

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

...

CM(M) no.223/2022  
c/w CM(M) no.224/2022

*Reserved on: 12.10.2023*

*Pronounced on: 31.01.2024*

Executive Engineer Roads and Buildings, Bandipora

.....Petitioner(s)

Through: Mr Ilyas Nazir Laway, GA

**Versus**

Nazir Ahmad Teli

.....Respondent(s)

Through: Mr B.A.Tak, Advocate

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. In both the writ petitions, Awards of the same date viz. 22<sup>nd</sup> July 2013, passed by Authority under Payment of Wages Act (Assistant Labour Commissioner) Bandipora (for short "*Labour Court*") in two petitions as also judgements/orders dated 31<sup>st</sup> October 2014, passed by learned Principal District Judge, Bandipora (for short "*Appellate Courts*") in two Appeals bearing nos.2/A and 3/A, are sought to be quashed.
2. I have heard learned counsel for parties and considered the matter. I have gone through the impugned judgements.
3. Learned counsel appearing for petitioner in both the petitions submits that orders of the Authority have been passed without appreciation of arguments/objections of petitioner and that too without appreciating the statutory provisions of Payment of Wages Act, 1936. It is also stated that the

Appellate Court has passed order impugned on technical ground for having not complied with the provisions of Section 17 (A) of the Act. It is also submitted that courts below have failed to appreciate that finally it is substantial justice which has supremacy over technical justice and that great injustice would be caused to the State functionary, i.e., petitioner, if this Court does not intervene in the matter as respondent no.1 by no stretch of imagination is competent to receive the amount, which stands already paid to the contractor-respondent no.2 and because of impugned orders, petitioner is compelled to pay public money when the authority has exercised jurisdiction which was not vested in it. It is also stated by learned counsel for petitioner that the work was allotted to respondent-contractor and not to respondent no.1, but without appreciating the fact that there existed no relationship of employer and employee between petitioner and respondent no.2, respondent no.3 has passed impugned order/award.

4. Perusal of file would reveal that the persons of respondents no.1 in both writ petitions filed application under Section 15(2) of the Act for payment of the amount claimed therein. Respondent-contractor in his written objections stated that in the year 2009-2010 the work was completed and earned wages of respondents no.1 remained unpaid to them because the department did not release the bills and that as and when department would release the bills, the payments would be made. The department claimed before the Labour Court that it made payment to contractor, but, as observed by the Labour Court, the department could not produce any documentary evidence in support of its objections. Statement of respondents no.1 got recorded by the Labour Court; besides got statements of his/their witnesses recorded. The

Labour Court in terms of impugned orders directed petitioners herein to pay the compensation to respondents no.1.

5. Against the orders dated 22<sup>nd</sup> July 2013, petitioners herein filed appeals. On consideration thereof, the Appellate Court observed that under Section 17 (1A) of the Act no appeal shall lie unless the memorandum of appeal is accompanied by a certificate issued by the Authority to the effect that appellant has deposited the amount payable under the direction appealed against and there is no escape from this mandatory provision of law. The Appellate Court has observed that since petitioner has given go-by to the mandatory provision of law, so it is left with no other option but to dismiss the appeal as being not maintainable under Section 17 (1A) of the Act inasmuch as application for condonation of delay also loses its relevancy.
6. The legislative intent of the Act of 1936 is to govern that how wages are paid to employees, direct or indirect and to protect employees from unlawful deduction and/or unjustifiable salary delays. The responsibility for payment of wages under the Act lies with employer. The employer, as provided under Section 3 of the Act, shall be responsible for payment of all wages required to be paid under the Act to the persons employed by him and in case of persons employed in factories, in the industrial or other establishments, in the case of contractor a person designated by such contractor who is directly under his charge, and in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act; the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment. Subsection (2) of Section 3 in clear cut terms provides that notwithstanding anything contained in Subsection (1) of

Section 3, it shall be responsibility of the employer to make payment of all wages required to be made under the Act in case the contractor or the person designated by the employer fails to make such payment.

7. If a person is aggrieved of a direction passed by the authority under the Act either under Subsection (3) or Subsection (4) of Section 15 of the Act, he may prefer an appeal, as is provided under Section 17 of the Act, within thirty days of the date on which the direction was made. However, Proviso to Section 17 (1A) of the Act envisions that no appeal shall lie unless the memorandum of appeal is accompanied by a certificate of the authority to the effect that the appellant has deposited with the authority the amount payable under the direction appealed against.
8. The provisions of Section 17 (1A) of the Act are mandatory. The use of the word “shall” indicate that the amount payable under the orders of the authority under the Act is required to be deposited before the said authority and a certificate to this effect has to be filed along with the memo of appeal, failing which the appeal would be treated as defective and would not be heard until and unless the defect was removed.
9. In the present case, respondents no.1 had moved applications under Section 15 (2) of the Act. The provisions of Section 15(2) of the Act provide that if any deduction is made from the wages of an employed man or any payment of wages is delayed, such a person may apply to the authority under the Act for a direction as provided under Subsection (3) of Section 15 of the Act. Insofar as Subsection (3) is concerned, it provides that when any application under Subsection (2) of Section 15 of the Act is entertained, the authority under the Act shall hear the applicant and employer or other person responsible for payment of wages or give them an opportunity of being

heard and, after such employer or other person is liable under the Act, direct the refund to the employed person of the amount deducted or the payment of the delayed wages together with payment of such compensation as the authority under the Act may think fit.

10.If petitioner herein felt aggrieved of the order/s of the Authority under the Act, he, while preferring the appeal/s under the Act, was required to fulfill the mandatory condition of appending the certificate from the Authority to the effect that he deposited the amount payable under the orders of the Authority, which he, however, did not and, therefore, the Appellate Court, while observing that petitioner did not fulfill this mandatory condition, has rightly dismissed the appeal of petitioner. Reference in this regard is appropriate to be made to the judgement passed by a Bench of this Court in *Executive Engineer v. Authority under Payment of Wages Act, 2007 (3) JKJ 432 [HC]*, wherein it was held that without satisfying the mandate of Section 17(1) of the Act, the appeal was not maintainable, rather it was ineffective, incomplete and not competent.

11.For the reasons discussed above, the instant writ petitions are without any merit and are, accordingly, **dismissed** with connected CM(s). Interim direction, if any, shall stand vacated.

(Vinod Chatterji Koul)  
Judge

Srinagar  
31.01.2024  
Ajaz Ahmad, Secy

Whether approved for reporting? Yes