

(2002) 12 PAT CK 0080
In the Patna High Court
Case No : L.P.A. No. 168/94

Rajendra Raut

APPELLANT

Vs

Awadh Kishore Prasad and Others

RESPONDENT

Date of Decision : 09-12-2002

Acts Referred:

Payment of Wages Act, 1936 — Section 3

Citation : (2003) 1 PLJR 333

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Uma Kant Shukla and Shakti Suman Kumar, for the Appellant; I.T. Gaur and Subodh Chandra Jha, for the Respondent

Final Decision : Dismissed

Judgement

1. The Appellant was a Respondent in the writ petition who was claiming rights under the Bihar Privileged Persons Homestead Tenancy Act, 1947. On an earlier application made by Rajendra Raut, Respondent No. 3, in the writ petition claiming a homestead, the application was rejected by the Anchal authority, Raxaul by a reasoned and speaking order dated 20.7.1990 in case No. 1/89-90, Annexure-4 to the writ petition. Thereafter, a second application was filed by Respondent No. 3 on 23rd September, 1992 for granting Parcha under the Act so that he could claim rights under the Act aforesaid. This case was registered as case No. 1/92-93. In the second application on the same issues and between the same parties a decision was taken by the Anchal Adhikari under the Act holding that Respondent No. 3 was entitled to a parcel of homestead and as a privileged person.
2. The second application was barred by the principle of res judicata. The issues could not be re-opened again and again.
3. Even otherwise the facts are not in issue that Respondent No. 3 was an employee of a oil mill of which Awadh Kishore Prasad, the Petitioner (in the writ

petition) was a proprietor and employer. The relationship between Awadh Kishore Prasad, the Petitioner, and Rajendra Raut, Respondent No. 3, was that of an employer and employee within the meaning of Payment of Wages Act, 1936 and Factories Act, 1934 (today Factories Act, 1948). In this regard it is on record in the order dated 20.7.1990, the first order by the Anchal Adhikari. that the area or the premises occupied by the Appellant-Respondent No. 3 came within the meaning of Section 3 (a-1). The land occupied by this Appellant was a land within the meaning of an industrial establishment. The said order was not challenged. The said order became final.

4. In the circumstances, the fact that issues were re-opened, the very application of the Appellant-Respondent No. 3 under the Act was mis-placed and barred by res judicata. Regard being had to the circumstances of the area occupied and relationship between this Respondent-Appellant and his employer what he occupied was land within the meaning of an industrial establishment and had received this land as during the course of his employment a relationship sufficiently recognised within the meaning of Payment of Wages Act, 1936 and the Factories Act, 1948. In fact conscious of this relationship the Appellant even moved the Prescribed Authority and received compensation under the Payment of Wages Act, 1936.

5. In the circumstances, the Court is not inclined to interfere with the order of the learned judge dated 11.11.1994 on the writ petition.

6. The appeal is dismissed. No order as to costs.