

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

CWP-24837-2017 (O&M)
Date of decision : 02.07.2020

Spacific Solutions Pvt. Ltd.

...Petitioner

Versus

The Authority Under The Payment Of Wages Act, 1936 and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vaibhav Sehgal, Advocate for the petitioner.

Mr. Kanwal Goyal, Advocate for respondent No.2.

ANIL KSHETARPAL, J. (ORAL)

The petitioner has filed the present Civil Writ Petition under Article 226/227 of the Constitution of India for issuance of writ in the nature of certiorari for quashing of order dated 25.10.2017 passed by the learned Additional District Judge, the Appellate Authority, under Section 17 of the Payment of Wages Act, 1936 (hereinafter to be referred as “the 1936 Act”).

At the outset, it must be noticed that this Court is disappointed with the manner in which the learned Additional District Judge has chosen to dispose of the first appeal. The Authority under the 1936 Act, passed an award dated 28.06.2017 for an amount of

₹10,91,000/- alongwith compensation of ₹2500/- against the petitioner.

It is apparent from the memo that the order was originally reserved but released on the same day i.e. 28.06.2017 by the authority under the 1936 Act. A memo directing deposit of the amount awarded was forwarded to the writ petitioner on 04.07.2017. The date on which the petitioner received the copy of the memo is not clear. The writ petitioner claims that it gained knowledge of the amount from the memo received. The petitioner applied for certified copy of the order on 13.07.2017 which is alleged to have been prepared and supplied on 19.07.2017. The petitioner filed an appeal against the order dated 28.06.2017 before the Appellate Authority on 03.08.2017.

As per Section 17 of the 1936 Act, an appeal against the order can be preferred within 30 days from the date on which the order or direction was issued. The petitioner in the grounds of appeal filed before the Appellate Court asserts that the appeal is being filed within the period of limitation. Learned Additional District Judge has dismissed the appeal on merits as well as being barred by limitation.

The Appellate Authority has committed material irregularity nearing perversity while dismissing the appeal being barred by limitation. The Appellate Authority noted that the appeal was presented before the Appellate Court on 03.08.2017 i.e. after a period of 1 month and 5 days from the date of order. However, it has failed to take note that the Authority under the 1936 Act had reserved the order on 28.06.2017. Hence, the order was not in the knowledge of the petitioner. As per the

petitioner, a memo demanding the amount was forwarded only on 04.07.2017. It is not the case of the respondents that copy of the order dated 28.06.2017 was also sent. In such circumstances, the petitioner applied for copy on 13.07.2017 which was prepared and delivered on 19.07.2017. Section 12(2) of the Limitation Act, 1963, provide that while computing the period of limitation for filing the appeal, the date on which the judgment/order is pronounced and the time requisite for obtaining a copy of the order to be appealed from, is required to be excluded. Thus, if 28.06.2017, the day on which the order was passed and the period from 13.07.2017 to 19.07.2017 is excluded, the appeal was filed within a period of 30 days. Even if the day on which the copy was prepared and delivered is not excluded, which is the practice in the High Court while calculating the limitation, still the appeal was filed within limitation.

Learned counsel for the respondents has very fairly admitted these facts. He was also fair to admit that the appeal was filed within the prescribed time.

Learned Additional District Judge has discussed the merits of the appeal in para 7 which reads as under:-

“7. Though, the appellant has denied the existence of relationship of employee and employer between the parties, but could not deny the fact that the respondent no.1-Saleem Ahmed did labour work of carpenter, brickworks, interior works and floor, tiles etc. for the restaurant owned by the appellant-company. There is nothing on the record to suggest that the respondent no.1 has put up a false claim before the Authority under the

Act. In another attempt to frustrate the claim of the respondent no.1, the appellant-company has further asserted that he does not fall within the definition of 'workman', rather he was a contractor, but there is nothing on record to prove these assertions. It appears that the appellant-company is just trying to find out the ways to get rid of paying the wages despite getting the work done from him. This trend/attitude needs to be curbed.”

Learned counsel appearing for the respondents also does not dispute that the manner in which the Appellate Authority has dismissed the first appeal on merits is not appropriate. Learned Appellate Authority has not even discussed the contentions of learned counsel for the parties. Learned Appellate Authority has made general observation while dismissing the appeal without even going deep into the facts of the case.

This Court has gone through the detailed grounds of appeal (Annexure P-2) filed before the Appellate Authority. It is apparent that the petitioner has denied the relationship of employer and employee. It also claimed, apart from other grounds, that the claimant does not fall within the definition of employed person. Further, it has been claimed that an application under the 1936 Act is not maintainable particularly in view of definition of the word “wages” as defined in Section 2(vi) of Section 2 of the 1936 Act. The Appellate Authority has failed to advert to those aspects.

Keeping in view the aforesaid facts, this Court is left with no choice but for to set aside the order passed by the Appellate Authority

and remand the case back to it for deciding the appeal afresh on merits.

In view of what has been observed above, the present Civil Writ Petition stands allowed.

Parties through their counsel are directed to appear before the Appellate Authority on 10.08.2020 at 10:00 AM.

Let Registrar General of this Court forward a copy of this order to the Presiding Judge concerned.

All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment.

02.07.2020

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No