C/O M.S SURENDRAN, LATHIKALAYAM, PETTAH P.O,

THIRUVANANTHAPURAM - 695 001. 65 SMT. K. ANNAMMA, TC 13/378(1), MRA-14, KUNNUKUZHI, THIRUVANANTHAPURAM - 695 037. 66 SMT. P. KOLAMMA, ABIRAJ BHAVAN, TC 39/2139, MANACAUD P.O., THIRUVANANTHAPURAM - 695 009. 67 SRI. R. SIVAN, VARUVILAKATHU VEEDU, KALLUMMOODU, ANAYARA P.O., THIRUVANANTHAPURAM - 695 029. 68 SRI.P.SASIDARAN NAIR, SAI PRABHA, TC 10/949-1, MANNAMOOLA, PEROORKADA.P.O, 695005. 69 SRI.K. RAVEENDRAN NAIR, SURYA SREE, PANAYAMCHERY, ANAND P.O, WP(C) NO. 14721 OF 2012 -7- NEDUMANGAD-695541. 70 SRI.K.ANANTHAKRISHNAN ASARI, KRISHNAKRIPA, SREEKRISHNAPURAM ROAD, VATTAVILA, POUDIKONAM P.O, THIRUVANANTHAPURAM 695587. 71 SMT.P. SUSEELA AMMA, SUNITHA BHAVAN, AERAVILA, PERUKAVU P.O, PEYAD, THIRUVANANTHAPURAM-695564. 72 SRI.A.BOSE, MAHIMA, CHRIST NAGAR, KARAKULAM P.O, THIRUVANANTHAPURAM- 695564. 73 SRI.G.JOSEPH, SHAJI BHAVAN, CHOOZHATTUKOTTA, MALAYAM, THIRUVANANTHAPURAM -695571. 74 SRI.V.KARTHIKAYAN ASARI, TC 49/1104, KADAYIL VILAKATHU VEEDU, KALIPPANKULAM, MANACAUD P.O, THIRUVANANTHAPURAM- 695009. 75 SRI.M.A.AHAMMED KABEER, ASKHAR MANZIL, NEAR RAILWAY STATION, KANIYAPURAM, THIRUVANANTHAPURAM- 695301. 76 SMT.M.BHASKARY, SHADHYA BHAVAN, MUKKOLA, KACHANI, KARAKULAM P.O, THIRUVANANTHAPURAM - 695564. 77 SRI.MADHAVAN NAIR, ANIL VIHAR, VADAKKE THUMARIMUTTAM, PAPPANAMCODE, THIRUVANANTHAPURAM-695018. 78 SMT.S.KRISHNAMMA, SHARON, THOONGAMPARA, KATTAKADA P.O, PIN- 695572. 79 SRI.D.JAMES, DAS MANDIRAM, KAVALOTTUKONAM, PERUKAVU P.O, THIRUVANANTHAPRAM-3. 80 SMT.M.HYMAVATHY, SIVAVILAS, KATTAILKONAM, POTHENCODE, THIRUVANANTHAPURAM-695584. 81 SRI.K.SASIDHARAN NAIR, LAKSHMI NIVAS, MATHODE LANE, THAMALAM, POOJAPPURA P.O, THIRUVANANTHAPURAM-695012. WP(C) NO. 14721 OF 2012 -8- 82 SRI.P.THANKAPPAN NADAR, TK SADANAM MUKKOLA,

MULLOOR P.O,THIRUVANANTHAPURAM- 695521. 83 SRI.P.RAMACHANDRAN NAIR, SATHYAVIHAR, VENGANOOR P.O, THIRUVANANTHAPURAM -695523.

