

(2002) 09 JH CK 0018

In the Jharkhand High Court

Case No : C.W.J.C. No's. 3451 and 3471 of 1994 (R) and 48, 49 and 50 of 1995 (R)

Binay Kumar Gupta etc.

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Bihar Minimum Wages (Amendment) Act, 1988 — Section 20(5A)
Minimum Wages Act, 1948 — Section 20, 20(6)

Citation : (2003) 1 JCR 267 : (2003) 96 FLR 1028 : (2003) 1 LLJ 877

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : S. Das, for the Appellant; R.S. Mazumdar, G.A. and Atanu Banerjee, J.C. to G.A. and Ritu Kumar, G.P. IV, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In these writ petitions the petitioners are aggrieved by the orders dated 10.8.1994 and 19.9.1994 passed by respondent No. 3, the Additional Collector, Ranchi, being the appellate authority under the Minimum Wages Act, in Miscellaneous Appeal Nos. 1/93, 4/93, 13/93, 15/93 and 16/93. By these orders the petitioners were directed to deposit 50% of the claimed amount and on their failure to deposit the said amount the appeal shall not be admitted.

2. It appear that on the application filed by the Labour Superintendent and Labour Inspector u/s 20(2) of the Minimum Wages Act (in short the said Act) complaining less payment of minimum wages by the petitioners who are the employers, proceedings were initiated by the Sub-Divisional Officer-cum-Authority under the said Act. On being noticed to show-cause the petitioners appeared before the Sub-Divisional Officer and took a defence that they were paying wages to their employees at the rates determined in a tripartite agreement reached between the authority, the Labour Superintendent and the members of the employee. The Sub-Divisional Officer, after hearing the parties,

held that the petitioners are not paying to the employees minimum wages fixed under the said Act and accordingly by order dated 7.5.1993 the petitioners were directed to make payment of the wages at the rate fixed under the said Act and also to pay compensation and the difference of the amount.

3. Aggrieved by the said order the petitioners preferred appeals before the Additional Collector-cum-Appellate Authority under the said Act. The appellate authority, after hearing the parties, found that there was no dispute between the employers and the employees regarding the rate of minimum wages. The dispute was whether by an agreement the petitioners-employers are entitled not to make payment of the minimum wages fixed under the Act. However, before admitting the appeal the appellate authority, by the impugned orders, directed the employers- petitioners to deposit 50% of the amount of wages so determined by the Sub-Divisional Officer being the authority under the Act.

4. Mr. S. Das, learned counsel appearing on behalf of the petitioner assailed the impugned order on various grounds. Learned counsel firstly submitted that subsection (5-A) of Section 20 as inserted by the Bihar Amendment is unconstitutional inasmuch as the State Legislature is not competent to made such amendment in the Act. Learned counsel then submitted that the claim petition filed by the Labour Superintendent u/s 20(2) was for less payment of wages and not for non-payment of wages and, therefore, such application was not maintainable u/s 20 of the said, Act. In this connection, learned counsel relied upon the decisions of the Supreme Court in the case of Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc., and in the case Binod Kumar v. Union of India and Ors. 2000 (2) BLJR 313. Learned counsel lastly submitted that the appellate authority can not direct u/s 20(6) of the said Act for deposit of 50% of the amount so determined by the authority under the Act.

5. Before appreciating the submissions made by Mr. Das I would first like to refer the relevant provisions of the Act. Sub-section (1) of Section 20 confers power to the appropriate government to appoint any authority of the Central Government of the State Government to hear and decide a claim arising out of payment of less amount than the minimum rates of wages by the employers. Sub-section (2) of Section 20 provides that where an employee has any claim of payment of less than the minimum rates of wages, he may apply to the authority for a direction in accordance with law under the provisions of that Act. Section 20 of the said Act reads as under :

"20. Claims.--(1) The appropriate Government may, by notification in the official gazette, appoint any Commissioner for Workmen's Compensation or any officer of the Central Government exercising function as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any other officer with experience as Judge of a Civil Court or as stipendiary Magistrate to be the Authority to hear and decide for any specified area or claims arising out of payment of less than the minimum rates of wages or

in respect of the payment of remuneration for days of rest for work done on such days Under clause (b) or clause (c) of Sub-section (1) of Section 13 or of wages at overtime rate u/s 14 to employees employed or paid in that area.

(2) Where an employee has any claim of the nature referred to in subsection (1), the employee himself, or any legal practitioner or any official or a registered trade union authorized 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 direction under subsection (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.

