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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3983 of 2020
Decided on: 18.05.2026

The State of HP and others ...Petitioners

Versus

Joginder Singh ...Respondent

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting? [1]

For the petitioners: Mr. Sumit Sharma, Deputy Advocate General.

For the respondent: Mr. Rahul Mahajan, Advocate.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioners by way of present petition have prayed for the following substantive reliefs:-

> *"a) That impugned order dated 31.08.2018 passed by Controlling Authority-cum-Labour Officer, Mandi Zone and further order/judgment dated 28.06.2019/15.07.2019 of Ld. Joint Labour Commissioner-cum-Appellate Authority, HP may kindly be quashed and set aside.*
>
> *b) That the entire relevant record of the Controlling Authority and Ld. Joint Labour Commissioner-cum-Appellate Authority, HP may kindly be summoned.*
>
> *c) That the operation of impugned order dated 31.08.2018 passed by Controlling Authority-cum-Labour Officer, Mandi Zone and further order/judgment dated 28.06.2019/15.07.2019 of Ld. Joint Labour Commissioner-cum-Appellate Authority may kindly be stayed during the*

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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pendency of Writ Petition."

2. The precise grouse of the petitioners in the present petition is that the entire service rendered by the respondent from the initial date of his engagement on daily wage basis till the date of his retirement could not have been taken into account for the purpose of calculating the gratuity. The undisputed facts are that the respondent was initially engaged on daily wage basis as Beldar (Class-IV) in Public Works Department in the year 2000. His services were regularized in the year 2012 and he retired from service on 31.01.2017. The entire service rendered by the respondent from the date of his engagement on daily wage basis till his superannuation came to be 16 years and 6 months, with 240 days in each calendar year w.e.f. 01.08.2000 to 31.01.2017. Since, the respondent was not paid the gratuity of the entire period, he filed an application under Section 7 of the Payment of Gratuity Act, 1972 (for short 'the Act'), before the Controlling Authority Mandi Zone, Mandi, H.P., who vide order dated 31.03.2018 allowed the same and calculated the amount of ₹1,45,385/- in terms of the provision of Section 4(2) of the Act and awarded interest on the said amount @10% per annum w.e.f.

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01.02.2017, till its payment in terms of the mandate as contained in Section 7(3-A) of the Act.

3. The petitioners feeling aggrieved by the said order dated 31.03.2018, passed by the Controlling Authority Mandi Zone, Mandi, H.P., had filed an appeal before the Joint Labour Commissioner-cum-Appellate Authority under sub-section 7 & 8 of Section 7 of the Act, who vide order dated 15.07.2019, had been pleased to dismiss the appeal as time barred, since it was filed beyond the period of maximum 120 days' as provided under the Act.

4. The petitioners feeling aggrieved by both the orders passed by the statutory authorities have filed the present petition challenging the same on the grounds that the appeal was filed on 30.07.2018 and the order passed by the Controlling Authority was received on 04.04.2018, and as such the same was within a period of 120 days. Further Controlling-cum-Labour Officer has calculated the gratuity for the entire service rendered by the respondent i.e. daily wage period and also the regular service on the last wages drawn by him, which is against law.

5. The respondent has not filed any reply to the petition, however, the learned counsel representing the

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respondent has supported the orders on the basis of the findings returned therein.

6. I have heard the learned counsel for the parties and also perused the record carefully.

7. Learned Deputy Advocate General representing the petitioners has vehemently argued that since there was a conflict of opinion of two-Judge Bench of the Hon'ble Supreme Court in ***Netram Sahu vs. State of Chhattisgarh and another,*** **(2018) 5 SCC 430**, and in Civil Appeal No.292 of 2009, titled, ***Bharat Sanchar Nigam Ltd., Jammu vs. Teja Singh,*** *regrading counting the entire service including the daily wage service for the purpose of grant of gratuity,* the matter has been referred by the Hon'ble Supreme Court to the Larger Bench and, therefore, the dispute raised in the present petition may be adjourned sine-die.