84 SRI.C. LEELAMMA, RESMI KULAKUDIYOORKONAM, NEMOM P.O, THIRUVANANTHAPURAM- 695020. 85 SMT. C.BELLA, TC 12/1528, RC STREET, KUNNUKUZI P.O, THIRUVANANTHAPURAM -37. 86 SMT.M.SUBAIDA BEEVI, ALTHAF MANZIL, TC 79/2008, KARIKKAKAM, ANAYARA P.O, THIRUVANANTHAPURAM - 695029. 87 SRI. SAFIYA UMMAL, KARTHIKA, MOONNUKALLINMOODU, NEYYATTINKARA P.O, THIRUVANANTHAPURAM -695121. 88 SMT.G.BABY, BATHANY NIVAS, PEYAD P.O, THIRUVANANTHAPURAM - 695573. 89 SRI. MUHAMAMED SRAJUDEEN, JEEVA MANZIL, KULAPPADA P.O,ARYANAD, THIRUVANANTHAPURAM - 695 542. 90 SRI. G. ASOKAN, ASWATHI, T.C.28/132, ATHANI LANE, KAITHAMUKKU, PETTAH, THIRUVANANTHAPURAM - 695 001. 91 SRI. D. SASIDHARAN, T.C. 24/1264, WALTS LANE, NANTHANCODE, THIRUVANANTHAPURAM - 695 003. 92 SMT. M. LALITHAMMAN, KRISHNA NIVAS, MALAYINKEEZHU P.O, THIRUVANANTHAPURAM - 695 571. 93 SRI. S. LALITHA DEVI, SREENILAYAM, VALIYAVILA, THOZICKAL, VIZHINJAM P.O, THIRUVANANTHAPURAM - 695 521. 94 SMT. V. CHANDRAKUMARI AMMA, SINDHU SADANAM, JP LANE, KULAKUDIYOORKONAM, NEMOM - 695 020. 95 SMT. H. SHERIFA BEEVI, MR VILLA, AMBARE LANE, WP(C) NO. 14721 OF 2012 -9- PARIS ROAD, VIKAS BHAVAN P.O, THIRUVANANTHAPURAM- 695 033. 96 SMT. C. BHAMINI, SOWPARNIKA, THINAVILA, NEDIYAVILA, KEEZHATTINGAL, ATTINGAL 695 101. 97 SMT. B. LALITHA BAI, BEENA BHAVAN, VELLAIKADVU, KODUGANOOR P.O. 98 SMT. K. NANU PILLAI, BEENA BHAVAN, VELLAIKADVU, KODUGANOOR P.O 99 SMT. P. PADMA KUMARI AMMA, PADMANIVAS, TC THIRUVANANTHAPURAM - 695 009. 100 SMT. RACHEL C. KURIAN, TC 27/2360-1, AKKARA VALIYA PARAMBIL HOUSE, THUMBARA LANE, CONVENT ROAD, THIRUVANANTHAPURAM - 1. 101 SRI. D.

CHELLAN, JIJI BHAVAN, INDIRAJI NAGAR, KURANDIVILA, CHEMPAZHANTHI THIRUVANANTHAPURAM - 695 587. 102 SMT. C. VASANTHA KUMARI, HARIPADAM, MADATHINKAL LANE, THAMALAM, POOJAPPURA, THIRUVANANTHAPURAM - 12. 103 SRI. G. SADASIVAN NAIR, GOVINDA BHAVAN, PANCHALLOOR, PALLICHAL P.O, THIRUVANANTHAPURAM - 20. 104 SRI. P. SUKUMARAN, SUNIL BHAVAN, VALYAVILA, MOTTAMOODU, NARUVAMOODU, THIRUVANANTHAPURAM - 695 020. 105 SRI. T.T. KUNJU KUNJU, MAKOM, CHERUKARA GARDEN NO. 164, THIRUMALA P.O, THIRUVANANTHAPURAM - 695 006. 106 SRI. GOPALAKRISHNAN NAIR.C, SAJI SADANAM, PANANGATTUKONAM, POUDIKONAM, THIRUVANANTHAPURAM - 695 581. WP(C) NO. 14721 OF 2012 -10- 107 SRI. V. MADHAVAN, SINDHU BHAVAN, OLIPURATHUKUNIL VEEDU, KAIPATTIMKKU, AVANANCHERI P.O, ATTINGAL - 695 103. 108 SMT. G. GOMATHI AMMAL, ARANDHI SADANAM, TC 10/1047, THOZHUVANCODE LANE, VATTIYOORKAVU P.O, THIRUVANANTHAPURAM - 695 013. 109 SMT. METILDA MATHAI, SANTHA MANDIRAM, RISHIMANGALAM, VANCHIYOOR P.O, THIRUVANANTHAPURAM - 695 035. 110 SRI. L. WILSON, ATTUVILAKATHU VEEDU, TC 111 SMT. A. AMBIKA KUMARI, DHANYA, TC 42/349, SREEVARAHAM, THIRUVANANTHAPURAM - 8. 112 SRI. K. KRISHNAN KUTTY, TK SADANAM, ALUVILA, THALAYAL, BALARAMPURAM P.O.- 695501 113 SRI. M. BHASKARA PILLAI, SANDHYA BHAVAN, TC THIRUVANANTHAPURAM - 695 008. 114 SRI. P.N. SADASIVAN NAIR, OS NIVAS, TC 53/2324- 2, KRA-44, KULAKKUDIYOORKONAM, NEMOM P.O - 695 020. 115 SMT. P. MAYADEVI, DEVI NIVAS, PARIYANEM, MUKKOLA, NEDUMANGAD P.O. 116 SMT. J. DORATHY, TC 18/1741, ATTUVILAKAM, THIRUMALA P.O, THIRUVANANTHAPURAM - 70. 117 SRI. K. RAGAVA KURUP, TC 26/925, PANAVILA JUNCTION, THIRUVANANTHAPURAM 1. 118 SMT. STELLA SIMON, MONICA, TC 34/699, GV RAJA SPORTS SCHOOL ROAD, SANKHUMMUKHAM P.O, THIRUVANANTHAPURAM - 7. 119 SRI. M. STEPHENSON, KALATHIL

