(2019) 08 JH CK 0114

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 570 Of 2017, Writ Petition(L) No. 3222 Of 2018

Anjani Kumar Pandey And Ors — APPELLANT

Vs

State Of Jharkhand And Ors — RESPONDENT

Date of Decision : 06-08-2019

Acts Referred:
Minimum Wages Act, 1948 — Section 20(6), 20(6A)

Citation : (2019) 08 JH CK 0114

Hon'ble Judges : H.C. Mishra, J;Deepak Roshan, J

Bench : Division Bench

Advocate : Vandana Singh, Lal Chandrahas Nath Shahdeo

Final Decision : Allowed/ Disposed Of

Judgement

1. As both these matters are connected matters, they have been taken up together and are being disposed of by this common order.

2. Heard the appellant in person and the learned counsel for the respondent Reliance Petrol Pump, a proprietary concern.

3. The facts of these matters lie in a short compass. The concerned workman, namely, Anil Kumar Pandey, being represented by the appellant Anjani Kumar Pandey, the General Secretary of Jharkhand General Kamgar Union, was denied the minimum wages by the respondent Reliance Petrol Pump. He got an order in his favour, which was dated 20.03.2010, passed by the Assistant Labour Commissioner-cum-Authority under the Minimum Wages Act, 1948, in M.W Case No.89 of 2008, whereby, the claim of the appellant for the Minimum Wages case was allowed, directing the respondent Reliance Petrol Pump, to make the payment of a sum of Rs. 89,687.12/-, being the difference in the minimum wages for the period of November, 2005 till November, 2008, along with five times compensation to the tune of Rs.4,48,435.60/-. Against the said order, M.W. Appeal No.4 of 2012 was filed by the respondent Reliance Petrol Pump in the

Court of the Deputy Labour Commissioner-cum-Appellate Authority, which stood dismissed by order dated 21.01.2017, as being barred by limitation under Section 20 (6) & (6-A) of the Minimum Wages Act (Bihar Amendment).

4. Against the said order, Reliance Petrol Pump moved this Court in W.P.(L) No. 2403 of 2017, which was allowed by the Hon'ble Single Judge, by order dated 29.08.2017, setting aside the order dated 21.01.2017 passed by the Deputy Labour Commissioner-cum-Appellate Authority in M.W Appeal No. 4 of 2012, and remanding the matter back to the Appellate Authority for hearing both the sides and to pass the order afresh on merits. In the said order, the Hon'ble Single Judge, has relied upon the decision of the Hon'ble Apex Court, in Raja Harish Chandra Raj Singh Vs. Deputy Land Acquisition Officer & Anr., reported in 1962 (1) SCR 676, for coming to the conclusion that the limitation would start from the date of knowledge of the order. The writ petitioner Reliance Petrol Pump had claimed that even though, the order was passed by the Assistant Labour Commissioner, in M.W Case No.89 of 2008 on 20.03.2010 itself, but the writ petitioner had no knowledge of the said order till the month of June 2012, and accordingly, the appeal was filed before the Appellate Authority within the period of limitation from the date of knowledge.

5. Aggrieved by the order passed by the Writ Court in W.P.(L) No.2403 of 2017, L.P.A No. 570 of 2017 has been preferred by the present appellant, challenging the order passed by the Writ Court on the ground that under Section 20 (6) & (6-A) of the Minimum Wages Act (Bihar Amendment), the appeal could be preferred only within the period of thirty days, which could be extended upon showing sufficient cause for a further period of thirty days, but no appeal was to be entertained thereafter.

6. The connected W.P.(L) No.3222 of 2018 has been preferred by the proprietary business, Reliance Petrol Pump, challenging the order dated 10.04.2018, passed by the Appellate Authority in M.W Appeal No.4 of 2012, pursuant to the order dated 29.08.2017 passed by the Writ Court in W.P.(L) No.2403 of 2017, and after the remand, the Appellate Authority had though maintained the principal amount of Rs. 89,687.12/-, which was, now to be paid to the widow of the concerned workman with the interest of 12 % per-annum, but the five times compensation amount of Rs.4,48,435.60/- was set aside by the Appellate Authority. It is an admitted position that this order dated 10.04.2018 passed by the Appellate Authority in M.W Appeal No.4 of 2012, has since been carried out.

