
(2001) 01 J&K CK 0030
In the Jammu And Kashmir High Court
Case No : Writ Petition No. 698/1998

Shiv Nath and Others

APPELLANT

Vs

Assistant Labour Commissioner and Others

RESPONDENT

Date of Decision : 01-01-2001

Acts Referred:

Payment of Wages Act, 1936 — Section 17(1A)

Citation : (2001) JKLR 408 : (2001) KashLJ 229

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

Bench : Single Bench

Judgement

1. An application was preferred under the payment of Wages Act. This was filed by Darshan Lal respondent no. 2. He was supporting the case of

others also. The total amount which was claimed was Rs. 39,800/-. The authority under the Payment of Wages Act allowed a sum of Rs. 13,168/.

The operative part of the order passed by the authority under the Payment of Wages Act is being reproduced below :

I therefore, accordingly pass an order of the aforesaid total amount, amounting to Rs. 12,168 (Rupees thirteen thousand one hundred and sixty

eight only) alongwith the compensation @ Rs. 207 each in favour of the claimants namely Darshan Lal, Moti S/o Massu, Masat Ram S/o Munshi

Ram, Vasdev S/o Balak Ram and Mulkh Raj S/o Rohlu Ram to be apportioned in the manner as stated above against the nonapplicants".

2. Two appeals were preferred one was preferred by the present petitioner and other was preferred by Darshan Lal. Both the appeals came to be

rejected. So far as the appeal preferred by the present petitioner is concerned, this was rejected on the ground that the amount which was found to

be due by the authority constituted under the Payment of Wages Act, had not

been deposited. It was observed that there is noncompliance of

Section 17(1A). Therefore, taking this view of the matter, the appeal preferred by the present petitioner was dismissed.

The relevant provision which required the deposit to be made is as under:

(1A) No. appeal under clause (a) of subsection (1) shall lie unless 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 appealed against".

3. The petitioners submit that an amount of Rs. 13,268/ was deposited vide cheque no. 011750/000118 dated 26th of May, 1990 and the same was credited in the account of Assistant Labour Commissioner, Udhampur. The requisite averments are made in paragraph "4" of the petition. This paragraph is being reproduced below :

That the learned court below has rejected the appeal of petitioners on the solitary ground of noncompliance to provisions of Section 17 proviso

(1A) of the Payment of Wages Act besides on facts. It is respectfully submitted that the claim of respondents no. 2 to 6 was not at all maintainable

before respondent no. 1 yet an award was passed. Whereas the petitioners herein deposited an amount of Rs. 13.268/through Executive Engineer,

PWD (RandB), Udhampur vide Cheque No. 011750/000118 dated 26.5.1990 and the same was credited in the official account of respondent

no. 1 on 13.6.1990. A certificate to this fact has been issued by respondent no. 1 a copy whereof is annexed herewith and marked as annexureC

hereto".

4. Reliance is also been placed on a certificate issued by the Assistant Labour Commissioner J and K Government Udhampur. This certificate is

being produced below:

DEPOSIT CERTIFICATE

Certified that Executive Engineer, PWD (RandB), Udhampur has deposited an amount of Rs. 13,268/ (Rupees thirteen thousand two hundred and sixty eight only), bearing cheque no. 011750/000118 dated 26.5.1990 in the case of Darshan Lal vs. Shiv Nath and the amount has been credited in our official amount on 13.6.1990".

5. It be seen that the appeal preferred by the present petitioner was dismissed

on the grounds that the provisions of Section 17(1A) were not complied with.

6. There can be no dispute with the proposition that provision of Section 17(1A) are mandatory and they are to be complied with.

7. A Division Bench of Allahabad High Court in the case reported as Dy. Chief Mechanical Engineer, Central Railway Workshop, Jhansi vs. The

District Judge Jhansi and Others. 1982 Lab. I.e. 278 was of the opinion that the basic requirement of S. 17(1A) appears to be that the appellant

must before he prefers an appeal deposit the amount awarded against him. If no such deposit is made before the filing of the appeal the appeal

shall be incompetent. The requirement regarding certificate by the authority to the effect that the appellant has deposited the amount payable under

the direction appealed against is to provide satisfactory proof in an uncontestable manner of the fact that the requisite amount has been paid. If due

to some exception and unavoidable circumstances the certificate is not filed along with the memorandum of appeal the right of appeal cannot be

defeated.

8. The Rajasthan High Court in case reported as Hajari Ram vs. The Matril Khadi , Bikaner, AIR 1979 Rajasthan 76, observed that where the

amount is deposited by cheque and a certificate is issued by the concerned authority, then that would be good and valid for the purposes of

preferring an appeal. The purpose behind insisting on the compliance of Section 17(1A) was indicated." What was said by the Rajasthan High

Court in the above case is being reproduced below :

.....The object of Section 17(1A) of the Act is that it attempts to put a stop to useless and harassing litigation against a poor and weak employee

who may be deprived of his just dues and has to depend on the amount of wages for his sustenance. It is to assure an employee that he will receive

the amount of wages, awarded to him in case appeal fails an appellant postpones his right to receive the amount of wages. It is for the authority

against whose direction or order an appeal is preferred to be satisfied that the appellant has deposited the amount payable"".

9. In the present case, a certificate was issued by the competent authority that deposit has been made. This certificate has been noticed above, in

view of the above, the matter is remanded back to the appellate authority who

would reconsider the matter and pass appropriate orders. Appeal would not be dismissed, merely on the ground that the deposit in terms of Section 17(1A) has not been made. Parties to appeal before the appellate authority on 19th, Feb., 2001. In case any of the parties do not appear, then the appellate authority would issue notices to all concerned. Disposed of accordingly.