

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Revision No.3735 of 2001 (O&M)

Date of decision: 05.08.2015

State of Haryana

.... Petitioner

versus

Sh. Balbir Singh

.... Respondent

II. Civil Revision No.3042 of 2002 (O&M)

Balbir Singh

.... Petitioner

versus

The Additional District Judge, Faridabad and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Ashwani Bakshi, Advocate,
for the petitioner in CR No.3042 of 2002 and
for the respondent in CR No.3735 of 2001.

None for the State.

1. Whether reporters of local papers may be allowed to see the judgment ? No.
2. To be referred to the reporters or not ?No.
3. Whether the judgment should be reported in the digest ? No.

K.Kannan, J. (Oral)

1. The revision petitions are at the instance of the State and the employee against the order passed by the District Judge which is the appellate authority under the Payment of Wages Act. The original petition before the authority was instituted by the employee

claiming that he was working from 01.07.1995 to 20.06.1996 and he had not been paid his wages. The Government had a contention to make that the petitioner was working only for one month from 01.07.1995 to 31.07.1995 when he had already been paid his wages of ₹1,325/- and produced in proof the copy of the muster roll. The contention of the State was that the petitioner had not worked beyond the said period.

2. Before the authority, the evidence was tendered by the employee himself and also produced 3 witnesses. AW2 was the Chowkidar working in the school in respect of which the claim was made and AW3 was yet another employee working in the Garhi Patti School who identified the signature of the Headmaster of the school in the records showing the presence of the employee at the school and AW4 was yet another employee who was a Sweeper who also identified the signature of the Headmaster as well as the Sarpanch Baldev Singh in some documents connecting the employee. The evidence of the employee was sought to be refuted by examination of the SDO who merely brought the proof relating to payment of wage for one month and produced the muster roll. The Authority, on sifting the respective evidence, held that the Government had not produced the Junior Engineer who had actually issued the receipts entrusting the pipes for removal from place for carrying out some works and all those receipts during the disputed period contained

references to the employee's name. The Authority drew an adverse inference against the State for not examining the Junior Engineer Chandar Pal Sharma. It found, therefore, that he had worked from 01.08.1995 to 20.06.1996 and directed wages to be paid.

3. This order was passed by the authority on 31.08.1998 and the appeal should have been filed under the provisions of the Act within a period of one month. The appeal, however, had been presented beyond the period of limitation and originally the appellate Court dismissed it summarily as barred by limitation. The government brought the summary rejection to challenge in a civil revision and this court had directed the matter to be remanded and gave further directions for disposal of the case on merits and also kept the issue of limitation open for a fresh consideration. The District Court on remand found the appeal to be barred by limitation but held all the same on merits that the employee could not have worked during the relevant period. At one go, the appellate authority rejected the documentary evidence produced by the employee that contained the signatures of the Junior Engineer making references to the petitioner as brought about by interpolation. It is against this order that the revision petitions have been filed by the State on the issue of limitation and by the employee on the finding recorded that he had not worked.

4. Even at the outset, I must observe that it was not even necessary for the employee to come on an independent challenge to the order passed by the court below. He could have supported the judgment of dismissal passed by the appellate court and argued for the issue held against him on merits but by way of abundant caution, civil revision has also been filed in C.R. No.3042 of 2002 by the employee as well.

5. The Payment of Wages Authority has correctly observed after examining 3 witnesses brought by the employee that adverse inference was bound to be drawn against the government for not examining the person who had issued the receipts. The appellate authority was wholly unjustified in making an intervention with reference to the receipts produced by the employee when the author of the receipts was not prepared to disown it by giving evidence before the authority. The observation of the appellate authority is that the petitioner's name has been interpolated in all the receipts. The counsel produced before me the original receipts which were produced and before the authority below which were taken back by the employee. The name of the petitioner finds place along side his brother's place Satbir. Both the names are centered in small slips of papers issuing instructions and if it was a case of interpolation, the name of the petitioner itself would have been cast on one corner and could not have been at the centre of each one of the slips. The

observation of the appellate authority was clearly perverse and he was interfering with a finding to dislodge the correct observation and interference made by the authority for non-examination of the person who had issued the receipts. The appellate authority did not also discuss the evidence of the three other witnesses who were fellow employees and who were the best persons to speak about the actual employment of the employee. I set aside the finding of the appellate court as untenable in law and facts and allow the civil revision filed by the employee in Civil Revision No.3042 of 2002.

6. The appellate authority has relied on judgments of various High Courts that the appeal against the order of the Payment of Wages Authority cannot be condoned by invoking Section 5 and I have not the assistance of the State to examine whether there is any contra view taken by any other court or this court. I uphold the decision relating to the bar of limitation and dismiss the civil revision filed by the State in Civil Revision No.3735 of 2001. The employee is entitled to the cost of ₹3,000/- in each case against the State.

(K.KANNAN)
JUDGE

05.08.2015
sanjeev