7. The appellant, in person, appearing in L.P.A No.570 of 2017, has submitted that the impugned order dated 29.08.2017 passed by the Writ Court in W.P.(L) No.2403 of 2017, cannot be sustained in the eyes of law, in view of the clear bar under Section 20 (6) & (6-A) of the Minimum Wages Act (Bihar Amendment). It is submitted by the appellant in person that under Sub-Section 6 of Section 20 of the Minimum Wages Act (Bihar Amendment), the appeal would lie before the Appellate Authority against the order of the Original Authority within the period of thirty days of the order. Section (6-A) provides that upon being satisfied, that

the appellant was prevented from presenting the appeal within the aforesaid period of thirty days due to any sufficient cause, the Appellate Authority, could allow the appeal to be preferred within a further period of thirty days, but not thereafter. The appellant in person, has further submitted that the original order was passed in M.W Case No.89 of 2008 by the Authority under the Act on 20.03.2010, whereas the M.W Appeal No.4 of 2012 was preferred before the Appellate Authority in the year 2012, and as such, the said appeal was clearly barred by un-condonable delay as provided under Section 20 (6-A) of the Minimum Wages Act (Bihar Amendment). The appellant in person, also submitted that though there was no question of considering as to whether when the respondent Reliance Petrol Pump got the knowledge of the said order, but the order dated 20.03.2010 had been communicated to Reliance Petrol Pump on the date of the order, through registered post, as is evident from the Dak Dispatch Register, which was brought on record as Annexure-8 to the supplementary counter affidavit, filed before the Writ Court. It may be stated that the bare perusal of this register shows that the order was communicated to Reliance Petrol Pump under registered post and the postal receipt was also there in the register. The appellant in person, accordingly, submitted that in that case, it has to be presumed that if the registered post was not returned back within the period of thirty days, it was duly served. The appellant in person, accordingly, submitted that there was no occasion at all for setting aside the order passed by the Appellate Authority on the point of limitation, and the Writ Court committed a manifest error in law in setting aside the order and remanding the matter back to the Appellate Authority for fresh consideration. The appellant in person, also submitted that since the order passed by the Writ Court cannot be sustained in the eyes of law, even the subsequent order passed by the Appellate Authority, as challenged in the connected writ application, also could not be sustained in the eyes of law.

8. Learned counsel for the Reliance Petrol Pump, on the other hand, has submitted that there is no illegality in the impugned order passed by the Writ Court, remanding the matter for considering afresh by the Appellate Authority. Learned counsel has submitted that the order dated 20.03.2010 passed by the Authority in M.W Case No. 89 of 2008, was never received by Reliance Petrol Pump till the month of June 2012, when one letter dated 05.06.2012, as contained in Annexure-7 to the connected writ application, was sent by the Authority to Reliance Petrol Pump for showing cause as to why appropriate action be not taken against them for non-compliance of the order dated 20.03.2010 passed by the Authority in M.W Case No. 89 of 2008. Learned counsel, placing reliance on this communication, has submitted that this was the first communication of the impugned order to the Reliance Petrol Pump and prior to that, there was no communication whatsoever about the order dated 20.03.2010 passed by the Authority under the Act. It is further pointed out by the learned counsel that upon hearing of the matter in M.W Case No. 89 of 2008, the order was reserved without fixing a date and suddenly, the order was passed on

20.03.2010, which was never communicated to Reliance Petrol Pump. Learned counsel has placed reliance upon the decision of the Hon'ble Apex Court in Biprom ASZ Bipron Trading SA Vs. Bharat Electronics Limited (BEL), reported in (2012) 6 SCC 384, wherein the law has been settled by the Apex Court in the following terms :-

"37. The aforesaid decision of the Appellate Tribunal was upheld by this Court with the observations made in para 12 therein. However, the aforesaid observations cannot be read divorced from the observations made in paras 13 and 18, which are as under :(M.M. Rubber case)

"13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore, courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmannar, C.J in Muthia Chettiar V. CIT 'a salutary and just principle'. The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law."

38. From the above, it becomes evident that the order dated 19.7.2011 would be binding on the Chairman-cum-Managing Director for the purposes of working out the limitation, but so far as the petitioner is concerned, the relevant date would be the date when the order is communicated to the petitioner. The order made by a statutory authority or an officer exercising the powers of that authority comes into force so far as the authority / officer is concerned, from the date it is made by the authority / officer concerned. But, so far as the affected party is concerned, the order made by the appropriate authority would be the date on which it is communicated. --------."

