

236(16)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6562-2016 (O&M)
Date of Decision:02.12.2024

M/S NEELKANTH POLYMERS Petitioner

Versus

BABLU SINGH AND ORS Respondents

Sr. No.	Case Number	Titled
2	CWP-6666-2016 (O&M)	M/S NEELKANTH POLYMERS V/S VIKRAM SINGH AND ORS
3	CWP-6673-2016 (O&M)	M/S NEELKANTH POLYMERS V/S MANOJ SHARMA AND ORS
4	CWP-6719-2016 (O&M)	M/S NEELKANTH POLYMERS V/S MUNNA LAL AND ORS
5	CWP-6725-2016 (O&M)	M/S NEELKANTH POLYMERS V/S MUKESH AND ORS
6	CWP-6803-2016 (O&M)	M/S NEELKANTH POLYMERS V/S VIPIN KUMAR AND ORS
7	CWP-6613-2016 (O&M)	M/S NEELKANTH POLYMERS V/S RAMBODH TIWARI AND ORS
8	CWP-6602-2016 (O&M)	M/S NEELKANTH POLYMERS V/S MAHADEV AND ORS
9	CWP-6596-2016 (O&M)	M/S NEELKANTH POLYMERS V/S PAWAN KUMAR AND ORS
10	CWP-6569-2016 (O&M)	M/S NEELKANTH POLYMERS V/S RAJ KUMAR AND ORS
11	CWP-6604-2016 (O&M)	M/S NEELKANTH POLYMERS V/S RAMENDER MISHRA AND ORS
12	CWP-6608-2016 (O&M)	M/S NEELKANTH POLYMERS V/S PAWAN CHAUHAN AND ORS
13	CWP-6616-2016 (O&M)	M/S NEELKANTH POLYMERS V/S AKHILESH KUMAR AND ORS
14	CWP-6610-2016 (O&M)	M/S NEELKANTH POLYMERS V/S RAJIV AND ORS
15	CWP-6563-2016 (O&M)	M/S NEELKANTH POLYMERS V/S PRAVEEN AND ORS
16	CWP-6901-2016 (O&M)	M/S NEELKANTH POLYMERS V/S



	ARUN KUMAR AND ORS
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CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Adarsh Jain, Advocate
for the petitioner(s).

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

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, the above-noted petitions are hereby adjudicated as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-6562-2016.
2. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting of order dated 11.05.2012 (Annexure P-1) passed by authority under Payment of Wages Act, 1936 (for short '1936 Act') and order dated 27.11.2015 (Annexure P-2) passed by the Appellate Authority under 1936 Act.
3. The petitioner is a partnership firm and engaged in the business of manufacturing plastic articles. It during 2007-2011 engaged workers through a contractor namely M/s The Marshal Security Enterprises, Uttar Pradesh. It claims that contract with manpower supplier was terminated on 23.02.2011. It made payment as per invoices raised by contractor. It was not making direct payment to the workers. The payment of workers was made by contractor. On account of termination of contract, the manpower supplier through its workers



lodged claim under different heads before authority constituted under 1936 Act. The petitioner, contractor as well as worker appeared before the authority and led their evidence. The said authority vide impugned order dated 11.05.2012 ordered the petitioner to pay a sum of Rs.52,394/- to workman. The petitioner preferred appeal before Appellate Court which vide order dated 27.11.2015 (Annexure P-2) dismissed the same.

4. Mr. Adarsh Jain, Advocate for the petitioner submits that authority under 1936 Act has no jurisdiction to adjudicate question of bonus because question of bonus as per Section 22 of Payment of Bonus Act, 1965 (for short '1965 Act') is an 'Industrial Dispute' which can be adjudicated by Labour Court. The bonus is also excluded from the definition of 'Wages' under 1936 Act. The petitioner as per Contract Labour (Regulation and Abolition) Act, 1970 (for short '1970 Act') is liable to pay wages which does not include bonus. The respondent No.2 was having Provident Fund and ESI Account which was used to make contribution of employer and employee. The contractor in its reply and pleadings has not disputed that he was engaged by petitioner and payment was made to him. He is pleading that whatsoever he received from the petitioner was paid to workers, thus, he is not liable to pay differential amount, if any. The worker in his cross-examination has accepted that there is no evidence of overtime still authority has granted payment with respect to overtime. The contractor never raised invoice for overtime and worker could not be expected to work for more than 2 years without getting wages with respect to overtime although he was getting payment with respect to normal working hours.

