

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

**CR No. 2594 of 2005 (O&M)
Date of decision: 19.01.2016**

Sube Singh	versus	... Petitioner
Manoj and others		 Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Abhinav Sood, Advocate for the petitioner.

K.Kannan, J. (ORAL)

The revision petition is against the orders passed by the authority under Payment of Wages Act, for a claim for wages unpaid, the defence was that the denial of employer employee relationship and also a plea simultaneously that whatever was contracted to be paid has already been paid. It was the further contention that the work entrusted to the workmen for raising a wall had not been completed properly and the wall itself had fallen. Consequently, even whatever amount was liable to be paid had been deducted and no further amount was liable to be paid.

On an issue of whether there existed a contract of employer-workmen relationship, the Tribunal examined the evidence of some other workmen who spoke about the fact that they had been engaged for the construction activity at the site maintained by the employer between the period from 28.04.2002 from 30.06.2002. Although it was contended by the workmen that all of them did not work to the period mentioned and some of them worked only for 15 days, the authority under the The Payment of Wages Act, 1936 reasoned that if they had not worked for the whole period there was no necessity for them to spend the resources and time to apply to the authority for payment of wages which was hard to believe for a

workman to engage himself in. He accepted the evidence given by some other workmen to believe that all of them had worked during the entire period from 28.04.2002 from 30.06.2002 and took as established the relationship between the employer and workmen. This finding must be taken to be purely factual and cannot be reopened at the revisional stage.

As regards the contention that the amount had been paid as per the contracted work, no payment can be accepted of what is not duly receipted and the authority had taken the evidence to assess that the wages payable was Rs. 50/- for Mason and Rs. 45/- for a labourer. This also would not require any modification as an adjudication on fact.

The plea that the work done by the workmen had not been proper and the whole edifice of the wall had fallen down and the employer was, therefore, entitled to made deduction for the work that had to be entrusted again and the damages that had resulted. This plea must be considered in the light of Section 10 of the Payment of Wages Act, 1936. The said provision allows permissible deductions and includes a claim for damage or loss as deductible only if the employed person that had been given opportunity to show cause against deduction and all such deductions would be recorded in a register to kept by the person responsible for the payment of wages. The authority has correctly reasoned that no notice had been given for deduction and it cannot be merely an unilateral act.

The finding is a complete answer to the plea made by the employer that all the amount that had been due had been paid and some amount that remained unpaid had also been set off against damages to the wall caused by the alleged shoddy work.

There is no merit in the revision and hence dismissed.

19.01.2016

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(K.KANNAN)
JUDGE