9. Learned counsel has also placed reliance upon the decision of the Hon'ble Apex Court in Raja Harish Chandra Raj Singh's case (supra), relied upon by the Writ Court, and has submitted that since the Reliance Petrol Pump had no knowledge of the order dated 20.03.2010 passed in M.W Case No.89 of 2008, the appeal would lie from the date of knowledge itself. Learned counsel accordingly, submitted that there is no illegality in the impugned order dated 29.08.2017, passed by the Writ Court in W.P.(L) No.2403 of 2017. As regards the connected writ application, i.e, W.P.(L) No.3222 of 2018 is concerned, it is submitted by the learned counsel that since the order dated 10.04.2018, passed

by the Appellate Authority in M.W Appeal No.4 of 2012, on remand, has already been complied with, this writ application has become infructuous.

10. Having heard the appellant in person and the learned counsel for the Reliance Petrol Pump, as also upon going through the record, we find that the order dated 20.03.2010 passed by the Assistant Labour Commissioner-cum-Authority, in M.W Case No.89 of 2008, was communicated to the Reliance Petrol Pump also through registered post and the postal receipt of the registered post has been brought on record. We do not find any merit in the submission of the learned counsel for Reliance Petrol Pump that since the order was reserved without fixing any date, this proprietary concern had no knowledge of the order passed on 20.03.2010. We fail to appreciate this argument in view of the fact that if the M.W Case No.89 of 2008 was being contested by the Reliance Petrol Pump till its final arguments, it is not expected to sleep over the matter for another two years, without taking care of the result of the said case.

11. Be that as it may, the fact remains that it has come on record that the order was communicated to the Reliance Petrol Pump on 20.03.2010 through registered post. It is the claim of the learned counsel for this proprietary business concern that the said registered post was never received by this business concern. We are of the considered view that if the postal receipt has been produced to show that the order was communicated through registered post, and the registered post was not returned back, there is a presumption attached to it that the letter was duly served, and the burden is on the proprietary business concern, to prove that the letter was not served, in which the proprietary business concern has failed.

12. Section 20 (6) & (6-A) of the Minimum Wages Act (Bihar Amendment), read as follows :-

"(6) Any employer or worker aggrieved by any direction made under sub section (3) by an authority appointed under sub section (1), on an application made under sub section (2), may, within 30 days from the date of the direction, prefer an appeal in such manner and to such Authority as the State Government may, by notification, specify in this behalf, and that Authority may, after hearing the appeal, confirm, modify or reverse the direction appealed against and no further appeal shall lie against the order made by such Authority in any Court of law"; and

(6-A) The Authority referred to in sub-section (6) may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period specified in sub-section (6), allow the appeal to be preferred within a further period of 30 days but not thereafter."

13. A bare perusal of this provision clearly shows that the order passed by the Authority could be challenged before the Appellate Authority within a period of thirty days, which period could be extended for further period of thirty days by the Appellate Authority in exercise of the power under Section 20 (6-A) of the

Minimum Wages Act (Bihar Amendment), and that too, upon showing to the satisfaction of the Appellate Authority that the appellant was prevented by sufficient cause for not preferring the appeal within the period of thirty days. After the expiry of another thirty days, there is a clear bar under the Act for entertaining the appeal. In other words, after the expiry of sixty days in all, the limitation is un-condonable at all, in the eyes of law. The decisions cited by the learned counsel for the Reliance Petrol Pump have no application to the present case, particularly when it has failed to substantiate its claim that it had no knowledge of the order dated 20.03.2010 passed in M.W Case No.89 of 2008, by the Authority.

14. In that view of the matter, the impugned order dated 29.08.2017 passed by the Writ Court in W.P.(L) No.2403 of 2017, suffers from an inherent illegality and the same cannot be sustained in the eyes of law. We accordingly, set aside the aforesaid order passed by the Writ Court.

15. This brings us to the connected writ application, which according to the learned counsel for the writ petitioner, has now become infructuous, in view of the fact that the order dated 10.04.2018, passed by the Appellate Authority in M.W Appeal No.4 of 2012, has been complied with. This writ application might have become infructuous, so far as the writ petitioner is concerned, but not as regards the concerned workmen. Since the order dated 29.08.2017 passed by the Writ Court in W.P.(L) No. 2403 of 2017 has been set aside, the subsequent order dated 10.04.2018, passed by the Appellate Authority in M.W Appeal No.4 of 2012, cannot be sustained in the eyes of law, as the said order is based only on the order passed by the Writ Court.

16. We accordingly, also quash the order dated 10.04.2018, passed by the Appellate Authority in M.W Appeal No.4 of 2012.

17. Consequently, L.P.A No.570 of 2017 stands allowed, and the W.P.(L) No.3222 of 2018 stands disposed of.