
(2016) 08 JH CK 0065
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6630 of 2014

Nand Kishore Sah

APPELLANT

Vs

Jharkhand State Electricity Board

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Constitution of India, 1950 — Article 21, Article 23

Citation : (2016) 4 JCR 623 : (2016) 4 JLJR 164

Hon'ble Judges : Mr. H.C. Mishra, J.

Bench : Single Bench

Advocate : M/s. Om Prakash Tiwary, Advocate, for the Respondents; M/s. Pooja Kumari, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. H.C. Mishra, J. - Heard learned counsel for the petitioner and the learned counsel for the respondent Jharkhand State Electricity Board.

2. The petitioner was an employee in the Jharkhand State Electricity Board (hereinafter referred to as "JSEB") and was posted as an Assistant Controller, Transmission Sub-Division, Goilkera Grid, within the district of East-Singhbhum, from where the petitioner has since retired from service. Overtime work was taken from the petitioner from time to time, for which the payment was not being made to the petitioner. The details of the period of overtime, as claimed to have worked, but not paid, is given in Annexure-1 to the writ application.

3. The petitioner earlier moved this Court in W.P.(S) No. 969 of 2004, which was disposed of by order dated 24.02.2004, as contained in Annexure-2 to the writ application, whereby the petitioner was directed to give a representation before the General Manager-cum-Chief Engineer, Transmission Zone-1, JSEB, Ranchi, making his claim for the overtime bills, who was directed to settle the dues of the petitioner if found entitled. Pursuant to the said direction of this Court, the order was passed on 10.01.2006, whereby a sum of Rs.49,402.92/- was sanctioned

towards some overtime dues. According to the petitioner, all his dues were not cleared by the said order, as the petitioner claimed to have worked overtime for 3,456 hours, for which he was entitled to the amount of Rs.4,56,683.68/- .

4. This compelled the petitioner to move this Court again in W.P. (S) No. 6620 of 2006, which was disposed of by order dated 09.08.2011, as contained in Annexure-5 to the writ application. By the said order the Electrical Executive Engineer, Transmission Division, Chaibasa, District Singhum West, was directed to determine the dues again which was payable to the petitioner as over-time, within a period of eight weeks after taking into account the claim of the petitioner. Pursuant to the said order of this Court, the Electrical Executive Engineer, Transmission Division, Chaibasa, has passed the impugned order as contained in memo No. 342 dated 06.07.2013 and has found that during the period of September, 1997 to December, 2006, the petitioner had worked for 1178 hours as overtime and he has already been paid the entire amount of Rs.1,19,131.16/- by the JSEB. It is also stated in the said letter that it had been stipulated in Office Order No. 451 dated 19.01.1995 issued by the Bihar State Electricity Board, read with the instructions of the JSEB as contained in Letter dated 26.06.2002, that an employee is entitled to a maximum of 50 Hrs. per quarter after observing the formalities as laid down under the Factory Act, but in the present case the petitioner claimed to have worked overtime for more than 100 hours for several months which was not permissible in the eyes of law. However, it is not stated in the order that the work was actually not taken from the petitioner for the hours of overtime as claimed by the petitioner, rather it is only stated that an employee is not entitled to work for more than 50 hours per quarter.

5. Learned counsel for the petitioner has submitted that the work was actually taken from the petitioner as over-time for more than the admissible hours by the JSEB, and as such, the petitioner cannot be held responsible for working more than admissible hours of overtime, as claimed to be inadmissible by the JSEB. It is submitted that if actually the work has been taken from the petitioner as overtime even for the period beyond the admissible hours, the petitioner is entitled to the payment for the said period and the claim of the petitioner cannot be rejected on the ground that in view of the instructions issued by the JSEB an employee is entitled to a maximum of 50 hours of overtime per quarter only. It is submitted by learned counsel that the case of the petitioner is fully covered by the decision of this Court in Nripendra Narayan Sinha v. Jharkhand State Electricity Board, Ranchi & Ors., in W.P.(S) No. 7200 of 2005, which was disposed of by order dated 05.05.2006, as contained in Annexure-4 to the writ application, wherein where, the work was taken from the employee as overtime which according to the JSEB was excess to the admissible hours, this Court had directed for making payment of the actual period of overtime for which the work was taken from the employee.

