

120

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20527-2023 (O/M)

Date of decision : 15.09.2023

M/s Kay Kay Facilities Engineering Services Pvt. Ltd. Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ishant Khangwal, Advocate
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (M/s Kay Kay Facilities Engineering Services Pvt. Ltd.) has filed the instant writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the Award dated 27.04.2023 (Annexure P-1), passed by the Labour Officer-cum-Conciliation Officer, Jhajjar, District Jhajjar (respondent No. 3 herein), whereby the petitioner-Company herein has been directed to pay delayed wages of Rs. 1,31,600/- to respondents No. 4 to 7-workmen herein.
2. Briefly, respondents No. 4 to 7-workmen herein, are stated to have been doing the work of petrolling with respondent No. 8 (M/s Haryana City Gas). As per the petitioner-Company, respondent No. 8 and petitioner-Company herein used to work together and the petitioner-Company herein provided the necessary machines.

It appears that respondents No. 4 to 7-workmen herein filed an application before the concerned Authority under the Payment of Wages Act, 1936, Jhajjar at Bahadurgarh, wherein the petitioner-Company herein is stated to have filed its objections. The concerned Authority under the Payment of Wages Act, 1936, after considering the case of the respective parties, passed the order dated 27.04.2023 (Annexure P-1), the operative part thereof reads as under:-

“8. Finding and a brief statement of the reasons therefore: Since no plea was made by the employer, nothing can be said about the defence of the employer. But the evidence through cheque payments goes on to show that the employee was working with the respondent firm.

The failure to make any representation by the respondent is despite having received the notice of the application under The Payment of Wages Act, 1936 by the petitioner.

The Contract Labour (Regulation and Abolition) Act, 1970 provides that in case the contractor fails to make payment of the wages to the employees the liability to pay shifts to the principal employer.

9. Amounts Awarded: 1,04,000 (One Lakh and Four Thousand Only) (Rs. 26,000/- each)

(a) Delayed wages : 1,04,000/- (One Lakh and Four Thousand Only) (Rs. 26,000/- each)

(b) Deducted wages : Nil

10. Compensation Awarded : 3,000/- each (Three Thousand Only)

11. Interest:- 15,600/- (Fifteen Thousand Six

Hundred Each) interest @ 10% per annum on the amount awarded from the date of institution of case to the date of order.)

12. Penalty imposed : Nil

13. Cost awarded : Nil

14. Total amount to be paid by the employer: 1,31,600/- (One Lakh Thirty One Thousand Six Hundred Only). If the respondent fails to deposit the awarded amount by 26.05.2023 further @ 10% per annum interest from the date of order to the date of its realization may be recovered.

15. "Order announced in Open Court on dated 27.04.2023...."

3. The aforesaid order dated 27.04.2023 (Annexure P-1) has been challenged by way of this writ petition on the plea that the concerned Authority below did not consider the fact that respondents No. 4 to 7-workmen herein had taken VTS (Vehicle Tracking System) and they had given in writing that as and when they resign, the said VTS will be returned to the petitioner-Company herein, however, the said VTS has not been returned. It is argued that the petitioner-Company had not paid the wages to respondents No. 4 to 7 herein only on account of the reason that respondents No. 4 to 7-workmen herein have not returned the VTS.

4. I have heard learned counsel for the petitioner-Company herein and perused the paper book with his able assistance.

5. A perusal of the instant writ petition would reveal that in para-10, following averment has been made :-

“10. That the petitioner seeks kind indulgence of this Hon'ble Court in setting aside the impugned order dated 27.04.2023 (Annexure P-1) as the petitioner company is ready to pay the wages but the respondents No. 4 to 7 may kindly be directed to return the VTS, which were taken by them from the petitioner company.”

6. From the aforesaid extracted para-10 of the instant writ petition, it is manifest that the petitioner-Company is admitting his liability to pay the wages to respondents No. 4 to 7-workmen herein, as directed by the concerned authority, vide order dated 27.04.2023 (Annexure P-1). However, it is sought to be contended that since respondents No. 4 to 7-workmen herein have not returned the VTS, accordingly, the petitioner-Company herein had not paid the wages to respondents No. 4 to 7-workmen herein. The aforesaid stand taken by the petitioner-Company herein is totally misplaced.

7. On a pointed query to the learned counsel for the petitioner-Company herein as to whether any complaint or any action has been initiated by the petitioner-Company herein against respondents No. 4 to -7 herein with regard to allegation that they have not returned the VTS, learned counsel has not been able to point out any material in that regard.

8. In my considered view, the petitioner-Company cannot withhold the wages payable to respondents No. 4 to 7-workmen herein only on the pretext that some article (VTS) was to be returned by workmen (respondent No. 4 to 7 herein) to the petitioner-Company herein moreso, when no document/material has been placed on record to indicate as to

whether the petitioner-Company herein had initiated any complaint or action against respondents No. 4 to 7-workman herein for non return of VTS. In case, respondents No. 4 to 7-workmen herein were required to return the said article (VTS) then the petitioner-Company shall have an independent cause of action for that and merely on that account, the wages cannot be withheld, which has been clearly admitted by them (petitioner-Company herein) as payable in para-10 of the instant writ petition, as extracted above.

9. In view of foregoing discussion, I do not find any merit in the instant writ petition and same is accordingly dismissed.

10. All pending application(s), if any, shall stand closed.

(HARSH BUNGER)
JUDGE

15.09.2023
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No