

**Bihar State Industrial Develop Vs. State of Jharkhand and Ors**

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**Court :** Jharkhand

**Decided On :** Jul-30-2015

**Appellant :** Bihar State Industrial Develop

**Respondent :** State of Jharkhand and Ors

**Judgement :**

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(L) No. 5592 of 2008  
Bihar State Industrial Development Corporation Limited having its office at Indra Bhavan, Ram Charitar Singh Path, P.S. Kotwali, P.O. G.P.O. & District Patna and its Unit at Swarnrekha Watch Factory, Namkum, P.O. & P.S. Namkum, District Ranchi through its Managing Director Shri Vijoy Prakash, son of Late Bhubanshwar Lal Das, residing at Ram Charitar Singh Path, P.S. Kotwali, P.O. G.P.O. & District Patna (Bihar) ... Petitioner Versus

1. State of Jharkhand

2. Additional Secretary, Department of Labour, Employment & Training, Government of Jharkhand, Ranchi

3. Labour Commissioner, JharkhandcumAppellate Authority under Payment of Gratuity Act, 1972, Ranchi having its office near State Consumer Officer at Doranda, P.O. & P.S. Doranda, District Ranchi

4. Deputy Labour CommissionercumControlling Officer under Payment of Gratuity Act, 1972, Ranchi

5. Shri Lakshmi Narayan, son of not known to the petitioner, Exemployee of Swarnrekha Watch Factory, Namkum, P.O. & P.S. Namkum, District Ranchi, residing at Qr. No. D/22, H.T.I.F. Colony, P.O. & P.S. Namkum, District Ranchi

6. State of Bihar through its Secretary, Department of Industries, Govt. of Bihar, Patna ... Respondents CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR For the Petitioner : Mr. Deepak Kumar Bharti, Advocate For Respondent No. 5 : Mr. Sanjay Kumar Thakur, Advocate Order No. 15 Dated: 30.07.2015 I.A. No. 8738 of 2013 This application has been filed seeking amendment in the writ petition for challenging notice dated 03.10.2012 issued in Case No. 05 of 201011 and order dated 17.10.2013 in C.C. No. 05 of 201213. Since the cause of action disclosed by the petitioner for filing the present writ petition is entirely different from the cause of action for challenging notice dated 03.10.2012 and order dated 17.10.2013, the learned counsel for the petitioner does not press 2 this application and seeks liberty to file writ petition for challenging the said orders. Prayer is granted. This application is disposed of as not pressed with liberty to the petitioner to challenge notice dated 03.10.2012 and order dated 17.10.2013 by filing separate writ petition. I.A. No. 756 of 2015 This application has been filed seeking amendment in the writ petition for challenging order dated 13.01.2011 vide Memo No. 117 passed by Dy. Labour Commissioner, Ranchi. The learned counsel for the petitioner does not want to press this application. Accordingly, this application is disposed of as not pressed with liberty to the petitioner to challenge order dated 13.01.2011 by filing separate writ petition. I.A. No. 1586 of 2014 This application has been filed seeking stay of notice dated 03.10.2012 and order dated 17.10.2013. In view of order passed in I.A. No. 8738 of 2013, this application has become infructuous. W.P.(L) No. 5592 of 2008 Aggrieved by order dated 19.12.2002 in Case No. G.P.39 of 2000 passed by the Deputy Labour Commissioner cumControlling Officer directing payment of Rs. 3,32,135/ with 10% interest per annum and order dated 18.10.2008 in Appeal Case No. PG01 of 2008 whereby, the Appellate Authority dismissed the appeal on the ground of limitation, the present writ petition has been filed.

2. The brief facts of the case are that, the respondent was an employee of Swarnrekha Watch Factory, a unit of Bihar State 3 Industrial Development

Corporation. After his retirement, the respondent raised a claim for retiral dues under Section 4 and under Section 7 of the Payment of Gratuity Act, 1972 and vide order dated 19.12.2002 in Case No. GP39 of 2000, the Deputy Labour Commissioner cum Controlling Officer passed an award of Rs. 3,32,135/ with 10% interest per annum in favour of the respondent. Since the petitioner due to financial crisis could not satisfy the award, a certificate case was initiated for realisation of Rs. 3,32,135/. The proceeding in Case No. 1(Lab.) 200304 before the Certificate Officer, Sadar, Ranchi was challenged by the petitioner in W.P.(C) No. 242 of 2006. The writ petition was dismissed on 30.03.2007 with liberty to the petitioner to raise objection before the Certificate Officer. The petitioner challenged award dated 19.12.2002 in W.P.(L) No. 6130 of 2007 however, the writ petition was dismissed with liberty to the petitioner to avail statutory remedy of appeal. Consequently, the petitioner filed Appeal No. PG01/2008 challenging award dated 19.12.2002. The Appellate Authority dismissed the appeal on the ground that the appeal was timebarred and the Appellate Authority has no power to condone delay.

