

(1983) 04 PAT CK 0001

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2632 of 1979

Awadh Lal Sah

APPELLANT

Vs

The State of Bihar and others

RESPONDENT

Date of Decision : 27-04-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Minimum Wages Act, 1948 — Section 19, 19(1), 20, 20(2), 29

Citation : (1983) PLJR 413

Hon'ble Judges : P.S. Mishra, J

Bench : Single Bench

Advocate : K.K. Sinha and Mr. S.K. Sinha, for the Appellant; D.P. Choudhary and Mr. Arjun Prasad, for the Respondent

Final Decision : Allowed

Judgement

Prabha Shankar Mishra, J.—The petitioner has moved this Court under Article 226 of the Constitution of India for quashing the order of the Anchal Adhikari, Baniapur, respondent No. 2, dated 26-12-1978 and 26-6-1979, as contained in Annexure-6 and the proceeding u/s 20(2) of the Minimum Wages Act, 1948 (hereinafter referred to as "the Act"). Labour Inspector of Masrakh (Respondent No. 3) in the district of Saran, filed a petition on 21-6-1978, before the Circle Officer, Baniapur, respondent No. 2, for action under the Act against the petitioner for realisation of claims of the respondent No. 5 (annexure-1) as agricultural labourer for the period from 10-2-1975 to 18-12-1977. It was alleged that the respondent No. 6 was paid by the petitioner wages at the rate of Rs. 2/- per day instead of the prescribed minimum wages of Rs. 5.50 P. per day. For a total period of 1037 days for which the respondent No. 5 worked as a labourer, the petitioner paid to him Rs. 2,074/- only and thus he did not pay to him a sum of Rs. 3,629.50 P. to which the respondent No. 5 was/is legally entitled to. By yet another petition filed on 21-6-1978 (Annexure-2), the respondent No. 3 moved the Circle Officer, Baniapur, respondent No. 2, alleging that the respondent No. 6 worked as an agricultural labourer under the petitioner

from 10-2-1975 to 5-12-77. She was paid wages at the rate of Rs. 2/- per(sic)der and not even the minimum prescribed under the Act. Thus, instead of Rs. 5,669.50 P. she was paid only Rs. 2,058/-, Rs. 3,601.50 P. less than she was legally entitled to. Notices calling upon to show-cause were given to the petitioner who appeared on 30-11-1978 and submitted his rejoinder stating that the respondent nos. 5 and 6 were not his employees. The respondent No. 5 who is the husband of the respondent No. 6, has raised a false claim with a view to denying to the petitioner his claim upon the mortgage of 18 kathas and 4 dhurs of land for a sum of Rs. 3,900 + 2,000/-. He also stated that the respondent nos. 5 and 6 raised their respective claims at the instance of one Dina Ahir, who was on litigating terms with Kapildeo Sah (the brother of the petitioner). The petitioner further stated that he is a businessman, he has got four sons, possessed very little landed property for which agricultural labourers were not required. The respondent No. 6 was examined in Claim Case No. 3 of 1978 on 19-12-78. Although the petitioner was present he did not cross-examine her. Claim case No. 4 of 1978 was amalgamated with the Claim Case of respondent No. 6 and 26-12-78 was fixed as the next date for the evidence and disposal. On 26-12-1978 several witnesses were examined. Petitioner filed his appearance but did not take part in the proceeding. The Circle Officer, on the basis of evidence adduced before him accepted the claims of the respondent nos. 5 and 6 and passed order u/s 29 of the Act ex-parte holding the respondent No. 5 entitled to a sum of Rs. 3,629.50 P. and the respondent no 6 entitled to a sum of Rs. 3,601.50 P. He issued notice to the petitioner calling upon him to appear for making the payment of the claims of the respondent nos. 5 and 6 to them in his presence on 15-1-1979. On 15-1-79 the petitioner filed a petition stating that although he had come with his witnesses yet his evidence was not taken on the previous date and the proceedings were disposed of exparte. Although, the respondent No. 2 did not find the statement of the petitioner acceptable yet he fixed 29-1-1979 as the next date for evidence on his behalf and accordingly issued notice to the respondent No. 3. The case, however, was adjourned on some dates and ultimately on 24-4-1979 the respondent No. 2 took evidence on behalf of the petitioner. On 26-6-1979 the respondent No. 2 heard and finally disposed of the matter holding that he could not find any thing in the evidence of the witnesses of the petitioner to rescind and/or modify and/or review the order passed by him and accordingly ordered the petitioner to, pay to the respondent No. 5 a sum of Rs. 3,629.50 P. and to the respondent No. 6 a sum of Rs. 3,601.50 P. and a token compensation of Rs. 1/-each. The petitioner has come to this Court seeking interference in the said two orders and for quashing the proceeding.

2. Learned counsel for the petitioner has raised three contentions namely, (i) the respondent No. 2 failed to adjudicate on the question of relationship of employer and employee between the petitioner and the respondent nos. 5 and 6 although there has been a specific denial of such relationship by the petitioner; (ii) the respondent No. 2 could not entertain the petition at the instance of the

respondent No. 3, who was not appointed by the appropriate Government by a notification in the Official Gazette as provided u/s 19 of the Act to act as the Inspector for the local limits within which the respondent nos. 5 and 6 were said to have been employed, and (iii) the respondent No. 2 could not entertain the claim applications on behalf of the respondent nos. 5 and 6 as they were presented much beyond the period of limitation as prescribed u/s 20, sub-section (2) proviso of the Act and he has also not recorded his satisfaction on the question that the respondent No. 3 had sufficient cause for not making the application within the prescribed period of six months from the date on which the minimum wages became payable.

