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J&K HIGH COURT ON EMPLOYER'S RESPONSIBILITY UNDER PAYMENT OF WAGES ACT, 1936

A. Introduction

In *Executive Engineer Roads & Buildings, Bandipora vs Nazir Ahmad Teli* case,¹ the Jammu & Kashmir High Court (**HC**) held that the responsibility of payment of all wages under the Payment of Wages Act, 1936 (**PWA**), lies with the employer in case the contractor or the person designated by the employer fails to make such payment to the contract workers.

B. Brief Facts

1. The respondent-contractor (**Contractor**) had not made payments for the work done by Nazir Ahmad Teli (**Teli**) in 2009-10 as the Roads & Buildings Department, Bandipora (**RBD**), had not released the bills for payments.
2. Teli filed an application under Section 15(2) of the PWA² against RBD before the Labour Court (**LC**).
3. The LC ordered RBD to make the payment since it was unable to produce any evidence of payments made to the Contractor for it to be paid to Teli.
4. The RBD appealed before the Appellate Court (**AC**) under Section 17 of the PWA.³ The AC rejected the appeal citing RBD's failure to produce, as required under Section 17(1-A) of the PWA, a certificate issued by the authority certifying that RBD had deposited the amount payable under the appealed direction.
5. Aggrieved, RBD approached the HC claiming that there is no employer-employee relationship between RBD and Contractor, and that the Contractor, having been allotted the works, the RBD was not liable to pay the wages to Teli.
6. The questions before the HC were:
 - i. Whether RBD was liable to make payments under the PWA, and
 - ii. Whether RBD was required to deposit the amount payable under the direction of the

¹ *Executive Engineer Roads & Buildings, Bandipora vs Nazir Ahmad Teli* (J&K HC) (31.01.2024– J&K HC):2024 SCC OnLine J&K 13.

² Section 15(2) of the PWA entitles an employee (or certain class of individuals authorised by the employee such as a legal practitioner, any official of a registered trade union etc.) to apply to a labour authority for a direction to the employer where any deductions have been made from their wages in contravention of the PWA, or there is a delay in the payment of wages.

³ Section 17 provides for appeal against an order of or a direction made by the labour authority under section 15.

authority under the PWA before filing an appeal.

C. Court's Judgment & Reasoning

The HC dismissed the appeal holding that:

1. An employer cannot escape liability for payment of all wages as the responsibility for payment of wages under the PWA lies with the employer in case the contractor or the person designated by the employer fails to make such payment.
2. Section 17(1A) of the PWA sets out mandatory requirements and the use of “*shall*” indicates that the amount specified by the authority under the PWA must be paid, and a certification of payment must accompany the appeal; failure to comply with this requirement invalidates the appeal, and it cannot be heard until the defect is corrected.

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