3. Heard the learned counsel for the parties.

4. Mr. Deepak Kumar Bharti, the learned counsel for the petitioner submits that the Appellate Authority under the payment of Gratuity Act exercises quasijudicial powers and though, it is not a court in strict sense, the Appellate Authority is a Tribunal constituted under a Special Act and therefore, Section 14 of the Limitation Act would apply to exclude the period beyond 120 days during which the petitioner was prosecuting writ petitions before this Court. The learned counsel for the petitioner relies on decision in M.P. Steel Corporation Vs. Commissioner Of Central Excise [Civil Appeal No.4367 Of 2004]. Per contra, Mr. Sanjay Kumar Thakur, the learned counsel for the respondent no. 5 4 supports the orders passed by the Controlling Authority as well as the Appellate Authority and submits that the plea of no work no pay to justify that the respondent was not paid salary because entire industrial unit was closed, is liable to be rejected, summarily.

5. In State of Punjab Vs. Labour Court, Jullundur & Ors. (1980) 1 SCC 4, the Hon'ble Supreme Court has held that the Payment of Gratuity Act is a complete

Code containing detailed provisions for payment of gratuity. For enforcement of the provisions of the Act, Controlling Authority is entrusted with the task of administering the Act. The Act also provides that any error committed by the Controlling Authority can be corrected in appeal by appropriate Government or the Appellate Authority. Section 7(7) of the Payment of Gratuity Act provides that any person aggrieved by an order under subsection

(4) of Section 7 may, within 60 days from the date of the receipt of the order, prefer appeal. It further provides 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 appeal within the said period of 60 days, extend the said period by a further period of 60 days. The power to condone delay beyond 60 days is thus, restricted to further period of 60 days only. In so far as, application of Section 5 of the Limitation Act is concerned, it is thus, limited to the extent of delay of 60 days beyond the statutory period of 60 days for filing appeal provided by the Payment of Gratuity Act. In Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur (1975) 4 SCC 22, the Hon'ble Supreme Court has held as under:

22. Thus the principle that emerges is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application thereunder and provides in clear terms that such period on sufficient cause being shown, may be extended, in the 5 maximum, only upto a specified timelimit and no further, then the tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum timelimit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

6. It is also important to note that Payment of Gratuity Act which is also a Central Legislation, has been enacted subsequent to the Limitation Act. Ordinarily, when there are similar mandates in two statutes, the provision in the later statute prevails. The Payment of Gratuity Act provides period of limitation and power of the Appellate Authority to condone delay of a specified period on establishing sufficient cause. In my opinion, there is an implied prohibition from invoking the

provisions under the Limitation Act for condoning delay beyond the period prescribed under Section 7(7) of the Payment of Gratuity Act. The provisions under Section 7(7) of the Payment of Gratuity Act, 1972 is pari materia to Section 34(3) of the Arbitration and conciliation Act, 1996. Though, objection under Section 34 of the Arbitration and conciliation Act, 1996 is filed in the court of Principal District Judge and the Appellate Authority under the Payment of Gratuity Act is not a court, it may be usefully noticed that the Hon'ble Supreme Court has held that objection under Section 34 of the Arbitration and Conciliation Act, 1996 filed beyond the extended period of 120 days cannot be entertained. In Consolidated Engg. Enterprises v. Irrigation Deptt.(2008) 7 SCC 169 the Hon'ble Supreme Court has held as under:

20. ....When any special statute prescribes certain period of limitation as well as provision for extension up to specified timelimit, on sufficient cause being shown, then the period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. As the 6 intention of the legislature in enacting subsection (3) of Section 34 of the Act is that the application for setting aside the award should be made within three months and the period can be further extended on sufficient cause being shown by another period of 30 days but not thereafter, this Court is of the opinion that the provisions of Section 5 of the Limitation Act would not be applicable because the applicability of Section 5 of the Limitation Act stands excluded because of the provisions of Section 29(2) of the Limitation Act.

7. From the facts disclosed in the present case, I find that even otherwise also, no case is made out for condoning the delay. The award dated 19.12.2002 was first challenged in W.P.(L) No. 6130 of 2007 and thus, it cannot be contended that the writ petition was preferred within the extended period of 120 days provided under Section 7(7) of the Payment of Gratuity Act. Assailing the award dated 19.12.2002, the learned counsel for the petitioner has contended that due to financial crisis the industrial unit of the petitioner was closed and therefore, the respondent was not paid salary. As rightly contended by the learned counsel for the respondent no. 5, the plea of no work no pay taken by the petitioner is liable to be rejected. Moreover, once the challenge to award dated 19.12.2002 in W.P.(L) No. 6130 of

2007 was not entertained by this Court, the same cannot be assailed in the present writ petition. 8. Considering the above facts, I am not inclined to interfere in the matter and accordingly, the writ petition is dismissed. (Shree Chandrashekhar, J.) Manish/A.F.R.

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