

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

214

**CWP-19150-2017
Date of decision: 24.01.2023**

M/S ROUND DEE CLOCK SECURITIES

.....Petitioner

VERSUS

UNION OF INDIA AND ANOTHER

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Tejas Bansal, Advocate for
Mr. Sanjiv Kumar Aggarwal, Advocate
for the petitioner.

Mr. Rajiv Sharma, Advocate
for the respondents.

VINOD S. BHARDWAJ, J. (Oral)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, 1950 seeking issuance of a writ in the nature of Certiorari for quashing of the reply dated 28.03.2017 (Annexure P-9) and a further prayer had been sought for seeking issuance of directions to the respondents to release a payment of Rs. 8,98,872/- alongwith interest @ 18% per annum claiming to be overdue against the bonus arrears which have been declined by the respondents vide letter/reply dated 18.05.2017 (Annexure P-10).

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner was awarded the contract of providing security service to RITES offices and residential premises in Haryana area vide letter dated

14.02.2014 by the respondent No.2. A contract agreement was also signed between the parties which has been appended alongwith the said petition (Annexure P-1). The above said contract was initially awarded for a period of one year, however, the same was eventually extended after 31.01.2016. It is claimed that the petitioner was to make a payment of monthly wages to the security guards as per the rates of minimum wages fixed by the DGR from time to time and the same was required to be paid through the Bank Accounts. Vide Gazette Notification No. 6 dated 01.01.2016, an amendment was made in the payment of Bonus Act, 1965 vide which minimum wages were fixed for schedule employment and the notification was made applicable w.e.f 01.04.2014. An advisory was thereafter issued by the DGR that the wages be paid to the security guards as per the above-said notification. The petitioner thereafter made payment of the arrears w.e.f. 01.04.2014 to 31.01.2016 to the security guards deployed with the respondent No.2 and raised the arrears bill pertaining to the bonus to the respondent No.2 on 20.06.2016. A reply was however received from respondent No.2 whereby it was conveyed that the payments made to the security personnel towards bonus arrear from the period from 01.01.2014 to 31.01.2016 was not as per the Gazette of India Notification dated 01.01.2016 and the advisory issued by the respondents dated 24.02.2016. The petitioners were called upon to depute their representative for discussions and to understand the methodology as prescribed in the Gazette of India Notification issued by Government of India. It is averred the representative of the petitioner contacted the respondent-officials and informed about their methodology for carrying out the calculation and that a letter was thereafter sent on 21.11.2016 claiming the said amount.

3. Reply on behalf of respondents has been filed wherein the respondents disputed any such liability payable by them as there was no occasion for retrospective payment of bonus as allegedly undertaken by the petitioners. It was also pointed out that the information in this regard was sent by the respondent No.2 to the petitioner to clarify that the methodology adopted by them was not in accordance with the Gazette Notification and the advisory issued by the DGR and that mistakes were committed by the petitioner themselves. The respondents thus cannot be held liable for any payment made by the petitioner without the consultation with the respondent No.2. They have also specifically averred that the aforesaid aspect was duly brought before representative of the petitioner who afterwards contacted the respondents. The respondents have thus disputed their liability to reimburse the bonus claim raised by the petitioners. He further submits that as per Clause 32 of the Agreement in question, in case there is any dispute which remain unresolved between the parties, the same is required to be referred to sole arbitration to be appointed by the CMD, RITES and receipt of such arbitration as also been prescribed. It was also averred that in view of the disputed questions of facts involved in the present petition and an arbitration clause having been agreed to between the parties, the present petition would not be maintainable.

4. I have heard learned counsel(s) appearing on behalf of the respective parties and have gone through the documents appended alongwith the instant petition.

5. It is evident from a perusal of the above that while the claim lodged by the petitioner is regarding the bonus arrears disbursed by him to the security guards deployed on the strength of Notification issued by the

Government of India as also the advisory issued by the DGR. A contrary stand adopted by respondent No.2 is that the said notification was not applicable in the manner as interpreted by the petitioner and that as a result of erroneous disbursement of the dues by the petitioner to its security guards, the liability cannot be fastened upon the respondent No.2.

6. The liability being disputed and an arbitration clause having been agreed to between the parties in terms of Section 7 of the Arbitration and Conciliation Act, 1996, there is no occasion for writ Court to enter into the disputed questions of fact.

7. The present petition is accordingly dismissed. The petitioner shall, however, be at liberty to take recourse to the alternative remedy available to him in accordance with law to claim the dues.

(VINOD S. BHARDWAJ)
JUDGE

JANUARY 24, 2023
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No