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HIGH COURT ON RESPONSIBILITY OF EMPLOYERS TO PAY WAGES

The Jammu & Kashmir and Ladakh High Court (“**HC**”), in the *Nazir Ahmad* case,¹ held that it shall be the responsibility of the employer to pay all wages required to be paid under the Payment of Wages Act, 1936 (“**Act**”) in case the contractor fails to make such payment.

Brief facts:

Nazir Ahmad (“**Ahmad**”) filed application in the Labour Court (“**LC**”) for payment of wages under the Act.² The contractor, employing Ahmad, stated that the wages remained unpaid as the state Roads & Buildings Department (“**Department**”) was yet to release the bills, following which the wages would be paid.

The Department claimed in its objection before the LC that the payments had been made to the contractor. However, the Department was unable to produce documentary evidence to support its objection. The LC, in its orders, held that the Department should pay the wages to Ahmad.

The Department appealed against the order before the Principal District Judge (“**Appellate Court**”). However, the Appellate Court dismissed the appeal on the ground that the mandatory conditions for appeal under Section 17(1A) of the Act were not fulfilled by the Department.³ The Department appealed before the HC.

HC’s Judgement & Analysis:

The HC:

- Observed that: “*The employer, as provided under Section 3 of the Act, shall be responsible for payment of all wages required to be paid under the Act to the persons employed by him and in case of persons employed in factories, in the industrial or other establishments, in the case of contractor (or) a person designated by such contractor who is directly under his charge, and in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act.*”⁴
- Held that it shall be the responsibility of the employer to pay all wages required to be made under the Act, if the contractor, a person designated by the contractor, or any other person designated by the employer fails at making the required payment.⁵

¹ *Executive Engineer Roads and Buildings, Bandipora vs Nazir Ahmad Teli*, 2024 LiveLaw (JKL) 17.

² Section 15(2) of the Act.

³ Paragraph 5 of the Judgement.

⁴ Paragraph 6 of the Judgement.

⁵ *Ibid*, and section 3(2) of the Act.

- Opined that a person is aggrieved by an order passed under section 15 of the Act, they can appeal such orders within 30 days of it being passed.⁶ No appeal under section 17 will lie unless the appeal is accompanied by a certificate of the authority to the effect that the person appealing has deposited with the authority the amount payable under the orders appealed against.⁷
- Held that a certificate accompanying the memorandum of appeal is mandatory. If the amount (required to be deposited with the authority) and a certificate to its effect do not accompany the memorandum of appeal, it would be treated as defective and would not be heard until and unless the defect was removed.⁸
- Referred to the 2007 *Executive Engineer* case⁹ that “without incomplete, the mandate of Section 17(1) of the Act, the appeal was not maintainable, rather it was ineffective, incomplete and not competent.”¹⁰
- Concluded that: “If the Petitioner herein (i.e., the Department) felt aggrieved of the order/s of the Authority under the Act, he, while preferring the appeal/s under the Act, was required to fulfill the mandatory condition of appending the certificate from the Authority to the effect that he deposited the amount payable under the orders of the Authority, which he, however, did not and, therefore, the Appellate Court, while observing that he did not fulfill this mandatory condition, has rightly dismissed the appeal.”¹¹

Accordingly, the HC dismissed the Department’s appeal.

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⁶ Section 17 of the Act.

⁷ Paragraph 7 of the Judgement and proviso of section 17 (1A) of the Act.

⁸ Paragraph 8 of the Judgement.

⁹ *Executive Engineer v. Authority under Payment of Wages Act*, 2007, (3) JKJ 432 [HC].

¹⁰ Paragraph 10 of the Judgement.

¹¹ Paragraph 10 of the Judgement.