

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21909 of 2017
Date of Decision: 26.02.2020

Bipanjeet Singh

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE GIRISH AGNIHOTRI

Present: Mr. Munish Bhardwaj, Advocate for the petitioner

Mr. Rajesh Bhardwaj, Sr.DAG Punjab

Mr. Inderjit Kaushal, Advocate for respondent No.6

GIRISH AGNIHOTRI, J. (Oral)

(1) The present writ petition has been filed by the petitioner Bipanjeet Singh, *inter alia*, with a prayer seeking a writ in the nature of *certiorari* for quashing the order/award dated 06.02.2014. A perusal of the order dated 06.02.2014 (P4) reveals that an application for grant of compensation to the tune of Rs.15 lakhs along with interest was filed by Amarjit @ Subhash – respondent No.6 under the Employees Compensation Act, 1923 (in short, the 1923 Act) on account of injury which resulted into amputation of right hand of the applicant - Amarjit.

(2) Learned counsel for the petitioner submits that it may be noticed that respondent impleaded in the above-said application was M/s Nex Jain through its owner Bipin Jit Singh, Plot No.418, Sector 82, Mohali.

(3) In para 2 of the order dated 06.02.2014, it has been noticed that notice was served upon the respondent-management and accordingly they appeared and sought time to file reply to the claim application. It is then observed that the respondent had sought number of opportunities to file reply and ultimately did not appear on 06.09.2012 and accordingly was

proceeded against *ex parte*. The matter remained pending from 2012 till 2014 before the Employees Compensation Commissioner, SAS Nagar, Mohali and consequently on 06.02.2014, respondent-management was directed to deposit an amount of Rs.7,20,951/- within 60 days from the date of passing of the order failing which the respondents would be liable to pay statutory interest @ 12% per annum.

(4) Learned counsel for respondent No.6 has raised objection by making reference to para 7 of the written statement. Para 7 of the preliminary submission of the written statement filed by respondent No.6 refers to the fact that the petitioner cannot challenge the award dated 06.02.2014 in the writ petition. It has been mentioned that the only remedy provided is of filing appeal under Section 30 of the 1923 Act. Section 30 of the 1923 Act reads as under:-

“(1) An appeal shall lie to the High Court from the following orders of a Commissioner, namely:--

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum;

[(aa) an order awarding interest or penalty under section 4A;]

(b) an order refusing to allow redemption of a half-monthly payment;

(c) an order providing for the distribution of compensation among the dependants of a deceased [employee], or disallowing any claim of a person alleging himself to be such dependant;

(d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub-section (2) of section 12; or

(e) an order refusing to register a memorandum of agreement or registering the same or providing for the registration of the same subject to conditions:

Provided that no appeal shall lie against any order unless a substantial question of law is involved in the appeal and, in the case of an order other than an order such as is referred to in clause (b), unless the amount in dispute in the appeal is not less than three hundred rupees:

Provided, further, that no appeal shall lie in any case in which the parties have agreed to abide by the decision of the Commissioner, or in which the order of the Commissioner gives effect to an agreement come to by the parties:

Provided further that no appeal by an employer under clause (a) shall lie unless the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him the amount payable under the order appealed against.]

(2) The period of limitation for an appeal under this section shall be sixty days.

(3) The provisions of section 5 of the [Indian Limitation Act, 1963 (36 of 1963)] shall be applicable to appeals under this section.”

(5) Learned counsel for respondent No.6 also relies upon the judgment passed in **CWP No.18015 of 2014 (Fire Balls Securities & Ors. vs. Commissioner Workmen Compensation Rewari & Ors.)** decided on 02.09.2014. Para 6 of the said judgment reads as under:-

“The Apex Court in [City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others](#), 2009 (1) SC 168 laid down the principles whereby, this Court would exercise its remedy under [Article 226](#) of the Constitution of India. It was specifically held that this Court had to consider

whether the petitioner has an alternative and efficacious remedy for the resolution of the dispute. Paragraphs 29 and 30 of that judgment read as under:-

"29. In our opinion, the High Court while exercising its extraordinary jurisdiction under [Article 226](#) of the Constitution is duty-bound to take all the relevant facts and circumstances into consideration and decide for itself even in the absence of proper affidavits from the State and its instrumentalities as to whether any case at all is made out requiring its interference on the basis of the material made available on record. There is nothing like issuing an ex parte writ of mandamus, order or direction in a public law remedy. Further, while considering the validity of impugned action or inaction the Court will not consider itself restricted to the pleadings of the State but would be free to satisfy itself whether any case as such is made out by a person invoking its extraordinary jurisdiction under [Article 226](#) of the Constitution.

30. The Court while exercising its jurisdiction under [Article 226](#) is duty-bound to consider whether:

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;*
- (b) the petition reveals all material facts;*
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;*
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;*
- (e) ex facie barred by any laws of limitation;*
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.*

The Court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly

and accurately for the consideration of the Court and particularly in cases where public revenue and public interest are involved. Such directions are always required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter-affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public law remedy to which he is not otherwise entitled to in law."

The questions which are now sought to be raised can be effectively raised in the appeal which is provided and mandatory under the Act. In such circumstances, this Court is of the opinion that the present writ petition is not maintainable and accordingly, the present writ petition is dismissed with liberty to the petitioners to seek their alternative remedy as provided under the law."

(6) Learned counsel for the petitioner however submits that the order is without jurisdiction. He submits that the wife of respondent No.6 was in fact the owner of the M/s Nex Jain which was respondent-management before the Employees Compensation Commissioner.

(7) Having heard learned counsel for the parties, this Court is in agreement with the submissions made by learned counsel for respondent No.6. The petitioner in the present case could have taken all the pleas before the authority under the 1923 Act i.e. the Employees Compensation Commissioner and the Assistant Labour Commissioner SAS Nagar. For two years the matter remained pending from 2012 to 2014 before the said authority. Moreover, he could have filed an appeal and explained the same before the Appellate Authority. Therefore, this Court is of the view that the

effectively raised in appeal which is provided and mandatory under the 1923 Act. The writ petition is therefore devoid of any merit and is held to be not maintainable.

(8) However, the petitioner, if so advised, may avail his remedy in accordance with law.

(9) Dismissed with liberty aforementioned.

26.02.2020
Vvishal

(Girish Agnihotri)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No