

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION***

***WRIT PETITION NO. 11620 OF 2015
ALONG WITH
WRIT PETITION NO. 11684 OF 2015***

M/s.Oil and Natural Gas Corpn. Ltd.,
Represented by -
The Manager (Security) & Dy. Manager IR
Room No.121, Vasudhara Bhavan,
Bandra (E), Mumbai – 400 051.

... Petitioner in both
petitions.

v/s

The Regional Labour Commissioner
(Central), Bombay,
Shramraksha Bhavan, Shivshruti Rd.,
Sion, Mumbai – 400 022.

2 Oil Field Employees Association,
B-506, Sai Vihar, Sector 15,
Sewri-Belapur, Navi Mumbai 400 614,
Represented by
Shri S. Mishra, the President.

3 M/s.CIS Bureaus Facility Services P. Ltd.,
302, Center Point, J.B. Nagar,
Andheri (E), Mumbai 400 059.

4 Union of India, Aykar Bhavan, Mumbai. ... Respondents in
both petitions.

Mr.R.S.Apte, senior advocate along with S.Bhalwal i/by Vyas and
Bhalwal for the petitioner in Writ Petition No.11620 of 2015.

Mr.Keric Setalwad along with Mr.Anupam Surve along with S.A.Bhalwal i/by Vyas and Bhalwal for the petitioner in Writ Petition No.11684 of 2015.

Mr.S.G. Mishra, Resp. No.2 in-person present.

CORAM: N.M. JAMDAR, J.

DATED : 22 FEBRUARY 2016

ORAL ORDER:

These two petitions are filed by the Oil and Natural Gas Corporation Limited, challenging the order passed by the Authority under the Payment of Wages Act, directing the Petitioner O.N.G.C. to make payment of unpaid wages to the workmen who had filed applications before the authority. Two petitions have been filed as two separate applications were been filed, which have been allowed by two different impugned orders. However, since the question of law and the facts and circumstances are identical and that they have been argued together, are being disposed of by this common order.

2 Respondent No.2 - Oil Field Employees Association, filed applications before the authority under the Payment of Wages Act, under Section 15 of Payment of Wages Act, 1926. In Writ Petition No.11620 of 2015, wages have been claimed for the period from December 2013 to December 2014. In Writ Petition No.11684 of 2015, application was filed claiming wages from April 2014 to December 2014. These applications having been allowed by the

impugned orders, the writ petitions are filed.

3 From an order passed allowing the application filed under Section 15 of the Act, an appeal under Section 17 of the Act is provided. Sections 15 and 17 of the Payment of Wages Act, 1926, read as under :

'Sec.15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

(1) The appropriate Government may, by notification in the Official Gazette, appoint –

(a) any Commissioner for Workmen's Compensation; or

(b) any officer of the Central Government exercising functions as, -

(i) Regional Labour Commissioner; or

(ii) (ii) Assistant Labour Commissioner with at least two years' experience; or (c) any officer of the State Government not below the rank of Assistant Labour Commissioner with at least two years experience; or (d) a presiding officer of any Labour Court or Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under industrial disputes in force in the State; or (e) any other officer with experience as a Judge of a Civil Court or a Judicial Magistrate, as the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:

Provided that where the appropriate Government considers it necessary so to do, it may appoint more than one authority for any specified

area and may, by general or special order, provide for the distribution or allocation of work to be performed by them under this Act.

(2) Where contrary to the provisions of this Act any deduction has been made from the wages of an employed person, or any payment of wages has been delayed, such person himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector under this Act, or any other person acting with the permission of the authority appointed under sub-section (1), may apply to such authority for a direction under sub-section (3):

Provided that every such application shall be presented within twelve months from the date on which the deduction from the wages was made or from the date on which the payment of the wages was due to be made, as the case may be :

Provided further that any application may be admitted after the said period of twelve months when the applicant satisfies the authority that he had sufficient cause for not making the application within such period.