VEEDU, MANNALIVILA, VENPAKAL, P.O, WP(C) NO. 14721 OF 2012 -11- THIRUVANANTHAPURAM - 695 123. 120 SUJATHA. S, W/O. LATE T. PREMNATH, 'SUPREETHAM', TC 3/1316, PATTOM POST, THIRUVANANTHAPURAM. 121 E.N GIRIJA, W/O LATE SIVASANKARAN NAIR, INDEEVARAM, NELLIVILAKATHU, OOROOTAMBALAM P.O, THIRUVANANTHAPURAM. 122 SUSEELA P, W/O LATE L. SIVANKUTTY, RESIDING AT PAZHAVILA HOUSE, TC 39/625, CHADIYARA, POOJAPPURA, THIRUVANANTHAPURAM. 123 S.S LALITHAMBIKA, W/O LATE P RAVEENDRAN NAIR, PRIYA NIVAS, TC 50/401, KALADY, KARAMANA POST, THIRUVANANTHAPURAM. 124 PRAKASI, W/O LATE CYRIL GYPSON FERNANDEZ, TC VALLAKKADAVU, THIRUVANANTHAPURAM. 125 CHANDRIKA KUMARI. V, W/O LATE V. GOPI, KUTTANADI CHANDRIKA BHAVAN,KOZHIKOLLA, AMARVILLA P.O, NEYYATTINKARA BY ADVS. SRI.R.MOHAN KUMAR DR.K.P.SATHEESAN SR. SRI.R.SREEHARI THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 01.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WP(C) NO. 14721 OF 2012 -12-

JUDGMENT

The question involved in this case is whether the limitation under Section 7(7) of the Payment of Gratuity Act, 1972 providing sixty(60) days for filing the appeal plus sixty(60) days can be condoned by taking the aid of the provisions of Section 29(2) of the Limitation Act, 1963.

2. Learned counsel appearing on behalf of the respondents raised the objection qua maintainability of

the writ petition as the appeal preferred against the order

of the assessment dated 05.05.2010 was concededly belated by 730 days.

3. This Court in the judgment dated 23.01.2023 in W.P(C).2502 of 2021 has held as under:

..9. I have heard the learned counsel for the parties and appraised the paperbook. It would be appropriate to reproduce the provisions of Section 7(7) of the Payment of Gratuity Act.

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from WP(C) NO. 14721 OF 2012 -13-

> 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: 30 [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 sub-section (4), or deposits with the appellate authority such amount.]

