

(2014) 02 PAT CK 0055

In the Patna High Court

Case No : L.P.A. No. 862 of 2013 in C.W.J.C. No. 11027 of 2006

Ashok Kumar Singh

APPELLANT

Vs

The Bihar Electricity Board

RESPONDENT

Date of Decision : 14-02-2014

Acts Referred:

Constitution of India, 1950 — Article 12

Citation : (2014) 142 FLR 787 : (2014) LLR 1215 : (2014) 2 PLJR 416

Hon'ble Judges : Vikash Jain, J;Navin Sinha, J

Bench : Division Bench

Advocate : Brij Mohan Kumar Singh, Advocate for the Appellant; Vinay Kirti Singh and Vijay Kumar Verma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Navin Sinha, J.—The present appeal arises from order dated 8.3.2013 dismissing C.W.J.C. No. 11027 of 2006 opining that the claim for overtime wages was raising disputed questions of facts. Learned Counsel for the appellant submits that the claim for overtime wages was made on specific pleadings in the writ application mentioning specific dates and duration. The counter affidavit contained no specific denial and raised frivolous objections only. The contention that the overtime wages could not be paid beyond fifty hours for every quarter has already been considered and rejected by this Court in C.W.J.C. Nos. 2827 of 2007 and 2976 of 2007. The order of the Chief Factory Inspector addressed to the Joint Secretary, General Administrative Department of the respondent Board dated 29.2.2008 rejecting the objections of the Board had been brought on record in the rejoinder to the counter affidavit. The Board did not deny it. The medical bills have also been wrongly rejected.

2. Counsel for the Board submitted that the learned Single Judge has rightly opined that the claim was raising disputed questions of fact as also contended in the counter affidavit. The medical bills were rejected because they had not been submitted in the prescribed manner.

3. We have considered the submissions on behalf of the parties. The writ application specifically alleges in para 6 that the appellant had worked overtime from February to July and September to December in 1999 for a total, of 186 hours. From January to April and in July, October and December in the year 2000 for a total of 160 hours. From February to May and in August, October and December in the year 2001 for a total of 128 hours. From January to March and August, October, November and December in the year 2002 for a total of 128 hours. From February to May and in August, October, November and December in the year 2003 for a total of 112 hours. From January to May and in September, October, November and December in the year 2004 for a total of 128 hours. From January to April in the year 2005 for a total of 40 hours. This was done while he was working on the technical side of generation and transmission. He was transferred to the Transmission Sub-Division, Purnea where he worked overtime in the months of August, October and November in the year 2005 for a total of 72 hours and from January to March and in May 2006 in Purnea Sub-Division for a total of 64 hours. It is his case in the pleadings that this assertion has been made on basis of office records verified by the authorities and directed to be paid. Overtime wages bill was sanctioned and passed for Rs. 1,36,000/- but a sum of Rs. 6,000/- only has been paid for the period from May 2002 to October 2002.

4. The counter affidavit on behalf of the Board has been affirmed by the Legal Supervisor of the Board. In our opinion there shall have to be a difference where the counter affidavit is filed by an Administrative Officer based on legal advice and where a counter affidavit is filed by a person trained in the law or at least a rudimentary training of the law. There shall be a presumption with regard to the latter that he had a minimum understanding of what was required to be answered. The paragraph we have referred to did not allege any complicated question of law but made specific assertion on facts. They had to be either correct or incorrect. Curiously the counter affidavit in para 3 acknowledges that certain payments for overtime have been made to the appellant. It then alleges ineligibility for payment beyond fifty hours in a quarter. Certain payments have been denied because the overtime return was not signed by the Electrical Executive Engineer. There is no denial that he had not worked overtime. Scrutiny of claims for overtime is understandable. But to deny overtime wages on the ground that it had not been scrutinized simultaneously not denying discharge of overtime is inheritably incongruous.

5. The appellant in his rejoinder with reference to para 3 of the counter affidavit specifically alleges that no payment as mentioned therein had been made to him in his pleadings at para 5. In para 6 he asserted that though sanctioned the payment has not been made. The contention of the Board that its Office Order No. 451 dated 19.1.1995 was related to payment of overtime wages under the Factories Act has already been negated by the Chief Inspector of Factories on 29.2.2008.

6. The contention of the Board that overtime wages beyond 50 hours in a quarter could not be paid is not sustainable in view of the order in C.W.J.C. Nos. 2827 of 2007 and 2976 of 2007 read with the letter of the Chief inspector of Factories dated 29.2.2008. In a writ petition pleadings are very important. If they are specifically not pleaded or not denied, relief cannot be granted or may have to be granted dependant on whose responsibility it was to discharge the onus. The appellant made specific assertion of facts, and after the counter affidavit was filed, in his rejoinder made specific disclosure with regard to the erroneous stand of the Board regarding payment in para 3 of the counter affidavit. Surely the Board could have verified its record and filed a rebuttal if any.

7. In view of the submissions made in para 3 of the counter affidavit read with paras 5 and 6 of the rejoinder we are of the opinion that if the appellant has worked overtime there has to be evidence by way of entry in the relevant registers. The fact that it may not have been countersigned by appropriate authority may not necessarily be conclusive and may raise presumption which the board can rebut for cogent reasons and not abstractly. The question would also arise if works were being done beyond normal hours at the Power Plant or at the Transmission Station during the period when the appellant was working. We are therefore not satisfied that complicated disputed questions of facts incapable of being unraveled were involved. The Board was dealing with the claim of its employee. It falls within the definition of "Estate" under Article 12 of the Constitution and has a duty to act fairly, reasonably and responsibly to look after its employees when the obligation arises. We therefore consider it proper to direct that the Board shall examine his grievance in the manner discussed by us and pass an appropriate reasoned and speaking order setting out reasons if it proposes to deny any claims in part or in whole. Let it be so done within a maximum period of three months from the date of receipt and/or presentation of a copy of this order.

8. In so far as the medical claims are concerned, the Board has raised certain procedural objections. Keeping in mind the amount involved as Rs. 37,000/- and odd only, if the appellant removes the objection and submits it again the Board shall consider it in accordance with law preferably within the same period. The appeal is allowed.