

(2023) 08 J&K CK 0053
In the Jammu And Kashmir High Court
Case No : Civil Miscellaneous No. 225 Of 2022

Ali Mohammad Dar

APPELLANT

Vs

Deputy Labour Commissioner (Authority Under Payment Of Wages Act), Kashmir Division, Srinagar And Others

RESPONDENT

Date of Decision : 28-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 227
Code Of Civil Procedure, 1908 — Section Order 9 Rule 13
Payment Of Wages Act, 1936 — Section 15, 17(1), 17(1)(a)
Constitution Of Jammu And Kashmir, 1956 — Section 104

Citation : (2023) 08 J&K CK 0053

Hon'ble Judges : Puneet Gupta, J

Bench : Single Bench

Advocate : Rouf Ahmad Parray, Aftab Ahmad, Satinder Singh

Final Decision : Dismissed

Judgement

Puneet Gupta, J

1. Abdul Hamid Khan-respondent No.2 in the present petition, filed an application in terms of Section 15 of the Payment of Wages Act, 1936 (hereinafter called as 'The Act') for recovery of Rs.1,94,820/- on account of delayed wages. The application was disposed of by the respondent No.1 vide order dated 30.06.2015.

2. The petitioner herein moved an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex-parte order dated 30.06.2015.

3. The application was contested by the applicant/claimant. The application was also dismissed vide order dated 08.11.20216 by the respondent No.1. The respondent No.1 also vide order dated 17.11.2016 directed the petitioner herein to deposit the amount granted by the respondent No.1 within a period of 15 days failing which legal action was to follow.

4. The petitioner has challenged all the aforesaid order passed by respondent

No.1.

5. The claim put forward by the respondent No.2 before the Authority is not required to be gone into by this Court while dealing with the petition in hand.

6. The petitioner has challenged order dated 30.06.2015 on the ground that the respondent No.1 could not appear in the case on 29.04.2015 due to curfew imposed in the City and, therefore, was not in know of the next date of hearing 27.05.2015, fixed by the respondent No.1 in the proceedings. The petitioner was set ex-parte on the said date and the impugned order was passed on the next date of hearing fixed on 30.06.2015.

7. The petitioner moved an application for setting aside order dated 30.06.2015 on 29.07.2015 and the application was contested by the claimant therein. The petitioner herein pleaded the aforesaid facts in the application filed under Order 9 Rule 13 CPC. The application was dismissed vide order dated 08.11.2016. The respondent No.1 dismissed the application on the ground that the judgment produced by the petitioner herein for setting aside ex-parte order dated 30.06.2015 is not applicable as the judgment was not passed under the Act. It may be mentioned herein that the petitioner had cited AIR 1985 SC, 294 titled 'Satnam Verma v. Union of India'. The contention of the petitioner is that the respondent No.1 erred in not applying the judgment to the case of the petitioner.

8. The learned counsel for the petitioner has argued that the proceedings taken out by the respondent No.1-Deputy Labour Commissioner was not in accordance with law.

9. The court has been taken through the interim orders which came to be passed by the respondent No.1 before the final order dated 30.06.2015 whereby the applicant-Abdul Hamid Khan was held entitled to the amount mentioned in the order.

10. The learned counsels for the respondents, however, submit that the respondent No.1 has not committed any illegality in passing the order dated 30.06.2015 when viewed in the light of the conduct of the petitioner herein in the proceedings before the respondent No.1 and failing to put forward any genuine plea before the said respondent.

11. The scanned record of respondent No.1 is before the court.

12. The Court has gone through the orders including the order dated 30.06.2015 by virtue of which the application filed by the respondent No.2 was finally decided.

13. The petitioner was proceeded ex-parte vide order dated 27.05.2015 as the petitioner herein was not present before the respondent No.1 and the case was directed to be listed on 12.06.2015 for judgment. On 30.06.2015 the case was finally decided and it has been noted in order dated 30.06.2015 that the file could not be placed before the respondent No.1 on 12.06.2015 and thus taken

