

CWP-12773-2023

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

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**CWP-12773-2023
Decided on: March 14, 2024**

**M/s Jainendra Gurukul Senior Secondary School, Sector 1, Panchkula
...Petitioner**

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Presence: Mr. Adarsh Jain, Advocate,
for the petitioner.

Mr. Satish Singla, AAG, Haryana,
for respondent Nos. 1 to 3.

Mr. Gurshabad Singh Sandhu, Advocate,
for respondent No. 4 – Bharat Sharma.

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SANJAY VASHISTH, J.

1. Challenge in the present writ petition, filed under Article 226 of the Constitution of India, is to the order dated 22.02.2021 (Annexure P-1), passed by the Authority under the Payment of Wages Act, 1936, Panchkula, vide which in exercise of its power under Section 15(3) of the Payment of Wages Act, 1936 (for short, 'the 1936 Act'), petitioner-management has been directed to deposit an amount of Rs. 35,757/- towards 30% salary from May, 2020 to October, 2020, alongwith two times penalty, i.e. Rs.71,514/- and Security deposit of Rs. 1,000/-, total amounting to Rs. 1,17,271/-, within a period of 30 days from the date of order, failing which the said amount was recoverable as per the provisions of the 1936 Act alongwith interest @ 12% per annum till actual realization.

2. After issuance of notice of motion, vide order dated 02.06.2023,

a short reply, dated 29.02.2024, has been filed by respondent No. 4 – Bharat Sharma, wherein questioning the maintainability of the writ petition, it has been pointed out that the petitioner-management has straight away approached this Court by filing the present writ petition, without availing the statutory remedy of appeal against the impugned order dated 22.02.2021 (Annexure P-1), which is provided under Section 17 of the 1936 Act.

3. I have heard learned counsel for the parties and gone through the material available on record.

4. Perusal of impugned order dated 22.02.2021 (Annexure P-1), reveals that the same has been passed under Section 15(3) of the 1936 Act.

Section 17 of the 1936 Act pertains to ‘Appeal’, and prescribes as under:-

“17. Appeal. - (1) An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court -

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under sub-section (2) of section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under sub-

section (4) of section 15.

(1A) No appeal under clause (a) of sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

(2) Save as provided in sub-section (1), any order dismissing either wholly or in part an application made under sub-section (2) of section 15, or a direction made under sub-section (3) or sub-section (4) of that section shall be final.

(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the court referred to in sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The court referred to in sub-section (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.”

From a bare reading of Section 17 of the 1936 Act, it is crystal clear that an order or a direction made by the Authority in exercise of power under sub-section (3) of Section 15 of the 1936, is appealable under Section 17 of the 1936 Act.

5. Admittedly, the petitioner-management has not opted to avail the said statutory remedy of appeal under Section 17 of the 1936 Act, and approached the present writ petition, that too after a period of two years of passing of the impugned order dated 22.02.2021 (Annexure P-1). Even, there is a misstatement on the part of the petitioner-management, inasmuch as, in para No. 24 of the writ petition, it has been stated as under:-

“24. That the Petitioner has no remedy available to them by way of appeal or revision for the redressal of their grievances except to invoke the extraordinary jurisdiction of this Hon’ble Court by means of filing this writ petition under

Article 226 of the Constitution of India as the Order passed is without jurisdiction and is void and in violation of the procedure prescribed under the Act of 1936.”

6. As a result of availability of an alternative statutory remedy of appeal, no relief can be granted in favour of the petitioner in the present proceedings.

Accordingly, the **writ petition is dismissed.**

(SANJAY VASHISTH)
JUDGE

March 14, 2024
Pkapoor

Whether speaking/reasoned?	✓ Yes/No
Whether reportable?	✓ Yes/No