

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (L) No. 47 of 2017**

Janardan Prasad Sharma S/o Lt. Sharda Prasad Sharama, aged about 54 years, R/o Village and Post Mohgaon, Tahsil Saja, District Bemetara, (Chhattisgarh)

---- Petitioner**Versus**

1. State of Chhattisgarh through: Secretary, Department of Labour, Mantralaya, Mahanadi Bhawan, Naya Raipur, (Chhattisgarh)
2. The Industrial Court Raipur, the Member appoint under Payment of Wages Act, 1936, Tahsil and District Raipur (Chhattisgarh)
3. The Inspector appoint under Payment of Wages Act, 1936, Bemetara, District Bemetara, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Akhilesh Mishra, Advocate
For Respondent/State	:	Shri S. P. Kale, Dy. Advocate General

Hon'ble Shri Justice P. Sam Koshy**Order On Board****03/02/2017**

The present petition has been preferred assailing the order dated 09.08.2016 passed in Civil Appeal No. 01/2018/P.W. Act/B/11 whereby the respondent no.2 i.e. the Industrial Court, Raipur has affirmed the order of the Labour Court, Durg i.e. the Authority under the payment of Wages Act dated 15.01.2016 in Case No. 84/P.W. Act/2014 wherein the Labour Court had ordered the petitioner for depositing Rs.34,300/- as unpaid wages and Rs.10,000/- as penalty within 45 days from the date of order. It was also ordered that in case, the said amount is not deposited within 45 days, the amount shall carry interest @ 12% per annum from the date of claim application till the date of depositing of the said amount.

2. Brief facts of the case are that the Labour Inspector, Bemetara filed a claim application under Section 15 of Payment of Wages Act, 1936

before the Labour Court, Durg i.e. the Authority under the Payment of Wages Act stating that on 13.09.2013 a written complaint was received from Kishan Sapaha and other workers by the Office of the Labour Authority, Bemetara. It was alleged in the said complaint that an amount of Rs.34,300/- was not paid by the petitioner to the workers and the said amount which was due may be released from the present petitioner.

3. The case was registered as Case No. 84/P.W. Act/2014/Civil. The present petitioner immediately entered appearance before the Labour Court and denied the claim stating that the entire amount which was due was paid to Kishan Sapaha who was given the contract for construction of the house. It was contended by the petitioner that the claim itself was not maintainable as per the provisions of Payment of Wages Act as the same has been filed beyond the period of limitation prescribed under the Act.

4. The Labour Court proceeded further with the matter and framed two issues: (i) whether the workers mentioned in Annexure-A are entitled for the wages of Rs.34,000/- from the present petitioner? (ii) Whether in the light of the objection taken in the reply, the claim deserves to be rejected?

5. During the course of evidence three witnesses were examined on behalf of the claimant; i) Kishan Sapaha, ii) Bhagwat Sahu and iii) Labour Inspector M. K. Netam.

6. After conclusion of trial, the Labour Court vide its order dated 15.01.2016 ordered for payment of Rs.34,300/- to the claimants and also imposed penalty of Rs.10,000/- totaling Rs.44,300/-. It was also ordered that if the said amount was not paid within a period of 45 days, the amount shall carry interest @ 12% per annum from the date of claim application till the date of depositing of the amount.

7. This order dated 15.01.2016 was subjected to challenge in an appeal under Section 17 P. W. Act, 1936 before the State Industrial Court, Chhattisgarh, Raipur where the appeal was registered as Civil Appeal

Case No. 01/2016/P.W.Act/B/11. The Industrial Court vide impugned order dated 09.08.2016 rejected the appeal of the petitioner affirming the order of the Labour Court.

8. It is these two orders which are under challenge in the present petition.

9. At the outset counsel for the petitioner submits that the entire claim application is totally misconceived and is not tenable on account of the fact that the beneficiaries to the claim application were not made party before the Labour Court by the Labour Inspector and in the absence of which, the claim application was not tenable. It is contended that the claimants had also not appeared before the Court below to make their statement and establish their case in respect of the wages which was agreed upon or unpaid or the amount which was paid to them and the amount which was left to be recovered from the petitioner. In the absence of any individual claimant being not made party or appeared before the Court below, the claim could not have been established. It is further contended that the claim application was also not tenable for the reason that the same was filed beyond the prescribed period of one year as specified under Section 15 (2) of the Payment of Wages Act and for all these reasons, the two impugned order bad in law and deserve to be set aside.

10. On perusal of the record it would clearly show that the beneficiaries to the claim application were not made party before the Labour Court. The record further reflects that except for one worker namely Bhagwat Sahu, none of the workers who had worked at the sight under the petitioner was examined so as to reach to a specific conclusion. It is reflected from the evidence that proper verification was not done by the Labour Inspector and he had straightway filed the claim application before the Labour Court under Section 15 of the Payment of Wages Act. From

the evidence which has come before the Labour Court it reflects that there was no proof in respect of the notice which is alleged to have been sent to the petitioner by the Labour Inspector. One of the claimants i.e. Bhagwat Sahu in his evidence has stated that the contract was obtained by Kishan Sapaha the person who had filed the complaint before the Labour Inspector and it is he who used to take work from the workers and pay the wages to them. In the given factual background of the case, it is all the more necessary for the Labour Inspector at the time of lodging of the claim application to have made the claimants as party so that they could have appeared before the Court below and established their case in a much better manner. In the absence of which, the entire adjudication is an empty formality and without any cogent and strong evidence.

11. Further, the evidence of Kishan Sapaha before the Labour Court shows that the work was executed by the workers in January, 2013 and the claim application was filed on 17.07.2014, as such it was beyond the period of limitation as prescribed under the provisions of Payment of Wages Act. This, aspect has also not been dealt with by the Labour Court while deciding the claim application nor by the Industrial Court in Appeal. Though the petitioner had taken objection that the matter was beyond limitation, from the evidence which has come on record particularly that of Bhagwat Sahu it appears that it is a case where the contractor Kishan Sapaha had some payment recoverable from the petitioner and for which he had approached the Labour Authority by filing a complaint without there being any proof or evidence in respect of the 12 workers engaged by him, the period of engagement, the amount paid to the workers and the amount which stood balance during that period. These aspects have also not been considered by the Industrial Court while deciding the appeal whereas it ought to have taken into consideration these aspects.

12. Thus, for the foregoing reasons, this Court is of the opinion that the two orders dated 15.01.2016 passed by the Labour Court, Durg (Annexure P-2) and 09.08.2016 passed by the Industrial Court, Raipur (Annexure P-1) are not sustainable and are accordingly set aside/quashed. The matter is remitted back to the Labour Court with a direction that the Labour Inspector shall incorporate the beneficiaries to the claim as a party necessary in the claim application and thereafter proceed further to adduce evidence before the Labour Court who in turn shall pass a fresh order thereafter.

13. With the aforesaid observations, the present writ petition stands allowed and disposed of.

**Sd/-
(P. Sam Koshy)
JUDGE**