3. The first two contentions of the petitioner, as evidenced by the facts on the record, are not acceptable. The Circle Officer has noticed in the Order date 26-6-79 that the Circle Inspector's evidence before him disclosed that when on 18-12-77 he visited the agricultural holdings of the petitioner he found the respondent nos. 5 and 6 working. He has also recorded in his order that other witnesses, namely Mirajuddin, Satyadeo Ram and Shivji Yadav stated before him that they had seen the respondent nos. 5 and 6 working as labourers and receiving their wages from the petitioner. Upon this he could legitimately hold that the respondents nos. 5 and 6 were employed as agricultural labourers by the petitioner. There has thus been sufficient evidence on the record to reject the claim of the petitioner that there was no relationship of master and servant between him and the respondent nos. 5 and 6. In the counter affidavit filed before this Court on behalf of the respondents, it has been stated that Sri Ashutosh Prasad Sinha, Panchayat Supervisor, Baniapur (Saran), respondent No. 4, has been appointed-vide notification No. AC 1048/75 Shram-Niyogjan 17/dated 17th January, 1976, u/s 19 (1) of the Act for Baniapur Block. The lands in question were/are within the limits of Baniapur Block. Thus, he was competent to move the Circle officer by an application for appropriate action for payment of minimum wages to the agricultural labourers, namely, the respondent nos. 5 and 6. In view of this notification it is not possible to accept the second contention of the learned counsel for the petitioner, as well.

4. Sub-section (1) of Section 20 of the Act provides for the appointment by the appropriate Government the authority to hear and decide for any specified area claims arising out of payment of less than the minimum rates of wages and other claims like remuneration for days of rest or over time. Sub-section (8) of Section 20 runs as follows:-

Sub-Sec. (2) Where an employee has any claim of the nature referred to in sub-section (1), the employee himself, or any 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) may apply to such Authority for a direction under sub-Section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages (or other amount) became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

It is thus apparent that the minimum wages or other amount becoming payable could be claimed by an application presented within six months from the date on which it became payable and if presented after the expiry of the period of limitation the applicant has to satisfy the authority that he had sufficient cause for not making the application within such period. In the instant case applications were filed on 21.6.1978 and the claim of arrears of minimum wages raised before the respondent No. 2 was for the period from 10.2.1975 to 18.12.77 in the case of the respondent No. 5 and for the period from 10.2.75 to 5.12.77 for the respondent No. 6. Calculated even from the last date of the claim i.e. 18.12.77, the filing of the application before the Circle Officer was after the expiry of the period of six months. Undoubtedly, a provision has been made for condoning the delay in filing the application, but, the applicant, in the instant case the respondent No. 3, was obliged to satisfy the authority, respondent No. 2, that he had sufficient cause for not making the application within the prescribed period of six months. It was accordingly obligatory for the respondent No. 2 to record a finding that he was satisfied that the applicant (the respondent No. 3) was prevented for good reasons from making application within six months from the date the wages became payable. Neither any thing has been brought to my notice nor I have found any thing on the record to show as to what prevented the respondent No. 3 from making the application within the period of limitation. In C.W.J.C. No. 2628/79 disposed of on 28.1.83, brother B.P. Jha, J. has held that an application filed on 21.6.78 for a claim for the period from 10.2.75 to 3.12.77 was hopelessly time barred and could not have been entertained in the absence of sufficient cause shown for the delay in filing the application. I find no reason to take a different view.

5. It is not possible to ignore, however, the fact that the prescription of minimum wages by the State Government for agricultural labourers is implemented more in violation by the employers than its implementation. Illiterate and ignorant labourers are not expected to rush for their each days demands to the Labour Inspectors and other authorities. Implementation of such welfare legislative action can be ensured only by relentless vigilance of the executives responsible for ensuring the implementation of such a law. A lazy and casual approach by them shall undoubtedly result in the recalcitrant employers taking advantage of technical infirmities and escaping liabilities under the law. Recidivist tendencies of haves against have not can be arrested only by continuous surveillance and actions to prevent abuse and disobedience of law. A little more care, a little more vigilance by the respondent No. 3 would not have allowed the petitioner to appropriate so easily what legally belonged/ belongs to the respondent nos. 5 and 6. I would have considered remitting back to the respondent No. 2 the claim cases of the respondents nos. 5 and 6 for re-consideration as to whether there was sufficient cause that prevented the respondent No. 3 from making the

application within the prescribed period of limitation, had there been any attempt by the respondents to show even prima facie a reason for the same. Local authorities shall be well advised to report such matters to the competent authority within the prescribed period. If there is any delay in making the application they should record the reasons in the applications that they file before the competent authority. If they do not rise to the occasion such welfare schemes and laws shall remain illusive. In the result, this application is allowed. The order of the respondent No. 2 dated 26.12.78 and the order dated 26.6.79, as contained in Annexure-6 is hereby quashed. On the facts and in the circumstances of the case, there shall be no order as to costs.