

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

Case: WP(C) No. 2021/2022

Reserved on : 07.10.2025

Pronounced on : 10.10.2025

Barket Ali

..... Petitioner(s)/Appellant(s)

S/o Ab Rehman Malik

R/o Bharat Tehsil Bharath Bagla Distt.

Doda.

Through :- Mr. S.A. Hashmi, Advocate.

Vs

Divisional Manager SFC Division

.....Respondent(s)

Bhaderwah

Through :-

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

10.10.2025

BRIEF FACTS OF THE CASE

01. Petitioner, through the medium of the instant petition, filed under Article 226 of the Constitution of India has sought a writ in the nature of mandamus seeking quashment of judgment dated 03.06.2022 passed by learned Principal District Judge, Bhaderwah in an appeal filed by the respondent whereby appeal of the respondent has been allowed by setting aside the award passed on 26.11.2019 by the Authority under the Payment of Wages Act.

02. The brief facts of the case, which have been projected in the instant petition are that an award to the tune of Rs. 503567/- was passed by the authority under Payment of Wages Act by the Assistant Labour Commissioner Doda in favour of the petitioner against the respondent on account of delayed wages vide order dated 26.11.2019. The aforesaid appeal was preferred under Section 17 under the Payment of Wages Act by respondent on 30.12.2019 in the Court of learned District Judge, Bhaderwah. The appeal was accompanied by an application for condoning of delay under Section 5 of the Limitation Act was filed by the respondent.

03. The petitioner filed detailed objections to the maintainability of the said application seeking condonation of delay and a specific stand was taken by the petitioner before the learned Appellate Court that the appeal was filed beyond the period of limitation of 30 days and since there is no provision for condoning the delay under the Payment of Wages Act, which could enable maintainability of the said application for condoning the delay under the said Act. It was also urged before the learned trial Court that since the Payment of Wages Act has a complete mechanism for filing of such appeal under Section 17 of the Payment of Wages Act being a special legislation, the limitation act was excluded.

04. It has been further pleaded that since limitation period for filing of the appeal is 30 days and thus, the appeal could not have been entertained beyond the period of 30 days by placing reliance upon the Limitation Act, which has no applicability under the Payment of Wages Act. It was urged that the application was liable to be dismissed at the very threshold by placing reliance upon the judgment passed by Coordinate Bench of this Court in case titled **Tara Chand**

Vs. Ghulam Rasool reported in SLJ 1974 page 148 in which it has been held the Limitation Act would not be applicable under the Payment of Wages Act and that the ratio has been reiterated in the subsequent judgments as well.

05. It has also been pleaded in the instant petition by the petitioner that it was incumbent on the part of the learned Appellate Court, to have decided the application for condonation of delay on the grounds urged by the learned counsel for the parties, but to the utter shock and surprise of the petitioner, the learned trial Court by virtue of the order/judgment dated 03.06.2022 decided and allowed the application for condonation of delay and also the main appeal itself by touching the merits of the case. It is specific case of the petitioner that while deciding the application for condonation of delay, the appeal was also decided on merits without giving any opportunity of being heard to the petitioner to defend his claim and on this ground alone, the impugned judgment dated 03.06.2022 cannot sustain the test of law and is liable to be quashed.

ARGUMENTS ON BEHALF OF PETITIONER

06. Learned counsel for the petitioner has vehemently argued that the learned Appellate Court has committed a grave error of law and fact by allowing the said application of the applicant (respondent herein) whereby delay in filing the appeal has been condoned and that the order passed by the learned Appellate Court is in derogation to the mandate and spirit of the law laid down by this Court in Tara Chand' case (*supra*), which has been reiterated and followed by subsequent judgments by this Court as well.

07. The principle which has been applied in the aforesaid judgment is squarely applicable to the case in hand and thus, it can safely be concluded as

per the learned counsel for the petitioner that Section 5 of the Limitation Act is not applicable to the appeals preferred under the Payment of Wages Act.

08. It has also been urged by learned counsel for the petitioner that the order/judgment dated 03.06.2022, which is impugned in the present petition, some irrelevant judgments which have no bearing on the issue in question have been referred while passing the said judgment, which is subject matter of the instant petition.

09. Learned counsel for the petitioner has also drawn the attention of this Court to the order impugned passed by the learned Appellate Court, a perusal whereof reveals that the learned Appellate Court was of the view that the calling of the record from the concerned authority was imperative and most appropriate for deciding the appeal, yet the learned Appellate Court without calling for the record from the appropriate authority or perusing the said record held that the award has been passed in absence of the appellant employer and recorded a finding which does not sustain the test of law and is liable to be quashed.

