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(2015) 12 J&K CK 0008

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1065 of 2013 and CMP No. 1707 of 2013

Director Agriculture, Kashmir — APPELLANT

Vs

Authority Under the Payment of Wages Act — RESPONDENT

Date of Decision : 07-12-2015

Acts Referred:
Payment of Wages Act, 1936 — Section 17

Citation : (2016) 2 JKJ 348

Hon'ble Judges : Mr. Hasnain Massodi, J.

Bench : Single Bench

Advocate : Mr. Sajad Mir, Dy. AG, for the Appellants/Petitioners; Mr. Fayaz Ahmad Koul, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Hasnain Massodi, J. - Challenge is to the award dated 27th April 2013, rendered by Authority Under Payment of Wages Act, 1936,

in claim petition tiled Bashir Ahmad Bhat and Ors. v. Commissioner Secretary to Government, Department of Agriculture whereby

petition has been allowed and appellants directed to deposit an amount of Rs. 16,66,450 with the Authority, to be released in favour of

respondents, on account of unpaid wages, earned by them. First an overview of background facts.

2. The respondents on 19th July 2012, approached the Authority Under Payment of Wages Act with an application under section 15(2) of the

Payment of Wages Act 1936, for recovery of unpaid wages. Sometime after the application was filed, 30 applicants withdrew the application and

left 22 of their colleagues to prosecute the matter. The remaining applicants-22

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in number, claimed an amount of Rs. 13,66,450 as unpaid wages

from appellants'. The case set up was that applicants were engaged as casual laborers' by the appellants from time to time since 1992 to work at

Seed Multiplication Farm (Padgampora) and worked under the close supervision of appellants 2 and 3. It is pleaded that appellants unjustifiably

withheld their wages, constraining them to approach the Authority.

3. The appellants responded to the notice, issued by the Authority and filed their objections to the application.

4. On perusal of pleadings, following issues were framed by the Authority:-

i) Whether claim of the applicants is within the time frame, fixed in the Act, if not, whether delay is to be condoned? (OPA)

ii) Whether the applicants have worked with respondents and have earned wages? (OPA)

iii) Whether the applicants are presently working in the Agriculture Farm? (OPA)

iv) Whether the respondents are liable to pay the unpaid wages as claimed? (OPR)

The parties were asked to adduce evidence in support of their respective stand.

5. The respondents to substantiate their claim and discharge the burden of issues, onus whereof, was placed on them, examined Sh. Ab. Rashid

Dar, Gh. Hassan Dar, Manzoor Ahmad Rather, all residents of Padgampora and Manzoor Ahmad Naik resident of Tral. The appellants' did not

examined even a single witness to prove their stand set up in opposition to application or rebut the evidence adduced by applicants.

6. The Authority on perusal of evidence brought on record on April 27th 2013, passed the award, impugned in the petition.

7. It is pertinent to point out that petitioner did not adduce any evidence in support of their stand or to rebut evidence produced by respondents,

even Manager Seed Multiplication Farm (Padgampora) did not step into the witness box to belie respondents claim.

8. The Authority while deciding the issues observed that respondents in the year 1992 were engaged as casual labourers by petitioner at Seed

Multiplication Form, Department of Agriculture (Padgampora); that respondents worked under the supervision of respondents 2 and 3 and they

were unjustifiably denied the wages for the period they served the department. The Authority accordingly settled all the issues in favour of

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respondents and against the petitioners and computed the wages due to respondents 2 to 23 on account of work done/duty discharged by them

and directed petitioner to pay an amount of 30,66,450.

9. The award is questioned in the present petition, primarily on the ground that respondent no. 1 lacks jurisdiction to entertain the application under

section 16(2) of Payment of Wages Act 1936, much less dispose it off and pass the order, impugned in the petition. Reliance is placed on law laid

down in judgment dated 13th May 2011, whereby OWP No. 106/2008, titled Director Agriculture, Kashmir and another v. Authority

under Payment of Wages Act, Budgam and Others 2011 (3) JKJ 455 [HC] has been dismissed. The award is also questioned on the ground

that respondents 2 to 23 were not 'Government Employees' but 'where governed by the condition of services having been engaged on need basis,

on whatsoever amount payable by petitioner department and acceptable to respondents 2 to 23'. It is next urged that parties in view of terms and

conditions of engagement were at liberty to terminate engagement, if not acceptable to them. The Authority is said to have erroneously assumed the

jurisdiction and illegally exercised the jurisdiction so assumed. Failure to question the award in appeal, according to petitioners does not stand in

their way to impugn the award through medium of writ petition under Article 226 Constitution of India.

