

(2003) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 494 of 2002

Nazir Hussain Shah

APPELLANT

Vs

Authority under Payment of Wages Act

RESPONDENT

Date of Decision : 08-07-2003

Acts Referred:

Payment of Wages Act, 1936 — Section 15

Citation : (2010) 3 JKJ 321

Hon'ble Judges : Permod Kohli, J

Bench : Single Bench

Judgement

Permod Kohli, J.—Petitioner has assailed the award dated 15.11.2001 passed by the Assistant Labour Commissioner, Authority under

Payment of Wages Act, Kupwara against the petitioner for payment of Rs. 55,000/- as also order dated 9.9.2002 passed by the same Authority,

whereby an application for setting aside the exparte proceedings has been dismissed.

2. The grounds of challenge to the award are that respondent No.2 filed a frivolous claim petition before respondent No. 1 claiming therein that he

has supplied material i.e., Iron, Cement, Sand etc. worth Rs. 9,300/- and that he also supplied labour. He claimed a sum of Rs. 55,530/- as

outstanding amount in respect to supply, of material and labour charges. Respondent No. 1 initiated exparte proceedings and passed the award

impugned in the writ petition. It is submitted that the award passed by respondent No.1 is without jurisdiction as the amount claimed by respondent

No.2 was in respect to alleged supply of Iron, Cement, Sand etc. The Authority under the Payment of Wages Act is only entitled to award

payment of wages to the workmen in terms of Section 15 of the Payment of

Wages Act. Neither respondent No.2 was a workman nor the claims

lodged by him were wages as defined under the Payment of Wages Act. For the purposes of convenience definition of 'employed person' and

'Wages' is quoted below:

(i) 'employed person' includes the legal representative of a deceased employed person,

(vi) ""Wages"" means 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

employment or of work done in such employment and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name)

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which

provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be

made.

(e) Any sum to which the person employment is entitled under any scheme framed under any law for the time being in force;

But does not include-

(1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of

employment or which is not payable under any

(2) award or settlement between the parties or order of a Court;

(3) the value of any house-accommodation, or of the supply of light, water medical, attendance or other amenity, or of any service excluded from

the computation of wages by general or special order of the State Government.

(4) Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

- (5) Any traveling allowance or the value of any traveling concession;
- (6) Any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; of
- (7) Any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d)

Section 15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.-

(1)...

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages

has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf,

or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such

authority for a direction under sub-section (sic).

3. Respondent No.1 has referred to the claims of respondent No.2 in para 1 of the award, which reads as under;-

The petitioner in his application presented alleged that he had been employed as mate by the respondent for the construction of a culvert at Cham-

bkote-TAD Road. The petitioner states that he had engaged labourers for the construction of the said culvert, the wages of whom together with

other labour charges incurred upon the supply of the material which amount to Rs 55,530/- were not paid by the said contractor and are lying still

outstanding against him.

The petitioner produced a Photostat copy of the work order of AEE(R&B) Sub Division Tangdar (as alleged) issued in favour of the contrac-tor

Nazir Hussain Shah vide No. AEETY 204-6 dated 1.8.1996 and a muster sheet reflecting the attendance of engaged labourers their wages and

other labour charges incurred by him for the construction of the said culvert. The petitioner has furnished an affidavit to the extent of correctness of

his claim application and other appended documents.

4. Respondent No.2 appeared as a witness and his statement as reproduced in the award is also quoted below:

On 17.9.2001 the Court recorded the statement of the petitioner as his own, witness. The petitioner in his statement deposed that Nazir Hussain

Shah (PWD Contractor) routinely used to get his allotted work done through him as mate and the work under mention was also carried out by him

and after completion, of the said work an amount of Rs. 55,000/- stood outstanding against the said contractor on account of wages and other

labour charges which accrued upon the said construction.

In cross-examination revealed that Nazir Hussain Shah had verbally directed him to execute the work which he was ordered to carry out by the

concerned PWD Deptt. And there was not any written agreement between the two in that context. The petitioner deposed that he had maintained

the muster sheets and used to mark the attendance of the engaged labourers, deposed the wages of the labourers at the rate of Rs. 50/- per day

and the total labour charges which accrued upon the said construction to about Rs. 15000/- The total allotment of the work was about Rs.

94,000/- as the said contractor has revealed to him and assured him the payment of full amount excluding the cost of the material.

5. The relevant portion of the objections to the writ petition filed by respondent No.2 is also re-produced hereunder:

2. That the contents of para 3 are incorrect as respondent No.2 has completed the work allotted to him by the petitioner on 1.8.1996 to execute

the same as Mate for supplying the Labourers and other necessary material for completion the construction of RCC Culvert at place of Chamkote

Tad Road and an outstanding of Rs.55,530/- remained unpaid by way of wages to respondent No.2.

6. From the award and the facts admitted in the reply to this petition, the claim of respondent No.2 before respondent No. 1 was with respect to

the supply of material and labour charges. Respondent No.2 lodged claim with respondent No. 1 for himself claiming to be a mate supplying

labour as also the material and also for the execution of the work. In terms of Section 15(2) of the Payment of Wages Act, 1936, the claim for

deduction of wages or delayed wages can be lodged by the person himself, the legal practioner, the official of registered trade union authorized in

writing, the Inspector appointed under the Act or any other person acting on behalf of such person with the permission of the authority. It is case of

respondent No.2 that he executed the entire work on behalf of the petitioner, who was allotted the contract by the State. As a matter of fact,

respondent No.2 was a sub contractor though he claims himself to be a mate. Respondent No.2 does not fall in any of categories competent to

lodge claim for wages u/s 15(2) of the Payment of Wages Act, 1936. The claim of respondent No.2 in respect to supply of material and labour

and execution of the contract also does not fall within the scope and ambit of wages as envisaged by the Act. The award passed by respondent

No.1 is thus beyond the scope of the provisions of Payment of Wages Act. The same is without any authority of law and jurisdiction. It is

contended by the learned counsel for the respondent that the petitioner has a remedy of filing appeal under the provisions of the act and, therefore,

this writ petition is not maintainable. I am not inclined to accept the contention of the learned counsel for the respondents for the simple reason that

wherever it is found that the order impugned is without jurisdiction, this Court can interfere in exercise of its extra-ordinary writ jurisdiction.

Respondent No. 1 is a statutory authority and has been empowered to adjudicate upon the disputes as envisaged under the Act. In the present

case neither the dispute decided by respondent No.1 fall within the purview of the Act, nor the claim has been made by any person competent to

lodge such claim, thus, he had no legal authority to take cognizance of the claim petition and pass the award. The action of respondent No. 1 being

in contravention to and without authority of law the writ court is empowered to exercise its extraordinary jurisdiction to set aside the same.

Accordingly, the award impugned is hereby quashed.