10. With a view to fortify his claim, learned counsel for the petitioner has drawn the attention of this Court to the observation of the learned Appellate Court with particular reference to para 9 of the impugned judgment in which it has been observed that ***“in order to check the date chart the record of the case filed is imperatively required to be gone through”*** but the original record was never called by the learned trial Court from the competent authority and without summoning the record, the appeal was decided, which is the subject matter of the instant petition and on this ground also, the order impugned cannot sustain the test of law.

11. In addition, learned counsel for the petitioner submits that the learned Appellate Court has recorded a finding that there is tampering in the order sheet of the authority showing interjections in the date of issuance of the award. With a view to counter such observation, learned counsel for the petitioner submits that how and under what circumstances, the learned Appellate Court has recorded the said finding in absence of the record being summoned from the competent Court and what is the source of the said knowledge is not forthcoming from the record. How and under what circumstances the Appellate Court has recorded the said observation without summoning the record from the learned trial Court is not forthcoming from the record. Rather the petitioner with a view to substantiate his claim that no such tampering has ever taken place has placed on record the certified copy of interim order dated 26.11.2019, a perusal whereof vindicates the stand of the petitioner that no such tampering has ever taken place.

12. Learned counsel for the petitioner further submits that in absence of the record being examined by the learned trial Court, the said finding cannot sustain the test of law. He further submits that the impugned order has been passed in most mechanical manner and without application of mind. It was incumbent on part of the Appellate Court to have confined the order only to the extent of condonation of delay and the Court ought to have provided an opportunity of being heard to the petitioner, with a view to render effective assistance in case the merits of the appeal were to be discussed but by virtue of a common order both the application for condonation of delay and the appeal has been decided on merits thereby depriving the petitioner of an effective opportunity to render

valuable assistance. Thus, the act of the learned trial Court in deciding the appeal without providing an opportunity to the petitioner to address the arguments on merits of the case has violated the fundamental principle of natural justice in so far as the petitioner is concerned.

13. Lastly, learned counsel for the petitioner has placed reliance upon the statutory provision of Section 17 of Payment of Wages Act, a perusal whereof, reveals that an appeal against the order dismissing either wholly or in part an application made under Sub-Section 2 of Section 15 or against a direction made under Section 3 or Sub-section 4 may be preferred within 30 days of the date on which, the order or direction was made before the Court of small causes and elsewhere before the District Court. The learned counsel has also referred to proviso as laid down under Section 1(A) by way of a rider that no appeal under Clause (a) of Sub Section (1) shall lie unless the memorandum of appeal is accompanied by certificate by the authority to the effect that the appellant has deposited the amount payable under the direction appealed against. For facility of reference, Section 17 of the Payment of Wages Act is reproduced as under:-

17. Appeal.—(1) [An appeal against an order dismissing either wholly or in part an application made under sub-section (2) of section 15, or against a direction made under sub-section (3) or sub-section (4) of that section] may be preferred, within thirty days of the date on which [the order or direction] was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court—

(a) by the employer or other person responsible for the payment of wages under section 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees [or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees], or

[(b) by an employed person or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the

authority to make an application under sub-section (2) of section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or]

(c) by any person directed to pay a penalty under [sub-section (4)] of section 15.

[(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.]

[(2) Save as provided in sub-section (1) any order dismissing either wholly or in part an application made under sub-section (2) of section 15, or a direction made under sub-section (3) or sub-section (4) of that section shall be final.] [(3) Where an employer prefers an appeal under this section, the authority against whose decision the appeal has been preferred may, and if so directed by the court referred to in sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The court referred to in sub-section (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision.]

14. Thus, a from a bare perusal of the aforesaid statutory provision, as per the learned counsel for the petitioner, it is emphatically clear that the appeal cannot be entertained unless the said 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. However, the appeal has been entertained by the Appellate Court in contravention to the mandatory provision of Section 17 of the Payment of Wages Act. With a view to make it clear, he further submits that the certificate of deposit by no such stretch of imagination can be equated to the receipt of the cheque issued by ALC.

15. He further submits that as per the mandate of Section 17 of the Payment of Wages Act, equating a simple receipt of cheque issued by ALC with the

mandatory requirement of production of a certificate of deposit, as envisaged under Section 17 of the Payment of Wages Act, the appeal should not have been entertained and as the mandatory provisions of Section 17 was not followed.

16. Record further reveals that the instant petition was preferred by the petitioner in the month of September, 2022 and the notice was issued way back on 29.09.2022 and the respondents were granted ample opportunities to file response and also directed to address the arguments inspite of that none has appeared on behalf of the respondents on 20.05.2024 and also no one has caused appearance on behalf of the respondents on 29.08.2025.

17. Record further reveals that last and final opportunity was granted by this Court vide order dated 27.12.2024 to file response in the instant matter and since reply was not filed inspite of availing last and final opportunity, this Court vide order dated 29.08.2025 closed the right of the respondents to file response.