5. Per contra, Mr. Arihant Goyal, Advocate for respondent



No.2 submits that contractor had made payment to workers equal to payment received from Management. The contractor had not withheld any money received from the principal employer-petitioner and their contract with petitioner was till February' 2011. If workers had worked beyond the date of termination of contract, principal employer is liable.

6. Despite notice, there is no representation on behalf of the workman. On a few occasions, there was representation on behalf of the workman, however, for the last one year, nobody is coming forward. The matter is pending before this Court since 2016 and a small amount is involved, thus, it cannot be kept pending for an indefinite period.

7. I have heard the arguments of learned counsel for the parties and perused the record.

8. From the perusal of impugned orders, it is evident that there was contract between petitioner and respondent No.2 with respect to supply of manpower. The workers were engaged through contractor. The salary to workers was paid by contractor. The workers after termination of contract between petitioner and manpower supplier filed their claim under 1936 Act. As per Section 22 of 1965 Act, any dispute with respect to bonus is an industrial dispute in terms of Industrial Disputes Act, 1947 (for short '1947 Act'). Section 22 of 1965 Act is reproduced as below:

“22. Reference of disputes under the Act.—Where any dispute arises between an employer and his employees with respect to the bonus payable under this Act or with respect to the application of this Act to an establishment in public sector, then, such dispute shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or of any corresponding law relating to



investigation and settlement of industrial disputes in force in a State and the provisions of that Act or, as the case may be, such law, shall, save as otherwise expressly provided, apply accordingly.”

9. From the perusal of afore-cited section, it is evident that non-payment of bonus is an industrial dispute. The respondent No.1-workman claimed bonus which was not based upon any award or settlement, thus, it was an industrial dispute which could not be settled under 1936 Act, thus, authority under 1936 Act has wrongly exercised power with respect to non-payment of bonus, if any.

10. The workman during the course of cross-examination had accepted that there is no evidence of overtime. He had claimed overtime for the period from 01.01.2009 to 12.03.2011. He had claimed that he uniformly worked 4 hours extra everyday. He has accepted that there is no evidence of overtime work. During the entire period, contractor did not raise invoice with respect to payment of overtime work. The authority despite said facts has concluded that petitioner is liable to make payment with respect to overtime work. In the absence of evidence of overtime, neither demand was maintainable nor authority could direct the petitioner to make payment.

11. With respect to payment of leave encashment and outstanding wages, Mr. Adarsh Jain submits that petitioner offered payment with respect to earned wages, however, workman refused to accept. The petitioner even today is ready to make payment with respect to wages. Section 3 of 1936 Act also provides that it would be responsibility of principal employer to ensure payment of wages where workman is employed through contractor. Section 3 of 1936 Act reads as:



“3. Responsibility for payment of wages.—(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to persons employed by him and in case of persons employed,—

(a) in factories, if a person has been named as the manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948);

(b) in industrial or other establishments, if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;

(c) upon railways (other than in factories), if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned;

(d) in the case of contractor, a person designated by such contractor who is directly under this charge; and

(e) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act,

the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

(2) Notwithstanding anything contained in sub-section (1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.”

12. Section 21 of 1970 Act creates primary liability of principal employer to make payment of wages. Leave encashment is also part of



wages. Section 21 of 1970 Act is reproduced as below:

“21. Responsibility for payment of wages.—(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.

(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.

(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.

(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.”

13. From the perusal of afore-cited sections, it is evident that petitioner being principal employer was liable to pay wages. The payment of wages by contractor is irrelevant. In case there is allegation that contractor has not made payment of due amount, it is responsibility of the principal employer to make payment though it has right to recover from the contractor.

14. In the wake of above discussion and findings, this Court



finds that Authority under 1936 Act as well as Appellate Authority has wrongly assessed liability of petitioner *qua* bonus and overtime. The liability of bonus has been determined even beyond jurisdiction. Liability *qua* overtime and bonus is not sustainable, therefore, set aside. The petitioner is hereby directed to make payment of remaining amount within 3 months from today alongwith interest as ordered by authorities below, if workman comes forward.

- 15. Disposed of.
- 16. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

02.12.2024
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No