(3) When any application under sub-section (2) is entertained, the authority shall hear the applicant and the employer or other person responsible for the payment of wages under Section 3, or give them an opportunity of being heard, and, after such further enquiry, if any, as may be necessary, may, without prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted, or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding three thousand rupees but not less than one thousand five hundred rupees in the

latter, and even if the amount deducted or delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding two thousand rupees:

Provided that a claim under this Act shall be disposed of as far as practicable within a period of three months from the date of registration of the claim by the authority:

Provided further that the period of three months may be extended if both parties to the dispute agree for any bona fide reason to be recorded by the authority that the said period of three months may be extended to such period as may be necessary to dispose of the application in a just manner:

Provided also that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to -

(a) a bona fide error or bona fide dispute as to the amount payable to the employed person; or

(b) the occurrence of an emergency, or the existence of exceptional circumstances, the person responsible for the payment of the wages was unbothered, in spite of exercising reasonable diligence; or

(c) the failure of the employed person to apply for or accept payment.

(4) If the authority hearing an application under this section is satisfied -

(a) that the application was either malicious, or vexatious, the authority may direct that a penalty not exceeding three hundred seventy five rupees be paid to the employer or other responsible for the payment of wages by

the person presenting the application; or

(b) that in any case in which compensation is directed to be paid under sub-section (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty not exceeding three hundred seventy five rupees be paid to appropriate Government by the employer or other person responsible for the payment of wages.

(4-A) Where there is any dispute as to the person or persons being the legal representative or representative of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4-B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of Sections 193, 219 and 228 of the Indian Penal Code (45 of 1860).

(5) Any amount directed to be paid under this section may be recovered -

(a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and

(b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate.'

Sec.17: Appeal. *(1) An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of Section 15, or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency town before the Court of Small Causes and elsewhere before the District Court -*

(a) by the employer or other person responsible for the payment of wages under Section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person or any legal practitioner or any official of a registered trade union authorized in writing to act on his behalf of any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-section (4) of Section 15.

(1-A) No appeal under clause (a) of sub-section (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.

(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of Section 15, or a direction made under sub-section (3) or sub-section (4) of that section shall be final.

(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the Court referred to in sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) *The Court referred to in sub-section (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.'*

4 Learned counsel for the Petitioner urged that this Court, in its writ jurisdiction, should set aside the impugned orders and it is not necessary for the Petitioner to file an appeal under Section 17 of the Act. Reliance is placed on the decision of the Apex Court in the case of *Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai & ors.*¹, contending that inspite of availability of alternate remedy, the Court is not precluded from entertaining a writ petition.

5 It was contended by the counsel for the Petitioner that since there is a termination of service of the concerned employees, the Authority under the Payment of Wages Act had no jurisdiction to determine the claim and allow the application. For that purpose, reliance is placed on the decision of the full bench of this Court in the case of *Viswanath Tukaram v/s General Manager, Central Railway & ors.*² and decision of the Division Bench of Allahabad High Court in the case of *Ram Kishore Sharma v/s Additional District Judge & ors.*³ It was also contended that wages payable to the concerned employees were above Rs.18,000/- and therefore the provisions of the Act are not applicable to the concerned workmen and the order is without jurisdiction. It was also contended that

1 (1999) Vol.101(1) Bom.L.R. 448 (SC)

2 AIR 1958 Bom. 111.

3 (1969) II LLJ 353 All.

the Petitioner Corporation is not liable to pay any amount to the concerned workmen, at the most it would be the liability of the contractor. It was urged that, in identical situation, the Authority had taken a totally opposite view and had dismissed the applications. On these grounds it was urged that writ petition be entertained and the petitioner Corporation ought not be directed to file an appeal under Section 17 of the Act which contemplates pre-deposit of the amount.