18. Today also, when the matter was taken up, there is no representation on behalf of the respondents and on the other hand, learned counsel for the petitioner has insisted for hearing the instant matter, which was pending adjudication before this Court since September 2022 and this is how the matter was heard today.

LEGAL ANALYSIS

19. I have heard learned counsel for the petitioner at length and perused the record made available. Despite repeated opportunities granted by this Court, none has chosen to appear on behalf of the respondents. Even though the right of the respondents to file response was closed vide order dated 29.08.2025, still the matter was kept pending to afford one more opportunity to the respondents to

put forth their stand. However, today also, when the matter was taken up for final hearing, there was no representation on their behalf. The Court, therefore, proceeds to decide the matter on the basis of material available on record and the submissions advanced by learned counsel for the petitioner.

20. The core issue that arises for consideration in the present case is whether the learned Appellate Court was justified in entertaining and allowing the appeal beyond the statutory period of limitation of 30 days prescribed under Section 17 of the Payment of Wages Act, 1936, and whether it was competent to apply the provisions of Section 5 of the Limitation Act, 1963 for condoning such delay.

In order to adjudicate the present controversy, it is necessary to frame and decide the following issues:

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- a) Whether the Appellate Court committed a serious jurisdictional error by condoning the delay in filing the appeal under Section 17 of the Payment of Wages Act, 1936, despite the Act being a self-contained special legislation that prescribes a strict limitation period of 30 days and expressly excludes the application of Section 5 of the Limitation Act, 1963?
 - b) Whether the Appellate Court erred in law in entertaining the appeal without ensuring compliance with the mandatory requirement under Section 17(1A) of the Payment of Wages Act, 1936, which mandates that an appeal shall not be entertained unless accompanied by a certificate from the Authority confirming deposit of the awarded amount, and whether mere attachment of a cheque satisfies such statutory condition?
 - c) Whether the impugned order passed by the Appellate Court is vitiated by violation of the principles of natural justice, particularly the rule of audi alteram partem, by failing to provide the Petitioner an opportunity of being heard?

21. With regard to issue (a), Section 17 of the Payment of Wages Act, 1936, which provides the statutory mechanism for filing of appeals, prescribes a specific period of limitation of thirty days for preferring an appeal from the order or direction passed under Section 15 of the said Act. The said provision does not contain any enabling clause empowering the Appellate Court to condone the delay beyond the period of thirty days, nor does it incorporate by reference the provisions of the Limitation Act, 1963. It is a settled principle of law that when a special statute prescribes a specific period of limitation for filing an appeal or application and does not provide for extension thereof, the general provisions of the Limitation Act cannot be invoked.

22. The Coordinate Bench of this Court in **Tara Chand v. Ghulam Rasool**, SLJ 1974 page 148*, has categorically held that *“the Limitation Act is not applicable to proceedings under the Payment of Wages Act, the same being a self-contained and special code which provides its own procedure, forum, and limitation. The said ratio has been consistently followed in subsequent judgments of this Court. Therefore, the learned Appellate Court, by entertaining an appeal beyond thirty days and condoning the delay by invoking Section 5 of the Limitation Act, acted in manifest disregard of the settled legal position and in excess of its jurisdiction.”*

23. It is trite law that when a special enactment excludes the application of the general law by necessary implication, the Court cannot import provisions of the general law merely on equitable considerations. The Payment of Wages Act, being a beneficial and self-contained legislation, prescribes not only the manner and mode of appeal but also the conditions precedent for its maintainability,

including the mandatory requirement under Section 17(1A) of furnishing a certificate of deposit of the amount payable under the direction appealed against. This requirement is not directory but mandatory in nature, as it seeks to protect the rights of the workman and ensure that the employer does not frustrate the benefit of the award by filing dilatory appeals.

24. With regard to issue (b), a perusal of the record reveals that the respondent did not file any such certificate from the Authority under the Payment of Wages Act certifying the deposit of the awarded amount, as mandated by Section 17(1A). The learned Appellate Court, however, proceeded to entertain the appeal on the strength of a mere receipt of a cheque issued by the Assistant Labour Commissioner, which by no stretch of interpretation can be equated with the statutory requirement of a certificate of deposit. The failure to comply with such mandatory statutory precondition renders the appeal itself non-maintainable in the eyes of law, and consequently, the entire proceedings before the Appellate Court stand vitiated.

