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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of order: 31st May, 2024

+ W.P.(C) 6677/2024 & CM APPL. 27819/2024

M/S. WYAN INDUSTRIES PVT. LTD. Petitioner

Through: Mr. Rishabh Gupta and Mr. Devansh
Dua, Advocates.

versus

SMT. ISHWARI DEVI AND ANOTHER Respondents

Through: Ms. Pratima N. Lakra with Mr.
Chandan Prajapati, Advocates.

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Articles 226 and 227 of the Constitution of India has been filed on behalf of the petitioner seeking quashing of the impugned orders dated 19th March, 2024 and 23rd April, 2024 passed by the learned Commissioner, Labour Department, North District, Nimri Colony, Delhi under the Employee's Compensation Act, 1923 (hereinafter "the Act"), in Reference Number ECD/O6/ND/2023/373-375.

2. The brief facts relevant for the adjudication of the instant petition are as under:

a. It is stated by the petitioner that the husband of respondent

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By: DAMINI YADAV
Signing Date: 01.06.2024
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No. 1, i.e., Late Shri Bali Singh (hereinafter, “the deceased”) was employed with M/s Wyan Auto Industries LLP, a sister concern of the petitioner.

- b. During the course of his employment with M/s Wyan Auto Industries LLP, the deceased met with an accident and succumbed to death on 7th June, 2022.
- c. Thereafter, on 11th January 2023, the legal heirs of the deceased filed a claim petition before the Commissioner under the Employees Compensation Act, 1923, seeking compensation from M/s Wyan Industries Pvt Ltd., the petitioner.
- d. After receiving the notice of claim petition, the petitioner filed an application stating that neither the deceased was employed with them nor was he an employee at the time of his death.
- e. It is further stated by the petitioner that the application filed by petitioner on its letter head was treated as a written statement by the Employee Compensation Commissioner (hereinafter, “the Commissioner”). In the said written statement, the petitioner contended that the deceased was never employed by them and that such claim was made on a wrong legal advice as well as some confusion due to similarity of names.
- f. The reply filed by the respondents to the said letter was



considered as rejoinder and since the petitioner failed to take part in the proceedings or respond to any notices further served upon him, the claim petition was proceeded *ex-parte*.

- g. After the completion of the proceedings, the Commissioner passed an order dated 19th March, 2024 directing the petitioner to pay compensation amount of Rs.9,62,475/- along with interest @12% p.a. w.e.f. 7th June, 2022 till its realization and Rs. 5,000 / - as funeral expense to the legal heirs of the deceased, i.e., the respondents.
- h. Further, the Commissioner directed the petitioner to appear on 23rd April, 2024 and to show cause as to why penalty under Section 4A(3)(b) of the Act should not be imposed for the default in paying compensation.
- i. Thereafter, the petitioner moved an application before the Commissioner for re-calling/setting aside the order dated 19th March, 2024 which was dismissed by the learned Commissioner vide order dated 23rd April, 2024 with the direction to the petitioner to deposit the amount directed to be paid vide order dated 19th March 2024, and an order for penalty was issued.
- j. Subsequently, vide an order dated 23rd April, 2024, the petitioner's application was dismissed without issuing notice to the respondents and without hearing the petitioner.
- k. Being aggrieved by the impugned order dated 19th March,



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2024 and order dated 23rd April, 2024, the petitioner has filed the instant petition seeking quashing of the same.

3. Learned counsel appearing on behalf of the petitioner submitted that the deceased was an employee of M/s Wyan Auto Industries LLP, and not an employee of M/s Wyan Industries Pvt Ltd, the petitioner.

4. It is submitted that M/s Wyan Auto Industries LLP is a separate legal entity incorporated as a limited liability partnership Firm with LLP identification number AAX-2340 and is distinct from the petitioner which is a private limited company with Company Identification Number U37109DL2004PT0124960 having its own directors. Further, there are no common partners/directors between the petitioner company and the employer LLP.

5. It is submitted that the legal heirs of the claimant/respondent had filed the claim against the petitioner before the learned Commissioner on wrong legal advice or out of some confusion due to the similarity of names and there is no connection between the petitioner entity and the employer as far as the employment of the deceased is concerned.