The limitation to file an appeal against the

order of the authority has been specified as sixty (60)

days condonable by another 60 days subject to the explanation of prevention by giving a sufficient cause and not beyond. Section 5 and 29 of the Limitation Act reads thus:

5. Extension of prescribed period in certain cases. - Any appeal or any WP(C) NO. 14721 OF 2012 -14-

> application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant

satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period. Explanation.- The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this section.

29. Savings.-(1) Nothing in this Act shall

affect section 25 of the Indian Contract Act, 1872 (9 of 1872). (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local

law. (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law. (4) Sections 25 and 26 and the definition of easement in section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1882), may for the time being extend.

10. As per the provisions of sub Section 2 of Section

29 of the Act where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the

purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special and local law.

11. On plain and simple reading of the

aforementioned provisions, it is evident that the legislature while enacting sub Section 7 of Section 7 specifically excluded the application of limitation Act by providing the limitation of appeal for a period of 60+60 days. Otherwise, the limitation to file an appeal under the schedule of the limitation Act is WP(C) NO. 14721 OF 2012 -16-

thirty (30) days. Thus for all intends and purposes, there cannot be any condonation of delay by taking the aid of the aforementioned provisions by entertaining an application under Section 5 of the Limitation Act. In the judgment cited on behalf of the petitioner Commissioner of Sales Tax, U.P v. Madan Lal (supra) and Commissioner of Customs and Central Excise (supra), was a case wherein both aforementioned provisions ie., the UP Sales Tax Act and the Central Excise Act there was no exclusion of the limitation Act. It is in that context the provisions of Section 29(2) of the Limitation Act were brought into consideration. Thus there cannot be quarrel to the findings rendered in the judgments (supra). The ratio culled out in the judgment relied upon by the respondent (para 58 and 59) in Ganesan (supra) extracted herein below would be applicable in the instant case.

58. The ratio which can be culled from above noted judgments, especially

judgment of threeJudge Benches, as noted

above, is as follows:

(1) The suits, appeals and applications referred to in the Limitation Act, 1963 are suits, appeals and applications which are to be filed in a Court.

(2) The suits, appeals and applications

referred to in the Limitation Act are not the suits, appeals and applications which are to WP(C) NO. 14721 OF 2012 -17- be filed before a statutory authority like Commissioner under Act, 1959.

(3) Operation of Section 29(2) of the

Limitation Act is confined to the suits, appeals and applications referred to in a special or local law to be filed in Court and not before statutory authorities like Commissioner under Act, 1959.

(4) However, special or local law vide

statutory scheme can make applicable any provision of the Limitation Act or exclude applicability of any provision of Limitation Act which can be decided only after looking into the scheme of particular, special or local law.

59. We, thus, answer question Nos.2 and 3 in the following manner:

(i) The applicability of Section 29(2) of the Limitation Act is with regard to different limitations prescribed for any suit, appeal or application when to be filed in a Court.

(ii) Section 29(2) cannot be pressed in

service with regard to filing of suits, appeals and applications before the statutory authorities and tribunals provided in a special or local law. The Commissioner while hearing of the appeal under Section 69 of the Act, 1959 is not entitled to condone the WP(C) NO. 14721 OF 2012 -18- delay in filing appeal, since, provision of Section 5 shall not be attracted by strength of Section 29(2) of the Act.

12. Accordingly, the order under challenge Ext.P8 cannot be said to be suffering from any illegality and perversity. No ground for interference is made out. Writ petition is accordingly dismissed.

4. In view of the reasoning given in the judgment

cited supra, I find that there is no merit in the writ petition as the appeal preferred by the Government against the

order of the assessment was highly belated.

Writ petition stands dismissed. The finding of this Court shall be construed to be an expression of opinion only on the point of limitation and not on the merit. Sd/- AMIT RAWAL JUDGE vv WP(C) NO. 14721 OF 2012 -19- APPENDIX OF WP(C) 14721/2012 PETITIONER EXHIBITS EXHIBIT P1 A TRUE COPY OF THE ORDER OF THE CONTROLLING AUTHORITY. EXHIBIT P2 A TRUE COPY OF THE ORDER OF THE APPELLATE AUTHORITY.

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