

In the High Court of Punjab and Haryana at Chandigarh

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CWP-16640-2020

.....

Date of Decision:09.10.2020

Suresh Kumar

....Petitioner

vs.

State of Haryana and others

.....Respondents

.....

Coram: Hon'ble Mr. Justice Ashok Kumar Verma

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Present: Mr. Ashutosh Kaushik, Advocate for the petitioner.

**Mr. Sanjay Mittal, Additional Advocate General, Haryana
for respondents No.1 to 3.**

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Ashok Kumar Verma, J.:

The case has been taken up by way of Video Conference as per instructions in view of COVID-19 pandemic.

This writ petition has been filed under Article 226/227 of the Constitution of India for issuance of writ of certiorari for quashing the letter dated 19.08.2020 (Annexure-P3), vide which respondent No.3 has asked respondent No.5 to attach the entire salary account of the petitioner in an arbitrary and illegal manner and the petitioner has been left penniless and without monthly income to survive during Covid-19 period. It has been further prayed for issuance of a writ in the nature of mandamus directing the

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respondents to release the salary of the petitioner or at least part thereof so that he may have some money to meet out his day to day expenses. It has been further prayed that the letter dated 19.08.2020 (Annexure-P.3) may be stayed and the respondents be directed to release the monthly salary of the petitioner.

The brief facts of the case are that the petitioner joined as Guest J.B.T. Teacher on 11.10.2006 and he is presently posted as Guest J.B.T. Teacher with respondent No.4-school on payment of monthly salary and drawing salary of ₹28,080/- per month in the account maintained with respondent No.5-Bank. It is further submitted that vide award dated 31.10.2017 (Annexure-P.1), learned Commissioner, Employees' Compensation Act, Circle Kaithal (hereinafter referred to as 'the Commissioner') ordered that the petitioner will be liable to pay ₹7,55,500/- towards compensation and if the sum is not paid in 30 days then simple interest @ 12% per annum will accrue on the amount of compensation. The petitioner could not challenge the aforesaid award on merits within limitation period but he has now filed an appeal against the aforesaid award dated 31.10.2017, upon which a Co-ordinate Bench of this Court has issued notice in application for condonation of delay. The petitioner has also sought exemption from submitting statutory amount for filing the appeal. A copy of order dated 16.09.2020 passed in FAO No.2763 of 2020 is appended as Annexure-P.2. Now respondent No.3 has written letter dated 19.08.2020 (Annexure-P.3) to respondent No.5 asking him to attach the entire salary account of the petitioner so that award dated 31.10.2017 could

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be satisfied. In pursuance to the said letter, the salary account of the petitioner has been attached and he has not been able to get the salary causing great hardship to him.

Learned counsel for the petitioner inter alia contends that vide letter dated 19.08.2020 (Annexure-P.3) the entire salary account of the petitioner has been attached to satisfy the award dated 31.10.2017 and as per proviso to Section 60 of the Code of Civil Procedure, the entire salary of an employee cannot be attached and in fact the respondents should also follow the same procedure while executing the award under the Employees' Compensation Act, 1923

Notice of motion.

Mr. Sanjay Mittal, learned Additional Advocate General, Haryana has put in appearance and accepts notice on behalf of respondents No.1 to 3. He per contra has submitted that the petitioner did not challenge the award dated 31.10.2017 (Annexure-P.1) passed by the learned Commissioner vide which he was held liable to pay ₹7,55,500/-/- towards compensation along with interest if the amount was not paid within 30 days. Hence, the award had attained finality. He has further submitted that the petitioner has already filed an appeal against the award dated 31.10.2017 by way of FAO No.2763 of 2020 (Annexure-P.2) in which notice in the application seeking condonation of delay in filing the appeal has already been issued for 12.11.2020. Therefore, the present writ petition was not maintainable and is liable to be dismissed as such.

After hearing learned counsel for the parties and going through

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the record, I am of the opinion that the present writ petition deserves to be dismissed. A perusal of the copy of award dated 31.10.2017 (Annexure-P.1) shows that the Commissioner, Employees' Compensation Act, Circle Kaithal, has awarded against present petitioner-Suresh Kumar in respect of death of Kaptan due to electrocution while working during the course of employment of Suresh Kumar i.e. the petitioner., compensation payable to the dependents of deceased Kaptan to the extent of ₹7.55,500/- (Rupees seven lakhs fifty five thousand five hundred) along with simple interest @12% per annum on the amount of compensation if the awarded amount was not paid within 30 days. The petitioner did not prefer to file any appeal against the said award within the period of limitation. Rather, he filed FAO No.2763 of 2020 before this Court in which the following order has been passed:-

“Notice in the application (CM-7683-CII-2020) seeking condonation of delay of 798 days in filing the present appeal be issued for 12.11.2020”

From the above discussion, it is amply clear that when the petitioner has already challenged the award dated 31.10.2017 by way of filing FAO No.2763 of 2020, which is now fixed for 21.11.2020, then how he can be justified to invoke the extra-ordinary jurisdiction of this Court for the issuance of writ in the nature of certiorari and mandamus. That being so, the filing of present writ petition is nothing but an abuse of process of law by the petitioner when he has already availed the alternative remedy by way of filing of above said FAO.

In view of the above, finding no merit in this writ petition, the same is dismissed.

October 09, 2020.

(Ashok Kumar Verma)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes/No
	Whether reportable:	Yes/No