

(2003) 05 J&K CK 0003

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 291 of 2002

JK Industries Ltd.

APPELLANT

Vs

Ali Mohd. Dar and Others

RESPONDENT

Date of Decision : 24-05-2003

Acts Referred:

Payment of Wages Act, 1936 — Section 15(2)

Citation : (2010) 3 JKJ 861

Hon'ble Judges : Syed Bashir-ud-Din, J

Bench : Single Bench

Judgement

Syed Bashir-ud-Din, Ju

1. Respondents 1 to 71 are the employees of J&K Industries and are working in its unit known as Govt. Silk Weaving Factory Rajbagh. These

employees filed an application before the Authority under payment of wages Act to restrain the employer JKI from deducting their earned wages

from their pay, on the plea that it amounts to unfair labour practice. The unlawful deductions from their wages were also prayed to be recovered

and paid back to these employees. They succeeded before the authority and a direction is issued to JKI Ltd. and the Govt. Silk Weaving Rajbagh

to deposit the amount of Rs. 4,74,875.35, the wages illegally deducted from the salaries of these employees. This order is passed on 17.04.2002.

The order is impugned in this petition on the ground that the respondents without waiting for the outcome of the writ petition SWP No. 1485/98

filed before the High Court on the same subject filed the application before the authority simultaneously and the authority without awaiting for

outcome of the writ petition passed the impugned order disposing of the application. The claim before the authority was time barred and the claim

could not have been entertained and upheld by the authority. The wages have been deducted in exercise of powers vested in the management and

within parameter of law. The order passed by the authority operates adversely to the interest of the Government Silk Weaving Factory at Rajbagh.

The alternative remedy of appeal available to petitioner is expensive.

2. Objections/reply has been filed. In reply, it is stated that there is no bar for the employees to take simultaneous proceedings for release of the

illegally deducted wages. The management decision relied for withholding the wages has no efficacy in law as the necessary legal provisions too

have not been followed. Employer has not availed of efficacious and effective statutory remedy available to it. Resorting to writ jurisdiction in the

facts and circumstances of this case, is misplaced. Petitioners are entitled to the benefits which are guaranteed to them by the Industrial and Labour

Laws. The impugned order is passed within jurisdiction.

3. The perusal of the impugned order shows that after the application was moved before the authority respondents did not appear before the

authority on summons. In the proceedings some interim directions of stoppage of illegal deductions from the pay of respondents was passed on

31.1.2001 by the authority found the deductions illegal and a direction for prosecution of Management is also passed. The JKI produced detailed

statement with regard to date and amount of recoveries unlawfully deducted from the employees. The authority also noticed that some agreement

providing for deductions in the event of workers/employees resorting to less production, willful default, pollution of factory atmosphere etc is on the

subject. But on the premise that the agreement is not authenticated by the concerned officer as required under the provisions of Factory Act, the

agreement was found to be not valid. The authority passed the order for deposit of illegally deducted wages from the employees Respondent no. 1

to 71, calculated at Rs. 4,74,875.35 for defrayment among these employees on calculations case wise as per statements produced by the

Employer JKI before it.

4. This order perused in conjunction with the petition allegations and the reply, leave no scope for the conclusion that parties have dispute on facts,

material to this case. The writ petitioner's main grievance is that the agreement was not considered while ordering the recovery and disbursement of

the withheld wages. But it is not so. The authority has found that the agreement is not proved as per law. Respondents / employees question the legality and efficacy of the Management decisions in absence of approval of such decisions by labour Commissioner and authentication of alleged agreement by Inspector of factories. The actual terms and conditions of appointments of the employees under the agreement under which writ petitioners employer claims deductions in question are legitimate and agreed, is a matter of proof on which count the authority states that it has not been proved.

5. The counsel for the parties are agreed that there is no bar for pursuing simultaneous remedies, if available under law. Mere pendency of writ is not to render the impugned order of the authority per se bad in law. It is not also denied that the limitation under the payment of Wages Act is amendable to condonation. This is so on the language of second proviso to Sub Section 2 of section 15 of the Payment of Wages Act (for short Act).