6. It is submitted that the deceased was not the employee of the petitioner and was appointed by M/s Wyan Auto Industries LLP on 2nd July, 2021, and thereafter, as per the pay register for the months of April, May and June, 2022, the salary of the deceased was being paid by M/s Wyan Auto Industries LLP.

7. It is submitted that the deceased Shri Bali Singh was an employee working with M/s Wyan Auto Industries LLP and his salary was being paid



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by the said M /s Wyan Auto Industries LLP itself and the said fact had been duly certified by the State Bank of India, Rai Industrial Area Branch, Sonipat, Haryana on its letter head bearing signatures of Branch Manager along with stamp of the bank.

8. It is submitted that the salary of the deceased was credited to his account from the account of M/s Wyan Auto Industries LLP. Hence, it proves the fact that the deceased was the employee of the said M/s Wyan Auto Industries LLP only and not the employee of the petitioner.

9. It is submitted that the respondents have concealed a material fact in the proceedings before the learned Commissioner that M/s Wyan Auto Industries LLP has paid an amount of Rs.65,284/- to Smt. Ishwari Devi, the wife of the deceased on 1st October 2022, which shows that the real employers of the deceased made sufficient efforts to compensate his widow.

10. It is submitted that the onus is on the employee to prove the employee-employer relationship and the respondents have not filed the record of employment of the deceased Shri Bali Singh such as his ESI card/PF card, appointment letter/salary slips/leave wages/or any other document proving his employment with the petitioner or his last drawn salary.

11. It is submitted that the petitioner had replied to the claim petition of the respondents by filing an application on letter head bearing stamp and signatures of Directors, wherein it had clarified its position regarding the non-employment of the deceased with it.

12. It is submitted that the application moved by the petitioner before the



learned Authority for recalling/setting aside of the impugned order dated 19th March, 2024 was dismissed without hearing the petitioner and without even issuing notice to the respondents and the learned Commissioner passed a non-speaking order whilst dismissing the said application.

13. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

14. *Per Contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the same is liable to be dismissed on the grounds of maintainability.

15. It is submitted that since the petitioner has approached this Court seeking quashing of the impugned orders without exhausting the alternative remedy provided under Section 30 of the Act, the instant petition is not maintainable.

16. It is submitted that in accordance with the Act, any appeal against the order of the learned Commissioner lies before the High Court, however, instead of approaching the High Court through a statutory appeal under Section 30 of the Act, the petitioner has approached this Court under its writ jurisdiction despite the fact that there exists an alternate remedy and therefore, this writ petition is liable to be dismissed.

17. It is further submitted that the present writ petition is not maintainable in view of the judgment of the Hon'ble Division Bench of this Court in the case titled as ***Naresh Kumar v. Jawahar Singh & Ors.*** in LPA NO. 80/2009 wherein it was held that a writ petition should not be entertained where a statutory right to appeal has been provided.



18. It is submitted that when dealing with similar issues in cases titled *Om Prakash & Anr. v. Commissioner, Employee Compensation and Ors.*, in **W.P.(C) 8883/2019**, and *State of Punjab and Ors. v. Rajvir Kaur & Ors.*, in **CWP-11289-1998**, the High Courts have held the writ petitions to be not maintainable in view of the statutory appeal under Section 30 of the Act.

19. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be dismissed.

20. Heard the learned counsel appearing on behalf of the parties and perused the record.

21. At the outset, it has been contended on behalf of the respondents that the instant petition may be dismissed on the grounds of maintainability itself since the petitioner has failed to exhaust the alternative remedy prescribed under the Employee's Compensation Act, 1923 and has approached this Court directly by way of the present writ petition under Articles 226/227 of the Constitution of India.

22. Therefore, this Court deems it imperative to first discuss upon the issue of maintainability of the instant petition which has been raised by the respondents.

23. Section 30 of the Act provides for the provision of appeal where any person aggrieved by an order of the Commissioner under the Act awarding compensation may prefer an appeal before the High Court within sixty days of passing of such order. The relevant portion of the same reads as:

“..Section - 30 Appeals. -

(1) An appeal shall lie to the High Court from the following



orders of a Commissioner, namely:-

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum ...”

24. In the present petition, after passing of the impugned orders, the petitioner did not prefer an appeal before the High Court in terms of the provisions under Section 30 as warranted under the Act, instead, the petitioner filed the instant writ petition under Articles 226/227 of the Constitution of India on the ground that the learned Commissioner erred in holding the respondents entitled to the compensation from the petitioner as the latter was not the employer of the deceased.