up on 30.06.2015. The interim orders passed in the matter reveal that the petitioner herein had not caused appearance in the case for many hearings before he was set ex-parte on 27.05.2015. The conduct of the petitioner and lack of his interest in the proceedings is writ large from the very absence from the proceedings prior to 27.05.2015 when he was set ex-parte. The petitioner submits that due to the curfew in City on 27.05.2015 he could not appear in the proceedings on that date before the respondent No.1. The petitioner has raised a disputed question of fact as to why he could not appear in the case on 27.05.2015. What prevented the petitioner to enquire about the next date of hearing even if the submission of the petitioner regarding his absence from the proceedings on 27.05.2015 is to be believed is not forthcoming from the petitioner. It is important to note herein that the presence of the claimant-Abdul Hamid Khan has been recorded in the order sheet on 27.05.2015 the date on which the petitioner herein seeks absence from proceedings on the pretext that the curfew was imposed in the City. It appears that the respondent No.1 had given enough leverage to the petitioner herein regarding his absence from the proceedings as it is evident from the interim orders that the petitioner was set ex-parte only after he had absented himself from the proceedings consistently on many dates of hearing.

14. If the party to the proceedings becomes negligent consistently and suffers, in that situation, the court cannot find fault in passing of the orders by the Authority, respondent No.1 in the present case and come to the rescue of the party. The petitioner appears to have taken the proceedings before the respondent No.1 in a casual manner which resulted into passing of the final order dated 30.06.2015 impugned in the present petition. On facts, the court finds no reason to interfere with the basic order of 30.06.2015 which granted relief to the respondent-applicant.

15. The other order impugned by the petitioner is of 08.11.2016 whereby the application filed by the petitioner for setting aside ex-parte order dated 30.06.2015 was dismissed.

16. The argument raised on behalf of the petitioner is that the respondent No.1 has gone wrong in not applying the judgment of Satnam Verma (supra) in the case in hand wherein the Hon'ble Supreme Court held that if the Tribunal was competent to proceed ex-parte it is logically to follow that the Tribunal was competent to entertain an application to set aside an ex-parte award. The respondent should have followed this principle in the present case also. It may be noted herein that the court in that case had dealt with the Industrial Disputes (Punjab) Rules, 1958 framed under the Industrial Dispute Act and had specifically referred to the rules while deciding the case.

17. The other side has raised a contention that the present petition filed against the basic order and the order whereby the respondent No.1 refused to set aside ex-parte order against the petitioner is not maintainable. It is also submitted that no genuine cause was pleaded in the application filed for setting aside the award

and further the aforesaid judgment is not applicable in the case in hand.

18. The learned counsel for the respondent No.2 has referred to the case titled "Executive Engineer v. Authority under Payment of Wages Act" 2007 (3) JKJ 432 wherein this Court while dealing with the petition filed for quashment of Award and the order of refusal to set aside ex-parte award under the Payment of Wages Act was held to be not maintainable as efficacious remedy was available to the petitioner therein.

19. The judgment cited leaves no room to hold that the present petition filed under Article 227 of the Constitution of India read with Section 104 of the Constitution of Jammu and Kashmir (as it was then applicable to the State, now Union Territory) is not maintainable. The court had also noted in the judgment in Executive Engineer case (supra) that the appeal was not maintainable without satisfying the mandate of Section 17 (1) of the Act. The petition filed was also dismissed on the ground that the petitioners have not challenged the Constitution validity of Section 17 (1) (a) of the Act.

20. The Court in the preceding paras has noted the conduct of the petitioner and found no illegality in the proceedings which led to the passing of the Award. The application filed for setting aside order dated 30.06.2015, whereby the respondent No.2 was held entitled to wages, also refers to the passing of the orders prior to order dated 30.06.2015 for setting aside the ex-parte order of payment of wages. The court having found no fault in the interim orders which even led to the passing of order dated 30.06.2015, the application for setting aside ex-parte order cannot find favour with the court.

21. The perusal of the application filed for setting ex-parte order of award does not make out any ground for setting aside the award.

22. As far as order dated 17.11.2016 passed by respondent No.1 is concerned that only directs the petitioner to deposit the amount which the respondent No.2/ claimant was held entitled to. No ground to quash this order.

23. The perusal of the record does not convince the court that any glaring mistake has been committed by the respondent No.1 infact while passing the award or even refusing to set aside the award which may require interference by this Court. It also appears that the petitioner did not purposely file statutory appeal against the award passed by respondent No.1 in order to avoid deposit of the amount awarded which was required to be deposited with the respondent No.1 before filing an appeal against the basic order of payment of wages.

24. In view of the discussion made above, the petition is held to be without any merit and is, accordingly, dismissed.