

(1998) 12 J&K CK 0026
In the Jammu And Kashmir High Court
Case No : O. W. P. 978/93

Ch.Mohd.Abdullah

APPELLANT

Vs

Authority Under the Payment of Wages Act (Assistant Labour
Commissioner)

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Payment of Wages (Procedure) Rules, 1937 — Rule 8

Citation : (1999) KashLJ 624

Hon'ble Judges : T.S.Doabia, J

Bench : Single Bench

Advocate : S.Bhushan, J.P.Sharma, Advocates appearing for the Parties

Judgement

1. The circumstances under which this writ petition has come to be filed be noticed.

2. The respondent No. 3 to this writ petition preferred an application under Section 15(2) of the Payment of Wages Act, 1936. An expert order

was passed by that authority on 30 April, 1993. The petitioner was directed to make payment of Rs.4, 0007 only to the respondent No.3. The

above expert order was sought to be executed through the Chief Judicial Magistrate, Jammu. It was at the stage of execution the petitioner came

to know about the expert order dated 30 April 1993. He preferred an application praying that the expert order be set aside. The said authority

came to the conclusion that the payment of Wages Act, 1936 does not contain any provision, which enables it to recall an expert order. The

application seeking recalling of the expert order was rejected. It is this order which is subject matter of challenge in this petition.

3. The petitioner submits that if Rule 8 of the Payment of Wages (Procedure)

Rules, 1972 is perused then sufficient power is available with the authority under the Payment of Wages Act, 1936 to recall an order if good cause is shown. Rule 8 of the said rules on which reliance is being reproduced below:

Rule 8 : Appearance of Parties : Sub Ruled)

If the application is entertained, the authority shall call upon the employee by in notice in Form 'E' to appear before him on specified date together

with all relevant documents and witnesses, if any, and shall inform the applicant of the date so specified.

SubRule (2):

If the employer or his representative fails to appear on the specified date, the authority may proceed to hear and determine the application expert.

SubRule (3):

If the applicant fails to appear on the specified date, the authority may dismiss the application.

Provided that an order passed under Sub Rule (2) or SubRule (3) may be set aside and the application reheard on good cause being shown within

one month of the date of the said order, notice being served on the opposite party of the date fixed for rehearing.

4. I am of the opinion that on the plain reading of the rule makes it apparent that the concerned authority had the power to recall expert order. As a

matter of fact such is the view found mentioned in the case reported as ""Mis R. R. Engineering Co., Vs. The Competent Authority and another"" ,

1974 LAB. I.C. 1285 (V 7 C 284).

5. This petition is allowed. The case is remanded to the authority constituted under the Payment of Wages Act who shall dispose of the matter on

merits. Let a copy of this order be sent to respondent No.1 who would issue fresh notice to all concerned.