

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

LPA No. 226/2018

Reserved on : 01.02.2024

Pronounced on : 06.02.2024

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| 1. Director, Urban Local Bodies, Jammu.
2. Administrator, Municipal Committee,
Bhaderwah.
3. Executive Engineer, Urban Local Bodies,
Division II, Jammu
4. Executive Officer, Municipal Committee,
Bhaderwah | Petitioner(s)/Appellant(s) |
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Through :- Mr. S.S. Nanda, Sr. AAG

V/s

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| 1. Assistant Labour Commissioner, Doda.
2. Shanker Dass S/o Bhoop Ram,
R/o Nagar, Bhaderwah, Tehsil Bhaderwah
District Doda | Respondent(s) |
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Through :- Mr. Dewakar Sharma, Dy.AG for R-1
Mr. M.P. Gupta, Advocate for R-2

Coram: **HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE**
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGMENT

1. The appellants have filed the instant Letters Patent Appeal against judgment and order dated 27.11.2018 passed by the learned Single Judge in the petition OW104 No. 82/2017 titled "*Director Urban Local Bodies Jammu & Ors. vs. Assistant Labour Commissioner Doda & Anr.*", filed under Section 104 of the Constitution of Jammu & Kashmir, treated by the learned Single Judge as the one filed under Section 226 of the Constitution of India, against the order dated 29.12.2014 passed by the Assistant Labour Commissioner, Doda and order dated 30.12.2015 passed in appeal by the District Sessions Judge, Bhaderwah, whereby the writ petition has been dismissed.

2. The case of the appellants before the writ court was that the award passed by the Assistant Labour Commissioner, Doda-Respondent No. 1 in favour of the respondent No. 2 was based on false and fictitious claim made by the respondent No. 2 of an alleged work of ganda nallah from the house of Hussain Dandh upto Jamia Masjid Bhaderwah, which was never executed on spot, nor the allotment was made by any one in favour of the respondent No. 2.

3. It is contended by the appellants in the appeal that the respondent No. 2 made a claim before the respondent No. 1 under the Payment of Wages Act for an amount of Rs. 1,13,790/- and in addition to this a compensation of Rs. 10,000/- was also claimed, however, the respondent No. 1 has passed an award for an amount of Rs. 2,18,790/- in favour of the respondent No. 2 in *ex parte*, without hearing the appellants herein; the appellants moved an application for setting aside the *ex parte* award dated 29.12.2014 along with the application for condonation of delay on 10.02.2015 before the respondent No. 1, which was rejected on 30.12.2015; thereafter the appellants also filed an appeal along with an application for condonation of delay before the court of learned District Judge, Bhaderwah which was also dismissed along with the appeal on 27.02.2017 on the ground that the provisions of Section 5 of the Limitation Act are not applicable to the present proceedings; the appellants challenged the award as well as the judgment and order passed by the learned District Judge, Bhaderwah dated 27.02.2017 before the learned Single Judge, which was also dismissed vide judgment dated 27.11.2018.

4. It is contended that the impugned judgment is contrary to the facts of the case and not sustainable under law as the specific plea raised in the writ petition with regard to false and fictitious claim of the respondent No. 2 herein has not been properly considered and no specific finding with regard to the claim

of the respondent No. 2 herein has been given by the learned Single Judge and has only relied upon the *ex parte* evidence produced by the respondent No. 2 before the respondent No. 1. It is further contended that the award was passed in *ex parte* by the respondent No. 1 without hearing the appellants or their counsel, as such, the principles of natural justice have been violated by the respondent No. 2 while passing the impugned award; the claimant/respondent No. 2 herein did not produce any documentary evidence in the shape of allotment, work order or any other official document to show that the alleged construction work of ganda nallah/drain was ever allotted to him; the respondent No. 1, while passing the award for the alleged wages to the tune of Rs. 1,13,790/-, has also granted compensation of Rs. 1,05,000/- in addition, in favour of respondent No. 2 instead of Rs. 10,000/- as claimed, hence the respondent No. 1 has exceeded his jurisdiction in granting compensation.

5. Learned counsel for the respondent No. 2 has vehemently argued that the learned writ court has rightly dismissed the writ petition filed by the appellants herein as the same is not maintainable, inasmuch as, mandatory provisions of Section 17(1-A) of the Payment of Wages Act, 1936 was not complied with.

6. Heard learned counsel for the parties and perused the record.

7. Admittedly, the respondent No. 1 (Authority under Payment of Wages Act) has passed the *ex parte* order dated 29.12.2014, against which the appellant filed an application for setting aside the same, however, the Authority vide order dated 30.12.2015 dismissed the said application. Aggrieved of the order dated 30.12.2015 the appellant filed the appeal before the District Judge, Bhandarwah. Along with the appeal, the appellant has also moved an application under Section 5 of the Limitation Act for condonation of delay. The learned District

Judge vide judgment dated 27.02.2017 has dismissed the said appeal along with the application for condonation of delay on the ground that as per Section 17 of the Act the appeal shall lie against an order dismissing the application made under sub section (2) of Section 15, or against a direction made under sub section (3) or sub section (4) of Section 15 and that too within 30 days of the date on which the order or direction was made. The learned District Judge observed that the order impugned does not fall in the category of orders against which appeal lies in terms of section 17 of the Act, therefore, is not an appealable order. The learned District Judge further observed that sub section (1-A) of section 17 provides that no appeal 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. However, the appeal filed before the District Judge was not accompanied by any such certificate. On this count also, the learned District Judge observed that the appeal is not maintainable. Aggrieved of the judgment dated 27.02.2017 the petitioner filed the writ petition, which too was dismissed by the learned Single Judge vide judgment dated 27.11.2018. The writ petitioner/appellant herein filed the present letters patent appeal against the said judgment.

8. The learned Writ Court while dismissing the appeal has observed that the Appellate Authority (District Judge, Bhaderwah) has dismissed the appeal mainly on two grounds, firstly that the provisions of Limitation Act under Section 5 were not applicable to appeal proceedings under the Act and secondly that the appeal was not accompanied by a certificate by the authority to the effect that the appellant had deposited the amount in terms of Section 17(1-A) of the Act.

9. Section 17(1-A) of the Act has clearly stipulated that in absence of memorandum of appeal and certificate by the authority to the effect that the writ petitioners/appellants have deposited the amount payable under the award, appeal against. The appellant herein has failed to show the compliance of Section 17(1-A) of the Payment of Wages Act.

10. We are not inclined to take a view other than what has been taken by the Appellate Court as well as the learned Single Judge and we are not inclined to interfere with the impugned judgment. The appeal is, accordingly, **dismissed**.

Jammu:
06.02.2024
Pawan Angotra