10. I have gone through the pleadings and have heard counsel for parties.

11. It needs to be pointed out at the outset, that Payment of Wages Act, 1936 is a welfare legislation, aimed at protection of workmen and avoid

exploitation of labour. It provides for recovery of delayed and unpaid wages due to an employed person in an expeditious and hassle free manner.

It applies to persons employed in any factory, otherwise than in a factory or even persons employed through sub-contractor.

12. In terms of section 2 (ia) and (ib) the ""employed person"" includes the legal representative of a deceased employed person; ""employer"" includes

the legal representative of a deceased employer. The wages are defined in section 2 (vi) as to mean all remuneration (whether by way of salary,

allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or

implied, were fulfilled, be payable to a person employed in respect of his

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employment or of work done in such employment. The definition of

wages includes all benefits enumerated in section 2(vi). Section 3 fixes responsibility of payment of wages. Section 4 provides for fixation of

wages, and section 5 time of payment of wages. Section 15 empowers the Officer appointed as Authority under Payment of Wages Act to

entertain and deal with an application for recovery of delayed or unpaid wages. In order to make benefit under the Act, available to the target

group, section 17 leaves scope for single application for recovery of delayed or unpaid wages by the group of employees, born on the same

establishment. The scheme of the Act is, therefore to provide efficient mechanism for recovery of unpaid and delayed wages. Section 17 provides

for appeal against made under Section 15 of the Act. The appeal is to be laid before the court of Small Causes in Presidency-towns and else-

where before the District court. However, the appeal is to be entertain only after the fulfilment of threshold conditions laid down therein.

13. The Act having regard to the object sought to be achieved, is to get liberal construction and interpreted in a purposive manner. The procedure

laid down under the Act is to be scrupulously adhered to and the rules followed in letter and spirit so that benefit contemplated is not denied to

garget group.

14. Petitioners in present petition have not followed the remedy of appeal, available under section 17 of the Act. They have, therefore very

conveniently avoided to follow the conditions subject to which the appeal is to be entertained. It is well settled law that where a statutory remedy is

available, right course is to exhaust such remedy and not to directly invoke writ jurisdiction of the Court. In the present case, petitioners had a

remedy in the form of an appeal against the order of Authority under Payment of Wages Act. They, without pressing into service section 17 of the

Act, have rushed to invoke writ jurisdiction of this Court. The appellate forum in such matter is in a better position to scan, re-appreciate and

analyse the evidence on the basis whereof, award/order is made. Such an option is not available to this Court while exercising writ jurisdiction.

Petitioners cannot rake-up the issue of jurisdiction to justify their failure to make use of equally efficacious remedy to question the award. The writ

petition is to fail on this count as well. Reference in this regard may be made to

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law laid down in Director, Department of Environmental and

Remote Sensing v. Sonaullah Bhat and Ors. [2011 (3) JKJ 87[HC]: 2011 SLJ 598].

15. The main plank of petitioners' case is that Assistant Labour Commissioner, Pulwama-author of impugned order did not have jurisdiction to

entertain and deal with the application. They seek to draw support from the judgment of this Court rendered on 13th May 2011 in OWP No.

788/2006. In order to find out whether the judgment relied upon extends support to petitioner's case, it is necessary to identify the place where the

cause of action arose and Authority under the Act, read with rules/notifications on the subject issued from time to time by the Competent Authority

in exercise of powers under Section 15 of the Act.