25. The Coordinate Bench of this Court in case titled ***Firm Amar Nath Baldev Raj Forest Lessees vs. Des Raj & two others*** bearing No. C. F. Msc. Appeal No. 50 of 1988 decided on 30.10.1987 has held as under:

"It is the mandate of law, the fulfillment of which is a condition precedent for the entertainment of an appeal a» the words "no appeal by an employer under clause (a) shall lie makes if abundantly clear the non-compliance of which makes the appeal in computer order to get the benefit of section 5 of the Limitation Act, it is not sufficient merely to show that the appellant was under a genuine impression and believing upon the deposited cheque "with the appeal or that he never intended to avoid to deposit the awarded amount and filed the certificate by depositing the amount after a long lapse of about is years, it cannot be either termed as bonafide or sufficient cause within the meaning of section 5 of the Limitation Act therefore, find that there Is no sufficient cause available to the petitions/appellant to get the delay condoned in depositing the amount and- filing the certificate, which admittedly did not accompany the Memo of Appeal, which is in clear violation of proviso 3 to sub-section (1) of section 30 of the Act. The provision of

filing the certificate alongwith the Memo of appeal being mandatory, strict f compliance is necessary. The application for condonation of delay is therefore, rejected.”

26. Reliance is placed upon case titled ***Director, Urban Local bodies, Jammu v. Assistant Labour Commissioner, Doda LPA No.226/2018*** decided on 06.02.2024, wherein the coordinate bench has held as follows:

“8.The learned Writ Court while dismissing the appeal has observed that the Appellate Authority (District Judge, Bhaderwah) has dismissed the appeal mainly on two grounds, firstly that the provisions of Limitation Act under Section 5 were not applicable to appeal proceedings under the Act and secondly that the appeal was not accompanied by a certificate by the authority to the effect that the appellant had deposited the amount in terms of Section 17(1-A) of the Act.

9. Section 17(1-A) of the Act has clearly stipulated that in absence of memorandum of appeal and certificate by the authority to the effect that the writ petitioners/appellants have deposited the amount payable under the award, appeal against. The appellant herein has failed to show the compliance of Section 17(1-A) of the Payment of Wages Act.

10. We are not inclined to take a view other than what has been taken by the Appellate Court as well as the learned Single Judge and we are not inclined to interfere with the impugned judgment. The appeal is, accordingly, dismissed.”

27. With regard to issue (c) , the record discloses that the learned Appellate Court, while allowing the application for condonation of delay, also proceeded to decide the main appeal on merits in a single composite order dated 03.06.2022, without affording the petitioner an opportunity of being heard. Such a course of action is contrary to the fundamental principles of natural justice. The petitioner was not given a fair opportunity to contest the appeal on merits, and the learned Appellate Court acted in undue haste by deciding both matters together, which amounts to a gross procedural irregularity.

28. In addition to the above, the impugned judgment reveals that the learned Appellate Court recorded certain findings alleging tampering of the order sheets and irregularities in the issuance of the award without ever summoning the original record from the competent Authority. Such findings, rendered without examining the primary record, are based on conjecture and lack any evidentiary foundation. The observations made by the learned Appellate Court, therefore, not only suffer from procedural impropriety but also violate the principles of fair adjudication.

29. Thus this Court is of the considered view that the learned Appellate Court has misdirected itself both on law and facts. Firstly, it wrongly invoked Section 5 of the Limitation Act despite clear statutory exclusion under the Payment of Wages Act. Secondly, it entertained the appeal without compliance of the mandatory deposit certificate requirement under Section 17(1A). Thirdly, it decided the condonation and the appeal together without hearing the petitioner, thereby violating natural justice. Fourthly, it recorded findings of fact without calling for the original record, thus acting beyond jurisdiction. These cumulative infirmities render the impugned judgment dated 03.06.2022 legally unsustainable.

30. For the foregoing reasons the impugned judgment dated 03.06.2022 suffers from multiple, independent and fatal infirmities as (i) it proceeded to decide the appeal while having recorded that the original record should be called but without ever calling it; (ii) it recorded a finding of tampering without any material; (iii) it decided the appeal on merits without affording the petitioner an opportunity of being heard, contrary to the audi alteram partem principle; and

(iv) the appeal was entertained and allowed despite absence of compliance with the mandatory proviso to Section 17(1A) which requires the production of a certificate evidencing deposit. Any one of these defects would suffice to quash the order; together they make it impossible to allow the impugned order to stand.

31. In view of the foregoing discussion and the multiple legal and procedural infirmities vitiating the impugned judgment, this Court is of the considered opinion that the order dated 03.06.2022 passed by the learned Appellate Court cannot be sustained in the eyes of law. The same is hereby **quashed and set aside**. Consequently, the petition is **allowed**, and the appeal preferred by the respondents before the Appellate Court is held to be **not maintainable** for being barred by limitation and non-compliance with the mandatory requirement under Section 17(1A) of the Payment of Wages Act, 1936.

32. The petition is accordingly, allowed.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
10.10.2025
Mihul

Whether the order is speaking	: Yes/No
Whether the order is reportable	: Yes/No