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Court : Jammu and Kashmir

Decided On : Nov-03-2006

Reported in : 2007(1)JKJ525

Judge : Bashir A. Kirmani, J.

Appellant : Block Dev. Officer Khag

Respondent : Authority Under Payment of Wages Act and ors.

Disposition : Petition allowed

Judgement :

Bashir A. Kirmani, J.

1. Instituted on 08.11.1999, this petition seeks quashment of award passed by authority appointed under Payment of Wages Act on 13.02.1999 in respondents favour to the tune of Rs. 1,77,290/-. Grounds pleaded are that the authority below entertained the claim after prescribed limit of time without notice to petitioners herein which renders the impugned award bad particularly because no employer/employee relationship existed between petitioner and the respondents.

2. In their reply the respondents have pleaded that petitioner before the appointed authority below had worked with respondent-department but their wages were unpaid and as such impugned award was well placed in fact and law. During

course of submission, appearing counsel have reiterated the contents of their respective pleadings.

3. I have heard learned Counsel and considered the matter. The first question that falls for consideration is whether in view of the alternate appellate remedy available to petitioners under Section 17 of the Payment of Wages Act, the writ petition could be maintained without exhausting the same and if so in what circumstances. In this behalf reference may be made to the precedent to find an answer to the question:

I. In *M.G. Abrol v. Shanti Lal and Co.* reported as AIR 1996 SC 297-Hon'ble Apex Court while considering the question was pleased to hold in Para 15 of judgement among other things as under:

Lastly it was argued that the High Court should not have exercised its jurisdiction under Article 226 of the constitution as the respondents had an effective remedy by way of appeal...but the High Court rightly pointed out that respondents had no effective remedy for they could not file an appeal without depositing the huge amount...as a condition precedent imposed on them that apart.... The existence of 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 circumstance to interfere its discretion.II. The question was also considered by Division Bench of this Court in *Tramboo Joinery Private Limited v. Authority under Payment of Wages Act* reported as 1998 S.L.J. Page 79 wherein while considering the question the bench observed as under:

Dealing with the contention of the learned Counsel for the respondent that the appellant had approached the writ court without exhausting efficacious remedy of appeal and the writ petition has rightly been dismissed, the writ court while recording such finding for dismissal of the petition has placed reliance upon the judgements of the Hon'ble Supreme Court reported in AIR 1969-556 and AIR 1985 p.330. We have pursued the judgements. The Hon'ble Supreme Court has laid

down law in AIR 1969 p.556 while dealing with a particular situation holding that the writ court should refuse to entertain the application where efficacious alternative remedy is available. In : 1985ECR4(SC) , it is observed that where the Court is convinced that there are good and sufficient reasons to by pass the alternative remedy provided by the Statute, the extra ordinary jurisdiction can be invoked and exercised. In the present case, the order of the Authority under the Payment of Wages Act is without jurisdiction and in case the matter is remanded back for exhausting the remedy available, it will be of no use and will serve no purpose and will only aggravate the agony of the parties to receive the verdict of the appellate Authority provided by the Statutes and only thereafter to approach the writ court.

It is well settled law that where the order of the Authority is patently without jurisdiction, the availability or exhausting of the alternative remedy is no bar to invoke the extra ordinary writ jurisdiction of the High Court by the aggrieved party.

It is further held by the Hon'ble Supreme Court in case title Dr. Smt. Kuntesh Gupta v. Management of Hindu Kanya Mahavidyalaya Sitapur (UP) and Ors. reported in AIR 1987 page 2186 in para 12 of the judgement which is extracted as;

The next question that falls for our consideration is whether the High Court was justified in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy it is true that there was an alternative remedy for challenging the impugned order by referring the question to the Chancellor under Section 68 of the UP State Universities Act. It is well established that an alternative remedy is not an absolute bar to the maintainability of a writ petition. When an authority has acted wholly without jurisdiction, the High Court should not refuse to exercise its jurisdiction under Article 226 of the Constitution on the ground of existence of an alternative remedy. The Writ Court has not appreciated this aspect of the law laid down by the Hon'ble Supreme Court holding that where the order of the Authority is without Jurisdiction the High Court should not refuse to entertain the writ petition and exercise extra ordinary with jurisdiction under Article 226 of the Constitution of India. We feel that on this score the order under appeal deserves to be interfered and set aside.

4. A commutative reading of the aforesaid judgements reveals that in cases where the Authority under Payment of Wages Act has acted without or in excess of jurisdiction or has failed to exercise jurisdiction vested in it or otherwise caused failure of justice, the availability of effective alternate remedy would not amount to a circumstance sufficient enough for not exercising jurisdiction under Article 226 of the Constitution. Objections taken to the award of authority on factual side may however, be better left to be agitated before the appellate authority.

5. Coming to instant case, the claimants before the authority below had admittedly been engaged by first respondent as Labourers who as contractor was allotted the work of construction of school building and fencing wall at Khag by Respondent No. 3. For years he failed to pay their wages on the pretext that department i.e. Respondent No. 3 had not released the bills pertaining to execution of contract and with his active support and convince the claim was filed before the authority and award obtained against respondent No. 3 even while the claim petition had been filed after around six years of the contract. For condonation of delay in presentation of the claim which in terms of Sub-section 2 of Section 15 of Payment of Wages Act was required to be presented with 12 months from the date when the wages became due, no notice appears to have been given to the present petitioner nor do they appear to have been heard on that aspect of the matter. Even after entertainment of claim petition and the subsequent enquiry, the petitioners herein do not appear to have been given a sufficient chance of showing that claimants had been employed by the contract and not the department and as such, as pleaded they could not be said to have been their employees, which they had expressly pleaded before the authority. On the contrary the authority below appears to have assumed not only employee/ employer relation between claimants and petitioners herein but also that the bills for contract work had not been paid for by present petitioners in favour of respondent No. 3, which perhaps was beyond his province and hence an exercise in excess of jurisdiction. In addition, all the aforesaid circumstances taken together constitute a flagrant violation of the procedure that should have been ordinarily adopted by authority below for giving the petitioners a reasonable opportunity of proving their pleaded defenses due to which the impugned award suffers from the vice of arbitrariness.

6. Accordingly the petition is allowed and impugned award is set aside, the matter is remanded back to concerned authority for fresh enquiry in presence of parties while giving them full opportunity to prove their respective contentions with a direction to complete the proposed enquiry within a period of three months from now. Parties through their counsel to appear before the concerned authority on 20.11.2006.

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