16. Section 15 authorizes appropriate Government may, by notification appoint any official for Workmen's Compensation or any officer of Central

Government exercising functions as Regional Labour Commissioner; or Assistant Labour Commissioner or any other officer of the state

Government not below the rank of Assistant Labour Commissioner; or to appoint a Presiding officer of any Labour Court of Industrial Tribunal,

constituted under the Industrial Disputes Act, 1947 (14 of 1947), or under any corresponding law relating to the investigation and settlement of

industrial disputes in force in the State; or any other officer having experience as a Judge of Civil Court or a Judicial Magistrate, as the authority is

to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons

employed or paid in that area, including all matters incidental to such claims. The Government in terms of proviso of section 15 is authorised to

appoint more than one Authority for any specified area and order distribution or allocation of work, to be performed by them under the Act. The

Government in exercise of powers under section 15, issue notification SRO 37, appointing Commissioner for workmen's compensation, appointed

under notification 409 dated 2nd September 1991, to be Authority for the purpose of under section (1) of Section 15 within the respective

territorial jurisdiction. The Government, earlier in exercise of powers under section (1) of Section 20 of Workmen's Compensation Act 1923,

appointed Assistant Labour Commissioner, to be Commissioners for workmen's

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compensation under the Act within the areas of their respective

jurisdiction. A conjoint reading of SRO 409 and 37, dated 23rd January 1980 referred to here in above, leads to the conclusion that

Commissioners for workmen's compensation is also to act an Authority under section 15 (1) in terms of Payment of Wages Act. In terms of SRO

457 of 26th September 1975, Government appointed Dy. Labour Commissioners for Jammu and Srinagar, to be Authorities for the divisions of

Jammu and Kashmir. It follows that in additional to Commissioner for workmen's compensation with a particular jurisdiction that Dy. Labour

Commissioner, Srinagar and Jammu are also to act as Authority for the purpose of Sub-section (1) of Section 15 of the Act. To illustrate a person

is aggrieved with non-payment, delayed payment of wages or illegal deduction of a part of wages. He has an option to approach with an

application under section 15 (1), Payment of Wages Act to the Commissioner under workmen's compensation-Assistant Commissioner of the

particular District where cause has arisen or Dy. Labour Commissioner having jurisdiction over the division, i.e. Kashmir or Jammu division.

Reference in this regard may be made to [Fayaz Ahmad Dar v. Chief Agriculture Officer Budgam and Anr. 2013 (2) JKJ 110[HC] : 2013

SLJ 245].

17. In the present case, petitioners claim to have worked at Seed Multiplication Form Padgampora, District Pulwama. They had an option to

approach Commissioner under workmen's compensation (Assistant Labour Commissioner) Pulwama with an application under section 15(1) of

the Act or Dy. Labour Commissioner, Srinagar. Petitioners have laid application under section (1) of Section 15 before the Commissioner under

workmen's compensation (Assistant Labour Commissioner Pulwama).The Assistant Labour Commissioner, Pulwama, therefore had the

jurisdiction to deal with the application. The petitioners in the circumstances cannot be heard, complaining that Commissioner under workmen's

compensation-Assistant Commissioner (Pulwama) did not have the jurisdiction to deal with the matter.

18. Petitioners question jurisdiction of the Authority on the ground that ""respondents 2 to 23 were not at all having status of being Government

employees"". The ground is pleaded on an erroneous assumption that Payment

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of Wages Act 1936, is applicable only to the Government

employees and the Authority under the Act has no jurisdiction to entertain an application, filed by workmen/employee other than the Government

employee. A bare look at Section 1 would reveal that the Act applies to wages payable to persons, employed amongst others in an industrial or

other establishment. Section 2(h) empowers the appropriate Government to notify any establishments) where the persons employed need

protection, or establishment within the meaning of Section 1(4) of the Act. It is nobody's case that petitioners were not entitled to the protection

under the Act as their claim did not fall within the purview of section 15 read with Sections 1 and 2 of the Act. The only ground as already stated,

is that they were not Government employees. The plea is taken unmindful of the fact that to invoke jurisdiction under Payment of Wages Act 1936,

a person is not required to be a ""Government employee"" and therefore, has a right to make an application under Section 15 of the Act, even in

absence of said status.

19. In the facts and circumstances of the case and for the reasons, discussed here in above, petition is held to be bereft of merit and is accordingly

dismissed. This however, shall not stand in the way of petitioners to work out any other remedy to question the impugned order as available under

law.

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