

Court No. - 8

Case :- WRIT - C No. - 1003437 of 2014

Petitioner :- Ram Nihore Singh

Respondent :- Presc.Auth. Payment Of Wages Act And Asst. Labour Commissioner

Counsel for Petitioner :- Raghvendra Kumar Singh Ii

Counsel for Respondent :- C.S.C.

Hon'ble Pankaj Bhatia,J.

1. Heard leaned counsel for the petitioner and learned Standing Counsel for the State.

2. Present petition has been filed by the petitioner challenging the order dated 17.07.2012 whereby an order was passed in exercise of powers under Section 15(3) of Payment of Wages Act.

The petitioner also challenges the recovery order dated 05.03.2014 issued in pursuance to the order dated 17.07.2012.

In the course of the argument, the petitioner also challenges the order dated 02.11.2012 whereby the application to recall the earlier order was rejected.

3. The facts, in brief, are that a report was submitted by the Inspector under Section 15(1) of the Payment of Wages Act alleging that unauthorized deductions were made in respect of certain workers, who were 20 in number, as such, proceedings were to be initiated against the petitioner. The petitioner states that no notice was ever served upon the petitioner, as such, the petitioner could not appear and an *ex-parte* order came to be passed against the petitioner holding that in terms of the Inspector's report and there being no defense, the petitioner was liable to pay an amount of Rs.71,400/- towards damages and Rs.71,400/- towards unauthorized deduction of wages in respect of 20 workmen whose name surfaced in the Inspector's report. The said order was an *ex-parte* order.

4. A perusal of the said order indicates that four dates were fixed, however, no one appeared on behalf of the petitioner to defend the application filed by the Inspector.

5. Learned counsel for the petitioner states that for recalling of an *ex-parte* order dated 17.07.2012, an application was moved alongwith an affidavit taking a defense that the petitioner was never served with a notice and further that the petitioner was

unwell and thus, could not appear. The said application was dismissed vide order dated 02.11.2012 by recording that adequate opportunity was granted to the petitioner to defend and no material demonstrating the illness was filed.

6. Contention of counsel for the petitioner is that a notice as is required to be served in Form E in terms of the Payment of Wages (Procedure) Rules, particularly Rule 8, was not served. A specific assertion was made with regard to non service of notice in Para - 5 of the writ petition.

7. In the counter affidavit filed by the respondents, it has been specifically stated in Para - 7 that information was sent to the petitioner vide letter dated 08.09.2011, however, a copy of the notice has not been annexed alongwith a counter affidavit.

8. In the rejoinder affidavit, Para - 7 of the counter affidavit has been specifically denied. Even in the order recall application, there is no consideration of the specific assertion that no notice was served.

9. In view thereof, the matter is remanded to the Adjudicating Authority to decide the matter afresh after giving an opportunity of hearing to the petitioner.

10. To avoid any further delay, it is directed that the petitioner shall appear before the authority concerned on 05.12.2023 at 12 Noon who shall thereafter proceed to pass a fresh order in accordance with law.

11. No further notice would be required to be served upon the petitioner.

12. In view of the fact that the matter is remanded, the impugned order dated 17.07.2012, the order dated 02.11.2012 as well as the recovery citation dated 05.03.2014 are quashed.

13. The amount deposited by the petitioner in terms of this order shall be subject to the outcome of the fresh order as directed to be passed.

14. The writ petition is ***disposed off*** in above terms.

Order Date :- 29.11.2023

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