8. As per the judgment passed by the Hon'ble Supreme Court in ***Netram Sahu's*** case (supra), the Hon'ble Supreme Court came to the conclusion that the entire service from the date of initial engagement till the date of retirement is to be counted for the purpose of determining the amount under the Gratuity Act, which judgment was

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pronounced on 23.03.2018 and so far the judgment in ***Teja Singh's*** case (supra) is concerned, it was pronounced on 16.01.2009. In the earlier judgment passed in ***Netram Sahu's*** case (supra), the Hon'ble Supreme Court had taken note of the fact that there is no justification to deny benefits of gratuity, which is a statutory right of an employee, the employer cannot deny the benefit of counting the entire service especially when the payment under the Payment of Gratuity Act is a welfare legislation. No doubt the Hon'ble Supreme Court has referred the matter to the Larger Bench, but since the judgment earlier passed in ***Netram Sahu's*** case (supra) holds the field, the benefit granted in favour of the respondent, who now stands retired, cannot be deferred only on the ground that the matter has been referred to the Larger Bench.

9. A co-ordinate Bench of this Court has already adjudicated upon the similar issue in CWP No.1884 of 2026, titled, ***Deputy Director, Animal Husbandry/Breeding Hamirpur vs. Rup Singh Thakur,*** and also taken note of the fact that though the matter has been referred to the Larger Bench in Civil Appeal No.564 of 2020, titled, ***Dhansai Sahu vs. State of Chhattisgarh and others,***

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vide order dated 21.08.2024, however the decision referred to Larger Bench continues to govern until the decision of Larger Bench is pronounced. The relevant para of the judgment reads as under:-

> *4. Learned Deputy Advocate General has fairly admitted that the point raised in this petition was also in question in* ***Bindumati vs. State of H.P. & Ors*** *and further that the decision in* ***Bindumati*** *has been accepted by the respondents therein and stands implemented. Relevant portion from the said decision is as under: -*
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> > *"4. Indisputably, the petitioner had been sanctioned gratuity in the sum of 1,08,567/- by respondent No.3 on 19.04.2023 for the ₹4,21,068/- was sanctioned in regular service rendered by her. Further, under office order dated 08.02.2024, a sum of 4,21,068/- was also sanctioned in petitioner's ₹4,21,068/- was sanctioned in favour as differential amount of gratuity for about 23 years 04 months of daily waged service discharged by her. Both the orders passed in this regard by respondent No.3 under the Payment of Gratuity Act, 1972 were accepted by the respondent Department. The remedy of appeal etc. was not availed against the aforesaid orders. That being the position, the respondent No.5's taking objections by putting forth the Finance Department's letter dated 31.12.2020 is beyond comprehension. Respondent No.5's objections were irrelevant when the respondent department had accepted the orders passed by the Competent Authority more particularly the order dated 08.02.2024. Furthermore, in terms of the office letter dated 31.12.2020, the Finance Department had advised the Administrative Department to agitate the orders passed in particular given situation before the Higher Appellate Authority within the prescribed time limit. As noticed previously, in the instant case no appeal was filed by the respondent department against the orders passed by adjudicating authority. The order dated 08.02.2024 passed by the adjudicating authority having*

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attained finality was required to be given effect to by respondent No.5. It is also relevant to take stock of the fact that respondents No. 1 to 3 (concerned department) have not even contested this writ petition. Rather a statement was made in this regard on their behalf on 20.08.2025 that they do not intend to file any reply. The petition has been opposed only by respondents No. 4 & 5 i.e. the Treasury Department. The objection of Treasury Department is not maintainable in the background of given factual situation.

5. It needs to be noticed that in ***Net Ram Sahu versus State of Chhattisgarh*** *, the Hon'ble Apex Court had held that having regularized services of appellant (therein), State had no justifiable reason to deny benefit of gratuity to appellant which was his statutory right; Question as to from which date services were regularized was of no consequence for calculating total length of service for claiming gratuity once services were regularized. It was further held that Payment of Gratuity Act being a welfare legislation is meant for benefit of employees who serve their employer for long time and, it was duty of State to pay gratuity to employee rather than deny benefit on some technical ground and force an employee to approach Court to get his genuine claim. Portion from the decision, relevant to context is as follows: -*

"16. In our considered opinion, once the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant has duly proved. 17. In the circumstances appearing in the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering "continuous service" for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

18. It was indeed the State who took 22 years to

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regularize the service of the appellant and went on taking work from the appellant on payment of a meager salary of Rs.2776/- per month for 22 long years uninterruptedly and only in the last three years, the State started paying a salary of Rs.11,107/- per month to the appellant. Having regularized the services of the appellant, the State had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

19. In view of the foregoing discussion, we cannot agree with the reasoning and the conclusion arrived at by the High Court which is legally unsustainable. It is really unfortunate that the genuine claim of the appellant was being denied by the State at every stage of the proceedings up to this Court and dragged him in fruitless litigation for all these years.

