
(2007) 09 J&K CK 0019
In the Jammu And Kashmir High Court

Executive Engineer	Vs	APPELLANT
Authority under Payment of Wages Act		RESPONDENT

Date of Decision : 03-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Payment of Wages Act, 1936 — Section 15, 17, 3

Citation : (2007) 3 JKJ 431

Hon'ble Judges : Mansoor Ahmad Mir, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, J.—Petitioner has sought indulgence of the Court for issuance of a writ of certiorari for quashing the award dated 21-

2-1998 passed by Assistant Labour Commissioner, Baramulla as Authority under Payment of Wages Act (for short the Act) in the claim petition

titled Ali Mohammad Bhat v. Executive Engineer and Ors., whereby an ex-parte award to the tune of Rs. 2,51,740/- in favour of the applicant --

respondent No. 2 herein read with order dated 22-7-1999, whereunder the application filed by the writ petitioner for setting aside ex-parte award

came to be rejected. The brief facts of the case are to be noticed:

2. Respondent No. 2, Ali Mohammad Bhat filed a claim petition before the Authority under Payment of Wages Act -- Assistant Labour

Commissioner, Baramulla with the averments that he supplied 557 labourers and 269 masons to the respondents 3 and 4, but the petitioner -- non-

applicant failed to pay wages to him which constrained him to invoke jurisdiction of the Authority under the Act. Ex-parte award came to be

passed. The petitioner filed an application before Authority under Payment of

Wages Act, for setting aside exparte award which came to be dismissed vide order dated 22-7-1999. Aggrieved by both the orders, the petitioner has questioned the same before this Court through the medium of this writ petition on the grounds taken in the writ petition and prayed for quashment of the same.

3. It is specifically averred by the petitioners in the petition that they have no other alternate and efficacious remedy available to them except to file

this petition. The question is whether the petitioner has efficacious and alternate remedy available? The answer is in affirmative for the following

reasons:

4. The aim and object of the Payment of Wages Act is to pass effective orders for the redressal of grievances of workman and if on facts it is

found that the wages of a workman have been withheld or employer has acted in such a manner which is apparently detrimental to the employee,

the authorities under the laws particularly administering the social justice for the working class cannot be held to be helpless in granting relief in

appropriate cases. If an award is passed in favour of the claimant, the aggrieved person can file an appeal in terms of Section 17 of the Act subject

to fetters and restrictions. It is profitable to reproduce Section 17(1)(a) hereunder:

17. Appeal-(1) An appeal against an order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or against

a direction made under Sub-section (3) or Sub-section (4) of that section may be preferred, within thirty days of the date on which the order or

direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court-

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and

compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability

exceeding one thousand rupees?|.

5. As per mandate of this provision of law, the appellant has to annex a certificate to the effect that it has deposited the amount payable under the

award, appealed against. The aim of this section is to ensure that the wages/ awarded amount is to be deposited before the authority before filing

the appeal and appeal can only there-after be competent. It has social purpose and object behind it, i.e. to save the labourer from the social evils.

If appeal is filed without certificate, it is incompetent ineffective and incomplete

Appellant in the instant case has not chosen to avail the alternate remedy by preferring an appeal. Instead of challenging the said order, by way of

appeal, the petitioner has filed this writ petition with the averment that efficacious remedy was not available to him, which is not correct. This writ

petition has been filed with the sole aim of giving a slip to law and to come out of rigour of Section 17(1)(a) of the Act. It is beaten law that where

efficacious remedy is available, writ is not maintainable. I am fortified in my view by apex Court judgment titled U.P. State Bridge Corporation Ltd.

v. U.P. Rajya Setu Nigam S. Karamchari Singh AIR 2005 SCW 3149, wherein their lordships have held that where alternate remedy is available,

writ is not maintainable. It is profitable to reproduce para 17 of the Judgment, hereunder:

The only reason given by the High Court to finally dispose of the issues in its writ jurisdiction which appears to be sustainable, is the factor of delay,

on the part of the High Court in disposing of the dispute. Doubtless the issue of alternative remedy should be raised and decided at the earliest

opportunity so that a litigant is not prejudiced by the action of the Court. Since the objection is one in the nature of a demurer. Nevertheless even

when there has been such a delay where the issue raised requires the resolution of factual controversies, the High Court should not, even when

there is a delay, short circuit the process for effectively determining the facts. Indeed the factual controversies which have arisen in this case remain

unresolved. They must be resolved in a manner which is just and fair to both the parties. The High Court was not the appropriate forum for the

enforcement of the right and the learned single judge in Anad Prakash's case had correctly refused to entertain the writ petition for such relief.

This Court had an occasion to deal with an identical question in case Faqir Chand v. Authority under Payment of Wages Act 1988 KLJ 223 and

has held that the writ jurisdiction cannot be substituted for the ordinary remedy of appeal provided under a particular statute as in the instant case

u/s 17 of the Payment of Wages Act. It is profitable to reproduce para 4 of the judgment hereunder:

â?|The object of the Labour Laws is to pass affective orders for the redress of grievances of workmen and if on facts it is found that a workman had been deceived or forced to enter into some alleged compromise against his wishes which is apparently to his detriment, the authorities under the laws particularly administering the social justice for the working class cannot be held to be helpless in granting relief in appropriate cases, as was done by the respondent No. 1 in the instant case on the basis of the judgment of the Supreme Court reported in Satrugan Isser Vs. Smt. Subujpari and Others, . The writ jurisdiction cannot be substituted for the ordinary remedy of appeal provided under a particular statute as in the instant case Section 17 of the Payment of Wages Act. The question raised by the petitioner could have been raised by him before the passing of the final order before the appellate authority if he still felt aggrieved. The petitioner has tried to over reach the arms of law by not filing a regular appeal in accordance with the provisions of law and after compliance of pre-requisite conditionsâ?|.

6. Same view has been taken by Allahabad High Court in case Vishwamitra Karyalaya Press Vs. Authority appointed under Payment of Wages Act, 1936 for Kanpur and Others, .

7. Otherwise also, this writ petition is liable to be dismissed on the ground that petitioners have not challenged the constitutional validity of Section 17(1)(a) of the Act. Without satisfying the mandate of Section 17(1) of the Act, the appeal was not maintainable, rather it was ineffective, incomplete and not competent. Without complying with the mandate of law, writ came to be filed in order to avoid the deposit of awarded amount, which is against the mandate of Payment of Wages Act.

8. The writ petition is also liable to be dismissed as disputed questions of facts have been raised therein, which cannot be gone into by this Court.

The disputed questions are whether wages of the petitioner -- claimant was Rs. 125/- or Rs. 1000/- per month. The apex Court in case State of

Karnataka v. KGSD Canteen Employees Welfare Association AIR 2006 SCW 212, has held that when serious question of fact is involved, that

cannot be gone into by the writ court. It is profitable to reproduce relevant para of the judgment hereunder:

â?|In a case of this nature, where serious disputed questions fact were raised, in

our opinion, it was not proper for the High Court to embark thereupon an exercise under Article 226 of the Constitution. The High Court in its judgment relied upon a large number of decisions of this Court, inter alia, in Reserve Bank of India (supra) and State Bank of India and Ors. v. State Bank of India Canteen Employees Union (Bengal Circle) and Ors. AIR 2000 SC 1518 ignoring the fact that all such disputes were adjudicated in an industrial adjudication.

9. Same view was taken by the apex Court in case Antonio S.C. Pereira v. Ricardina Noronha (D) by L.Rs. AIR 2006 SCW 5155

10. In view of the above discussions, the writ petition is not maintainable and is accordingly dismissed along with all connected CMPs.