6. Learned counsel for the JSEB on the other hand has opposed the prayer and

has pointed out from the counter affidavit filed on behalf of the JSEB, in which it is stated that the outstanding dues of the petitioner from the period 1997 to December, 2006 have already been paid by the answering respondents. It is also stated in the said counter affidavit that overtime dues more than the stipulated period is not permissible. Accordingly, it is submitted by learned counsel for the JSEB that as an employee is not entitled to work as overtime for more than 50 hours per quarter, in view of the Office Order No. 451 dated 19.01.1995 issued by the Bihar State Electricity Board, read with the instructions of the JSEB as contained in Letter dated 26.06.2002, the duties of the petitioner have been calculated according to the said order and instructions, which have already been paid to him, and no further claim of the petitioner can be entertained.

7. Having heard learned counsels for both the sides and upon going through the record, I find from the impugned order as contained in memo No. 342 dated 06.07.2013, brought on record as Annexure-7 to the writ application, that it is not stated therein that the work was actually not taken from the petitioner for the hours of overtime as claimed by the petitioner, rather it is only stated that an employee is not entitled to work for more than 50 hours per quarter, in view of the order and instructions of the Bihar State Electricity Board and the JSEB. Even in the counter-affidavit filed on behalf of the JSEB, it is only stated that the outstanding dues of the petitioner from the period 1997 to December, 2006 have already been paid by the answering respondents, and that over-time dues more than the stipulated period is not permissible. Thus even in the counter-affidavit, there is no denial to the fact that work was actually taken from the petitioner for the overtime as claimed by the petitioner. As such, the claim of the petitioner that the work was taken from him as overtime for more than admissible hours, has not been denied either in the impugned order as contained in Annexure-7, or in the counter-affidavit filed on behalf of the JSEB. The petitioner has brought on record by Annexure-1 to the writ application, the actual hours of the overtime claimed by the petitioner to have been taken from him. However, the fact remains that this has to be verified and ascertained by the respondent authorities and it is for them to calculate the actual hours for which the work was actually taken from the petitioner as overtime and to take the final decision in the matter.

8. I am of the considered view that in case it is found that the work was actually taken from the petitioner as overtime beyond the permissible hours prescribed by the order and instructions as mentioned in the impugned order, by any stretch of imagination, the petitioner cannot be held responsible for that. Any person, who can be held responsible for that, can only be the higher officer of the JSEB, who actually took work from the petitioner for the overtime hours even beyond the permissible hours. Taking work from the petitioner, beyond the permissible hours might also have been the necessity and the compulsion, taking into consideration the nature of work of the petitioner, but if the work has actually been taken from the petitioner, the legitimate claim of the petitioner cannot be denied only on the ground that some order and instructions of the JSEB prohibit

taking work from an employee as overtime beyond 50 hours per quarter. Denying an employee the due payment of the work actually taken from him, in garb of any order and instructions, shall deprive such employee from the right to livelihood, which includes the right to life, and shall also amount to partial forced labour, which shall be violative of Articles 21 and 23 respectively, of the Constitution of India.

9. In view of the aforementioned discussions, the respondent No. 4, the Electrical Executive Engineer, Transmission Division, JSEB, Chaibasa, Singhbhum West, is directed to verify from the record the actual hours of overtime taken from the petitioner during the period September, 1997 to December, 2006, and while doing so the respondent No. 4, shall verify the actual hours of overtime taken from the petitioner, without restraining it to the admissible overtime, according to the office order No. 451 dated 19.01.1995 issued by the Bihar State Electricity Board read with the instruction of the JSEB as contained in Letter dated 26.06.2002. In case it is found that the work has actually been taken from the petitioner as overtime more than the admissible hours, the payment thereof shall be made to the petitioner within a period of eight weeks from the date of production/communication of this order, along with the interest @ 10% per annum, with effect from 10.01.2006, i.e., the date when the sum of Rs.49,402.92/- was sanctioned towards some overtime dues to the petitioner, till the amount is actually paid to the petitioner, as the same has been wrongly and unduly denied to the petitioner, for which this is the third round of writ application which the petitioner had to file for getting his legitimate dues.

10. The respondent-JSEB shall be free to enquire as to which officer had taken more over time work than the admissible hours of overtime from the petitioner, without there being any compelling necessity and violating the order and instructions of the Board, and if any such officer is continuing in service of JSEB, the respondent Board shall be free to take appropriate disciplinary action against the said officer. As the arrears of petitioners are relating to the period from September, 1997, the payment of the entire dues shall be made to the petitioner, if any, by the JSEB, which the JSEB shall be at liberty to get it adjusted, if admissible, from the Bihar State Electricity Board.

11. This writ application is accordingly, allowed with the directions as above.