

(1990) 07 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8180 of 1989

Anirudh Thakur and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-1990

Acts Referred:

Minimum Wages Act, 1948 — Section 20, 20(1), 20(2), 20(2), 20(3)
Payment of Wages Act, 1936 — Section 15, 15(2), 15(3), 17

Citation : (1990) 2 PLJR 681

Hon'ble Judges : U.P. Singh, J;S.B. Sanyal, J

Bench : Division Bench

Advocate : Jai Krishna and Shivaji Pandey, for the Appellant; Farooque Ahmad Khan and Durgesh Nandan, For respondents No. 4, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sanyal & U.P. Singh, JJ.—This writ petition by the consent of learned counsel for the parties is disposed of at the stage of admission itself since notices were served to the respondents pursuant to the order dated 22.1.1(sic)90. The moot question in this writ petition is:--

Whether an aggrieved party as against entertainment of an application u/s 20 (2) of the Minimum Wages Act, 1948 after condonation of delay, is entitled to appeal against the said order under the amended sub-section (6) of section 20 of the Minimum Wages Act brought about by section 5 (Gha) of the Minimum Wages (Bihar Amendment) Act, 1979 (Act 5 of 1983).

2. At the outset it may be stated that before the Bihar Amendment there was no provision for appeal and all directions of the Authority were final.

3. In the present case the employer preferred an appeal against the order of condonation of delay and entertainment of the petition u/s 20 (6) of the Act, which was substituted by section 5 (Gha) of the Amendment Act, without waiting for a decision on merit u/s 20 (3) of the Minimum Wages Act. The appellate court

on such an appeal being filed dismissed the claim on the ground of delay in preferring the original claim as also on other grounds and the appeal was allowed.

Facts

4. Petitioner nos. 2 to 6 claiming to be the employees filed an application through an unregistered trade union of Alka Talkies, Madhubani, namely, Madhubani Zila Cinema Karamchari Sangh u/s 20 (2) of the Minimum Wages Act (hereinafter referred to as the Act) before the Deputy Labour Commissioner which was registered as M.W. case No. 45 of 1986. The said application was dismissed on 22.7.1987 solely on the technical ground that an unregistered trade union could not represent the petitioners which is barred under the Act without however, rendering any decision on merits of the case (vide Annexure-2). The petitioner nos. 2 to 6 thereafter filed a similar application u/s 20(2) of the Act through a registered union, namely, Jainagar Prathisthan Karamchari Sangh stating that they were paid wages less than the minimum wages fixed by the Government for Cinema Industry. In the said claim petition the petitioners prayed that the delay in filing the petition be condoned. In the claim petition petitioner nos. 2 to 6 were also individually party as would be evident from Annexure-3. By the order dated 6.8.1988 (Annexure-5) the Assistant Labour Commissioner condoned the delay for the period 7.2.1985 to 7.8.1986 and fixed 14.9.1988 for hearing of the claim u/s 20 (3) of the Act.

5. On 24.9.1988 much beyond 30 days an application for certified copy of the order dated 6.8.88 was filed which was supplied to the employer on 15.12.1988. The appeal u/s 20 (6) as amended by the Amendment Act was filed on 27.1.1989, even beyond 30 days from the date the copy of the order was supplied to the employer. The memo of appeal has been annexed and marked as Annexure-6.

6. Mr. Jai Krishna, learned counsel appearing on behalf of the petitioners raised two objections, namely (a) the appeal against an order of condonation of delay under the amended section 20 (6) is not maintainable since appeal only lay against the decision rendered under sub-section (3) of section 20 of the Act; and (b) the appeal should have been preferred within 30 days of the order dated 6.8.1988; but in the instant case the application for certified copy itself was made beyond 30 days i.e. on 24.9.1988 and even though the certified copy was made available on 15.12.1988, the appeal was preferred on 27.1.1989 i.e. beyond 30 days of the availability of the certified copy though under sub-section (6-A) of section 20 of the Act appellate court is debarred from condoning delay beyond 60 days.

7. Learned counsel for the employer respondent No. 4, on the other hand, submitted that any decision made u/s 20 (2) of the Act including entertainment of claim is appealable under the Amendment Act. He further contended that his client was not aware of the impugned order till such time when the application for certified copy was made.

8. The Minimum Wages Act, 1948, has undergone amendment which is known as Minimum Wages (Bihar Amendment) Act, 1979. The Amendment Act has made copious changes of various sections and section 5 of the Amendment Act has substituted sub-section (6) of section 20 and a new sub-section (6-A) has been added thereafter. Sub-section (6) and (6-A) read as hereunder.