6 That the writ petition can be entertained even though there is alternate remedy provided by the statute, cannot be disputed. But it is a self-imposed rule by the Courts not to exercise writ jurisdiction if an adequate redressal is provided under the Act from which the impugned order arises. In the present case, Section 17 permits any person against whom an order is passed by the authority, to file an appeal. The Appellate Authority has powers to consider the veracity and legality of the order passed under challenge. Therefore, a statutory appeal is available to the Petitioner.

7 As regard the contention that the Petitioner is not liable to pay any amount and that in identical situation the authority has taken a different view, are the grounds which the Petitioner can take up in appeal. The contention that the wages are above Rs.18,000/-, is disputed by the Secretary of Respondent No.2 who has appeared in person. He has sought to place a pay-slip for the month of March 2014 issued by the contractor – respondent No.3 on record stating that the gross salary is Rs.17,405/- and net salary

is Rs.15,376/-. Learned counsel for the Petitioner objects to taking this document on record stating that it was not part of the proceeding, the Respondent asserts otherwise. Without concluding the issue, least it can be said that this position will require adjudication.

8 It was then strenuously urged by the Petitioner that since there is a termination of service of the concerned employees by the Respondent No.3, the authority will have no jurisdiction to go into the correctness and validity of the termination and therefore the order is without jurisdiction. In the decision of the full bench of this Court in the case of *Viswanath Tukaram*, it is held that whether the services of the employees have been rightly or wrongly terminated and whether the dismissal was wrongful or unlawful, is not for the authority under the Act to determine. In the present case, however, it has to be noted that the applications were filed by the concerned workmen on 18 January 2015. Summons was issued to the Petitioner and Respondent No.3 contractor by the Authority on 2 February 2015 to appear on 20 February 2015. Thereafter the letter of termination is stated to be issued on 4 April 2015 retrospectively effecting the terminations from the year 2013. Respondent No.2 has denied that there is such termination and the Respondent No.2 contends that none of the letters issued by Respondent No.3 Contractor bears any acknowledgement of the concerned employees. On the other hand, it was contended by the Petitioner that though the terminations have been effected on 4

April 2015, they refer to earlier correspondence regarding absenteeism of concerned employees and therefore the letters of termination are not fabricated as alleged. Again, without going into this issue, there appears to be a necessity for adjudicating factual position as to whether there was a termination of services or not. This fact has not been put into issue though it was stated so in the say filed by the Petitioner. Respondent No.3 had not filed any say before the authority and only a letter stating these details was addressed. The proceedings under Section 15 of the Act are judicial proceedings and *prima facie* it was incumbent upon Respondent No.3 Contractor to place material on record in support of the order of termination by at least filing a say, in the same manner as has been done by the Petitioner. It also needs to be noted that the termination is not allegedly effected by the Petitioner but by the contractor. This disputed factual position as to whether there has been termination of the services of the concerned workmen or not can be more appropriately gone into by the Appellate Authority constituted under the Act. It is not possible to render a finding of fact in writ jurisdiction in respect of this disputed question. Once the Appellate Authority comes to the conclusion that there has been a termination of the services of the concerned workmen or not, the authority will no doubt apply the legal position and pass appropriate order.

9 As regard the direction of the deposit is concerned, the Act states that the Court who is hearing the appeal, may direct such

deposit. This provision has been consciously incorporated by the legislature. Therefore merely because this provision exists and that the Petitioner may have to deposit an amount is not a ground to entertain a writ petition.

10 In the circumstances, I am of the opinion that the contentions raised by the Petitioner will have to be raised by them in appeal which is provided under the Act and this is not a case where the extraordinary jurisdiction of this Court inspite of there being an alternate appeal available, is to be exercised. If the appeal is filed within a period of four weeks from today, the Appellate Court will consider the pendency of this writ petition for the purpose of consideration of delay.

11 Keeping all points of the parties open on merits, the writ petitions are rejected.

(N. M. JAMDAR, J.)