20. Indeed, this reminds us of the apt observations made by the Chief Justice M.C. Chagla (as he then was) in the case of Firm Kaluram Sitaramv. Union of India. The learned Chief Justice in his distinctive style of writing while deciding the case between an individual citizen and the State made the following pertinent observations:

> *"19. Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily reply on technicalities, and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person."*

21. These observations apply in full force against the State in this case because just case of the appellant was being opposed by the State on technical grounds. As a consequence, the appeal succeeds and is allowed. Impugned judgment/order passed by the High Court (Single Judge and Division Bench) are set aside and the orders of the Controlling Authority and Appellate Authority are

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> *restored with cost of Rs.25,000/- payable by the State to the appellant. Cost to be paid by the State along with the payment of gratuity amount."*
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> *Though the above decision has been referred to the Larger Bench in* ***Dhansai Sahu versus State of Chhattisgarh and another****, however, it is also settled principle of law that decision referred to Larger Bench continues to govern until decision of the Larger Bench (Reference:* ***Rajnish Kumar Rai versus Union of India and another and Ashok Kumar and another versus UOI and another)****."*
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> *As can be deciphered from the impugned order, the sole ground taken by the employers before the learned authorities below was to draw a distinction between the service rendered by the respondent as a daily wager vis-à-vis the service rendered by him as a regular employee for the purpose of computation of gratuity payable to him. In view of the law in force at present, the issue involved stands decided in favour of the respondent by the Hon'ble Apex Court. The law laid down in Net Ram Sahu3 , as observed, continues to hold the field, hence, the computation of gratuity payable to the petitioner for the service rendered by him with the petitioners under the impugned order calls for no interference. No other ground was urged. In view of above, the present petition is dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.*

10. This Court has also reiterated the same view in CWPOA No.781 of 2019, titled, ***Kirpa Ram vs. State of HP and others,*** and, therefore, the plea raised by the petitioners that the entire period cannot be counted for the purpose of determining the wages under the Payment of Gratuity Act, is rejected.

11. So far as another plea which has been raised by the petitioners, that the copy of the order passed by

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Controlling Authority was received on 04.04.2018 and appeal was filed on 30.07.2018 is concerned, the Joint Labour Commissioner-cum-Appellate Authority has taken note of the fact that the appeal was preferred on 03.08.2018, after delay of about 124 days and not on 30.07.2018. Even if the period is counted from the date of receipt of copy on order on 04.04.2018, the appeal was time barred. The question with respect to entertaining the appeal beyond 120 days had come up before the co-ordinate Bench of this Court in CWP No.12056 of 2024, titled, ***The Deputy Director, Animal Health/Breeding, Kangra at Dharamshala, District Kangra, H.P. vs. Sh. Satish Kumar***, in which it has been held that once the maximum period for filing the appeal against order passed by the Controlling Authority under Section 7(7) of the Payment of Gratuity Act is 120 days, the appeal filed beyond the said period is not maintainable. This Court concurs with the said view and once as per the specific findings returned by the Joint Labour Commissioner-cum-Appellate Authority, the appeal was instituted on 03.08.2018, though claimed to have been filed on 30.07.2018, it was admittedly beyond the period of limitation and thus, the writ petition on this

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account is also dismissed.

12. Consequently, I do not find any merit in the petition and the same is accordingly dismissed. It is made clear that in case the amount is not paid to the respondent, it shall be paid within three months from today in terms of the order passed by the first authority. However, there shall be no orders as to cost. Pending application(s), if any, also stand disposed of.

18th May, 2026 **(Jiya Lal Bhardwaj)**
(Anurag) **Judge**