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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 7th January, 2022

+ **W.P.(C) 13418/2021 & CM APPLs. 42298/2021, 42299/2021,
42300/2021**

UNION OF INDIA THROUGH: SECRETARY MINISTRY OF
AYUSH Petitioner

Through: Mr. Rajesh Gogna, CGSC with Mr.
Arihant Jain, Advocate.

versus

HEMANT KUMAR AND ORS. Respondents

Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned order dated 29th September, 2021 in *No. ND.36(29) 2021PADYC* titled *the Under Secretary (Admin), Ministry of Ayush v. Sh. Hemant Kumar* passed by the *Appellate Authority constituted under the Payment of Gratuity Act, 1972, New Delhi (hereinafter the "Appellate Authority")*. By the impugned order, the Appellate Authority has dismissed the appeal filed by the Petitioner herein under Section 7(7) of the Payment of Gratuity Act, 1972 (*hereinafter "Act"*) on the ground that the appeal was barred by limitation.
3. Mr. Gogna, Id. CGSC submits that in view of the pandemic, the orders of the Supreme Court dated 23rd September, 2021 in *Suo Moto Writ (Civil) No. 3 of 2020* titled *In Re: Cognizance for Extension of Limitation,*

extending the limitation period, would apply even to the proceedings under the Act. Accordingly, he prays that the Appellate Authority be directed to hear the appeal on merits.

4. Advance copy of this petition is stated to have been served upon the Respondents/Workmen (*hereinafter* “*Workman*”). Considering the nature of the dispute, being one of limitation and the fact that the Workman would also be incurring further costs, if notice is issued in the present petition, in the opinion of this Court, no further notice is required. The orders of the Supreme Court passed from time to time are very clear. The latest order of the Supreme Court dated 23rd September, 2021 has excluded the period from 15th March, 2020 to 2nd October, 2021 for the purpose of calculating limitation. The said order of the Supreme Court dated 23rd September, 2021 passed in *Misc. Appl. No.665/2021* in *SMW(C) 3 /2020* reads:

“I. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2021, if any, shall become available with effect from 03.10.2021.

II. In cases where the limitation would have expired during the period between 15.03.2020 till 02.10.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 03.10.2021. In the event the actual balance period of limitation remaining, with effect from 03.10.2021, is greater than 90 days, that longer period shall apply.”

5. In the present case, the order of the Controlling Authority is dated 28th May, 2020 and the same was passed during the pandemic. Thus, the period of limitation under Section 7(7) would not expire till 3rd October, 2021.

6. The appeal in the present case is stated to have been filed on 17th September, 2021 and was dismissed on 29th September, 2021. In view of the order of the Supreme Court, the date from the passing of the order by the Controlling Authority till the dismissal of the appeal is completely excluded for calculating the limitation period. Thus, the period of limitation provided under Section 7(7) of the Act has to be read along with the order of the Supreme Court. Thus, this Court is of the opinion that the appeal would not be barred by limitation and the appeal deserves to be heard on merits by the Controlling Authority. The impugned order, accordingly, stands set aside.

7. The appeal be now listed before the Appellate Authority on 7th February 2022.

8. The Appellate Authority is directed to issue notice to the Workmen and thereafter proceed with the appeal in accordance with law.

9. The present petition along with all pending miscellaneous applications is disposed of in the above terms. The Appellate authority would give benefit of this order to all similarly placed persons/litigants who are entitled to the benefit of the extended period of limitation in terms of the orders passed by the Supreme Court from time to time. The Appellate authority shall also circulate this order to all the other authorities under the Act, so that the benefit of the computation of the period of limitation, as directed vide order dated 23rd September 2021, is extended to all and multiplicity of proceedings as has happened in the present case is avoided.

10. Let the copy of this order be communicated to Mr. Abhijeet Kumar,

Appellate Authority Under the Payment of Gratuity Act, 1972 & Dy. Chief Labour Commissioner (C), 4th Floor, Jeewandee Building, Sansad Marg, New Delhi-110001.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 7, 2022/dk/sk