6. Contextually, after the order is passed by the authority in the above facts and circumstances, the provision of section 17 of the Act provide for an appeal against the impugned order to the District Court at Srinagar. However, the appeal is to lie on conditions and terms as specified by Section 1.7 of the Act, which inter alia provides that the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction, subject of appeal. Writ petitioner is fully aware about this position and the reason for not taking recourse to this alternative remedy of appeal is stated in para 5 of the petition as under:-

that the petitioner is constrained to invoke the extra ordinary writ jurisdiction of this Hon'ble Court because of its being in-expensive efficacious and speedy, otherwise the petitioner would have availed the remedy of appeal as provided under the Payment of Wages Act. Appeal, however can be filed only when the sum awarded by the Authority under Payment of Wages -- Act is deposited and certificate to the effect is obtained and unless the Appeal is accompanied by said certificate, appeal will not be competent and it cannot be entertained. The petitioner company corporation is facing acute financial crisis and is not in a position to deposit the awarded sum in

order to avail the remedy of appeal available under the payment of Wages Act.

7. Bare reading reveals that the petitioners have not deliberately filed appeal against the order, because the JK Industries Ltd. Churns out an alibi

that it is not in a position to deposit the awarded sum of Rs. 4,74,875.35. For it, this is quite a small sum as JK Industries Ltd. is running so many

Industrial Units including the Units in Silk Weaving Sector. The reason is not that there is no efficacious and speedy remedy to the writ petitioners,

but to avoid deposit of the amount, a pre-condition for filing of appeal as the appeal is not competent unless the memorandum is accompanied by a

certificate showing that the awarded amount has been deposited. The writ forum is neither court of appeal nor of revision. Though existence of

alternative remedy is not a rule of jurisdiction of limitation on the powers of the High Court, but all the same it cannot be lost sight of that it is a rule

of discretion and expediency and in a suitable case, when statutory remedy in the frame work of the law governing the subject, is available and

efficacious, the writ court can direct the petitioner to pursue alternative remedy and decline to intervene.

8. In the facts and circumstances of this case, it is not appropriate that the writ court should interfere with the impugned order. The writ petitioners

have adequate and suitable relief available under the statute, where the court of appeal can go into vital aspects of the case when the parameters of

the writ jurisdiction are not available to examine the matter under Article 226 of the Constitutions of India.

9. The authority Secretary, Minor Irrigation and Rural Engineering Services, U.P. and Others Vs. Sahngoo Ram Arya and Another, , cited by Mr.

Zahoor A.Shah, counsel for respondents which turns on its own facts, is hardly relevant to this case.

10. The authority, M.G. Abrol Vs. Shantilal Chhotalal and Co., cited by petitioner's counsel reiterates the principles that existence of alternative

appeal is not a rule of jurisdiction for the writ court but rule of discretion. Besides, not interfering with the exercise of discretion of the High Court in

dealing with the matter under Article 226 of the Constitution of India inter alia on the ground that large amount of penalty imposed on the writ

petitioners was to be deposited as condition precedent to filing of appeal, is not a

rule that in a case, like that one at hand, the High Court is precluded to refer the writ petitioner JKI Ltd. to alternate remedy. Even so, the Apex court while refusing to interfere with exercise of discretion of the High Court, in not referring the petitioner firm to alternative remedy of appeal, observed:-

...That apart, the existence of an effective remedy does not oust the jurisdiction of the High Court, but it is only one of the circumstances that the court should take into consideration in exercising its discretionary jurisdiction under Article 226 of the Constitution. In this case, the High Court thought fit to exercise its jurisdiction under Article 226 of the Constitution and we do not see any exceptional circumstances to interfere with its discretion.

11. In the facts and circumstances of this case, as referred here in-above, for JKI Ltd. deposit of the award amount is not such a large amount

which is beyond its means and which amount it cannot deposit. Again the nature of contest and dispute raised on facts, as even so in the pleadings, within the canopy of the impugned order is such that the above authority in my opinion, is not of much help of petitioners.

12. In the aforesaid view, in the totality of facts and circumstances, this writ petition is dismissed without formally admitting it to hearing at the thresh

hold after the counsel for the parties addressed the arguments on above aspects of the case at the pre admission stage.

13. While so dismissing the petition, it is made clear that apart from the proceedings culminating in impugned order, the employer is not barred

from taking action within parameters of law in the event of worker(s) failing to maintain the required level production, discipline pollution free work

atmosphere in the factory, fruitful utilization of time, punctuality, whether covered by agreement or not. After all workers/employees cannot be paid

even though they fail to fulfill the set production target in terms in norms fixed for Weaving department in Silk Weaving Factory Rajbagh. If the

workers are paid even when they are inefficient and not fulfilling the targets, the blame should lie in large measure with the Management of JKI,

who are expected to be vigilant and vigorously enforcing target oriented work culture to pursue such matters at every level, may be before the

prescribed forums under law including the one provided by Payment of Wages

Act and other Industrial and Labour/laws. Disposed of.