25. Before advertng to the adjudication of the instant petition, it is imperative to set out the relevant principles of law where it has been discussed as to whether the powers of a High Court under Articles 226/227 of the Constitution of India can be exercised if an alternate remedy existing under the relevant statute has not been exhausted by the aggrieved party.

26. A writ petition was preferred challenging the order of the Commissioner under the Act in the judgment passed by the Division Bench of Bombay High Court in case titled as ***Baban v. State of Maharashtra, 2021 SCC OnLine Bom 3083***, wherein the same was held to be not maintainable by the Court in the view of an alternative remedy existing under Section 30 of the Act. The Court, while dismissing the writ petition, had given the petitioner the liberty to approach the relevant forum of law by way of filing statutory appeal under Section 30 of the Act. The relevant



extracts from the judgment are as follows:

“..19. As such, the petitioner should have resorted to the remedy as is provided under section 30 of the Employees’ Compensation Act for assailing the judgment of the Labour Court. Unless the said judgment is quashed and set aside by the learned Single Judge Bench of this Court in a First Appeal, the said judgment and the directions of the Labour Court under Section 31 would be legally enforceable.

20. In view of the above, the second Writ Petition No. 8447/2021 is dismissed. Rule is discharged.

21. We make it clear that the dismissal of the second petition would not be a legal impediment to the petitioner if he chooses to assail the judgment of the Labour Court and its subsequent order passed under section 31 of the Employees’ Compensation Act, under section 30 of the said Act...”

27. In another judgment delivered by the Division Bench of Chhattisgarh High Court in case titled as ***S.K. Industries v. State of Chhattisgarh, 2023 SCC OnLine Chh 3929***, a writ petition was preferred challenging the order of the Commissioner under the Act which was held to be non-maintainable by the Court in view of an alternative remedy existing under Section 30 of the Act. The relevant extracts from the judgment have been reproduced here:

“..3. As has been observed by learned Single Judge that there is alternative remedy available to the appellant for redressal of its grievance, but without availing the same, appellant has directly filed the writ petition.

4. Considering the facts and circumstances of the case and after hearing learned counsel for the parties, we are of the view that there is alternative remedy available to the petitioner under



Section 30 of the Employee's Compensation Act, 1923 to file appeal. On due consideration, we do not find any good ground to interfere in the impugned order passed by learned Single Judge.

5. In view of the aforesaid, the instant writ appeal is dismissed with liberty to the appellant to approach appropriate forum for redressal of its grievance, if any..."

28. In the instant case, the petitioner, aggrieved by the orders of the learned Commissioner under the Act, has assailed the impugned orders before this Court through the present writ petition under Articles 226/227 of the Constitution of India.

29. As is clear from the discussions above, Section 30 of the Act comprehensively envisages remedies for the parties aggrieved by the order of the Commissioner to approach the High Court and prefer an appeal against such an order.

30. Furthermore, different High Courts in a catena of judgments have held that Section 30 of the Act provides for a proper and efficacious remedy through which an order of the Commissioner should be assailed and the said provision explicitly states that a High Court is the appropriate appellate forum which is to be approached by way of filing a statutory appeal.

31. Therefore, upon perusal of the above judgments, it is clear that High Courts have refused to exercise their jurisdiction under Articles 226/227 while considering writ petitions challenging the order of the Commissioner under the Act. The Courts have held that writ jurisdiction must be sparingly invoked to protect against violation of any legal or fundamental rights and



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only in the cases when all alternative remedies, especially those envisaged under the statute, have been exhausted.

32. In view of the foregoing discussions of facts as well as law, it is held that the instant petition is not maintainable since the petitioner has failed to exhaust the alternate remedy which is filing of a statutory appeal, and hence, the present petition is liable to be dismissed. Accordingly, the instant petition stands dismissed being non-maintainable.

33. Pending applications, if any also stands dismissed.

34. The petitioner is at liberty to approach the appropriate forum of law under the Act for the redressal of its grievances, if any. It is pertinent to mention herein that the time spent in pursuing the present litigation shall be excluded while computing the limitation period. It is also made clear that this Court has not made any observations with regard to the merits of the present petition.

35. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 31, 2024
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Click here to check corrigendum, if any