

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

CM(M) No. 119/2023
CM No. 4082/2023

Ram KrishanAppellant(s)/Petitioner(s)

Through: Mr. Anil Sethi, Advocate.

Vs

Netar ParkashRespondent(s)

Through:

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
12.07.2023

1. Assistant Labour Commissioner, Rajouri acting as an Authority under the payment of Wages Act, 1936 came to entertain an application on file no. 28/PWAct./2022 on 28.07.2022 filed by Netar Parkash-respondent herein.

2. In this application, the petitioner herein along with five others came to be named as non-applicants. The application was purportedly filed under the provisions of the Payment of Wages Act, 1936 for a claim which the applicant-Netar Parkash (respondent herein) made in the application that he had executed the work of tractor road from different points for which he has not been paid the money and for the recovery of the same the Payment of Wages Act, 1936 was invoked.

3. It is this application of the respondents which came to be allowed by the Assistant Labour Commissioner, Rajouri in terms of purported award dated 02.05.2023 thereby directing the petitioner herein to pay an amount of Rs. 4,64,646 under section 15(3) of the Payment of Wages Act, 1936.

4. The petitioner, herein, feeling aggrieved of the said award has come to file a statutory appeal under section 17 of the Payment of Wages Act, 1936 before the District Court, Rajouri which came to be assigned to the Additional District Judge, Rajouri on file no. Appeal/659/2023. This appeal came to be entertained as is evident from the order dated 25.05.2023.

5. However, by subsequent order dated 10.06.2023, the appellate authority of the Additional District, Judge Rajouri has withdrawn the interim direction with respect to stay of operation of the impugned award dated 01.05.2023 on the pretext that the deposit of the awarded amount has not taken place as per the requirement of Section 17(A) (1A).

6. Learned counsel for the petitioner is aggrieved of the order dated 10.06.2023 to the extent withdrawing the direction for stay of operation of the impugned award. Section 17(A) (1A) reads as under:

“(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.”

7. The moot point in the petition under Article 227 Constitution of India is as to whether the respondent herein who had approached the Assistant Labour Commissioner, Rajouri had set up a claim for himself as an employed person entitled to receive amount of Rs. 4,64,646/-.

8. In the case, when the respondent himself was not the wage earner quo the petitioner herein then there was perhaps no scope available for invoking of the provisions of the Payment of Wages Act, 1936 resulting in passing of an award which in itself did not say that the payment of an amount of Rs. 4,64,646/- was in favour of the respondent as the matter of payment of his wages.

9. Thus, in light of this aspect, the question arises as to whether the provisions of section 17(A) (1A) of the Payment of Wages Act, 1936 can come in the way of the petitioner herein as an appellant to maintain the appeal against the impugned award without the legal compulsion of making the deposit of the amount amount as directed under the impugned award.

10. *Prima facie* case is made out.

11. Issue notice to the respondents.

12. Petitioner to furnish registered postal cover for the service of the respondent within a period of seven days, whereupon the Registrar Judicial, Jammu to issue notices to the respondent.

13. Send for the record of the Assistant Labour Commissioner, Rajouri on file no. 28/PWAct./2022 in case titled “Netar Parkash Vs. Ram Krishan and others” bearing date of institution 28.07.2022 and date of decision 01.05.2023.

14. In the meantime, the operation of the impugned order dated 01.05.2023 passed by the Assistant Labour Commissioner, Rajouri shall remain stayed leaving the appellate court of Additional District Judge, Rajouri free to carry on with the adjudication of the appeal on the merits. This order is, however, subject to objections from the other side.

(RAHUL BHARTI)
JUDGE

Jammu
12.07.2023
Shivalee