9. Section 20 (1) of the Act provides for authority to entertain a claim petition under sub-section (2) of section 20 of the Act. Under sub-section (2) of section 20 of the Act the claim petition is required to be filed either by himself or through a legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector, or any person acting with the permission of the authority appointed under sub-section (1) for a direction to be made under sub-section (3) of section 20 of the Act. It provides for six months limitation with right of condonation by satisfying the authority about sufficient cause therefor. Under the scheme of the Act when such an application is filed and entertained, the authority is required to hear the applicant and the employer summarily by giving opportunity of being heard and in the cases of less payment of wages direct payment to the employees of the short fall along with or without compensation. If the authority on hearing the applicant is satisfied that the petition is malicious or vexatious it may dismiss the claim even by imposing penalty. The amount directed to be paid to the employee will be recovered as a fine imposed by a Magistrate, if the authority is a Magistrate, and if the authority is not a Magistrate by any Magistrate to whom the authority makes an application in this behalf as it were fine imposed by such Magistrate.

10. Learned counsel for the petitioners has drawn our attention to a decision in Sitaram Ramcharan and Others Vs. M.N. Nagrashna and Another, where a Bench presided over by Chief Justice Chagla held that only judgment rendered u/s 15 (3) of Payment of Wages Act could be appealed against u/s section 17 of the said Act as it stood then. To the same effect is the judgment in the case of Anant Ram and Others Vs. District Magistrate, Jodhpur and Another, where it was held that section 17 of the Payment of Wages Act, as it stood then, provided an appeal against a direction made under sub-section (3) of sub-section (4) of section 15 of Payment of Wages Act and not against an order entertaining the claim after condonation of delay u/s 15 (2) of the said Act. The law under the Payment of Wages Act, however, has undergone slight change inasmuch as u/s 17 of the Payment of Wages Act, as it stands now, a right of appeal has been provided against an order dismissing either wholly or in part an application under sub-section (2) of section 15 as also from a direction under sub-section (3) or sub-section (4) of that section. It may be observed here that even under the amended section 17 of the Payment of Wages Act right of appeal against entertainment of claim and condonation of delay has not yet been conferred. The scheme of sections 15 and 17 of the Payment of Wages Act has some similarity to that of amended section 20 of the Minimum Wages Act. From a conjoint reading of subsection (2), (3) and the amended sub-section (6) it is manifest that when a claim is entertained under sub-section (2) "the authority shall hear

the applicant and the employer" under sub-section (3) (sic) passed pursuant to a claim under sub-section (2) an appeal must be preferred. Under the newly added sub-section (6-A) of section 20 the appellate authority has been conferred with the power to condone the period of limitation for a further period of 30 days. Therefore if an appeal is preferred beyond 60 days no power of condonation of delay is conferred the appellate authority. In the instant case the appeal has been preferred against the entertainment of the claim u/s 20 (2) after condonation of delay, as against which no appeal lay. Therefore, the impugned appellate order (Annexure-1) is wholly without jurisdiction.

Further, the appeal was entertained much beyond 60 days, inasmuch as the application for supply of certified copy of the order dated 6.8.88 was made on 24.9.1988 and although the certified copy was obtained on 15.12.1988, yet beyond one month therefrom the appeal was preferred, namely, on 27.1.1989. Thus the appeal was preferred beyond 60 days on all counts. The appellate authority had no jurisdiction in entertaining appeal beyond 60 days of the original order.

11. For all these reasons, we are of the firm view that no appeal lay under the amended sub-section (6) of section 20 of the Act against an order condoning delay of the claim u/s 20 (2), of the Act. Further, the appellate court had no jurisdiction under any event to entertain appeal after sixty days of the original order in view of section 20(6-A).

12. We also, on going through the original order dated 6.8.1988, are satisfied that sufficient cause has been made out for condonation of delay. We, in our discretion, therefore, condone the delay in filing the claim [See Sheikhupura Transport Co. Ltd. Vs. Northern India Transport Insurance Co.,]. In the result, the writ petition is allowed, the order contained in Annexure-1 is quashed and the respondent-Assistant Labour Commissioner and Authority under the Minimum Wages Act, before whom Claim Case No. 3 of 1988 is pending, is directed to proceed with the claim case and render his judgment under sub-section (3) of section 20 of the Act in accordance with law. There will be no order as to costs.