(3) When any application under Sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary may, without prejudice to any other penalty to which the employer may be liable under this Act, direct :

(i) In the case of claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the Authority may think fit, not exceeding ten times the amount of such excess;

(ii) In any other case, the payment of the amount due to the employee together with the payment of such compensation as the authority may think fit not exceeding ten rupees and the authority may direct payment of such compensation in cases where the excess of the amount due is paid by the employer to the employee before the disposal of the application,

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered--

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or.

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under Sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), for the

purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents and every such Authority shall be deemed to be a Civil Court for all of purposes of Section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (Act V of 1898)."

6. By virtue of State Amendment by Bihar Act 5 of 1983 Sub-section (6) of Section 20 was substituted by the following sub-section which read as under :

“6. mi/kkj k ?1? ds v/khu fu;q? fdlh izkf/kdkjh }kj k mi/kkj k ?3? ds v/khu fn;s x;s
funs" k ls O;fDr dksbZ fu;kstd ;k deZdkj ;k bl vf/kfu;e ds vUrxZr fu;q? dksbZ
fujh{kd mi/kkj k ?2? ds v/khu vkosnu fd;s tkus ij] funs" k dh rkjh[k ls 30 fnuksa
ds Hkhrj ,slh jhfr ls vkSj ,sls izkf/kdkjh ls ikl vihy dj ldsxk ftls jkT; ljdkj vf/
klwpuk }kj k bl fufer fofufnZ"V djsa] vkSj ;g izkf/kdkj vihy dh lquokbZ djus ds ckn
ml funs" k dks] ftlds fo:n vihy dh xbZ gks] laiq"V] miarfjr ;k izfrofrZr dj ldsxk
rFkk ml izkf/kdkjh }kj k fn;s x;s vkns" k ds fo:n iqu% dksbZ vihy fdlh U;k;ky; esa
ugha gksxh A**

7. Again in 1988 by Bihar Amendment Act 9 of 1988 the following Sub-sections (4-A) and (5-A) were inserted.

"(4-A) No employee shall during the pendency of any proceedings arising out of claim case, take any action against any employee concerned in such claim case,--

(a) by altering to the prejudice of such employee, the conditions of service applicable to him immediately before the commencement of such proceedings, and

(b) by discharging, terminating the service in any manner or punishing whether by dismissal or otherwise of such workers, save with the express permission in writing of the Authority before whom the proceeding is pending.

(5-A) At the time of hearing, the Authority may direct the employer to deposit at least 50% of the claimed amount with the Authority excluding the amount of compensation. The said amount may be paid to the claimant which shall be adjusted subsequently with the decreed amount."

8. Now coming back to the first submission made by Mr. Das that Sub-section (5-A) of Section 20 of the said Act is ultra vires, I am of the opinion, that the submission made by the counsel is devoid of any substance. The State Legislative is empowered and competent to make amendment in the Act.

9. So far second submission made by Mr. Das that the application for less payment of wages is not maintainable u/s 20(2) of the said Act is concerned. I am of the opinion that the same is also not tenable. As noticed above the complaint was filed against the petitioners for enforcement of minimum wages fixed under the Act. In stead of taking defence of maintainability of the complaint the petitioners' case was that in view of the tripartite agreement they are not liable to enforce the minimum wages. Having regard to the said facts the decision relied upon by the petitioners are not applicable in the present cases.

10. The next and the last submission for which this writ application has been filed is that the appellate authority has no power under Sub-section (6) of the Section 20 of the said Act to make a direction for payment of 50% of the amount so determined by the authority under the Act. This submission of the learned counsel has also no leg to stand.

11. From bare perusal of Sub-section (5-A) of Section 20 as inserted by Bihar Amendment it is clear that even the original authority under the said Act before determining the claim and before disposing of the claim application, may direct the employers at the time of hearing to deposit at least 50% of the claimed amount, It is well settled that appeal is the continuation of the original proceeding and merely because sub- section (6) does not specifically make provision for the appellate authority to direct the employer to deposit 50% of the claimed amount it can not be held that the appellate authority can not make such direction under Sub-section (5-A) of Section 20 of the said Act. When the amount was finally determined by the authority u/s 20(2) of the said Act the appellate authority is competent to direct the employer to deposit 50% of the amount determined before the appeal is taken up for hearing. In that view of the matter, I do not find any illegality in the impugned or- ders passed by the Additional Collector being the appellate authority under the said Act.

12. For the aforesaid reasons I find no merit in these writ applications which are accordingly dismissed.