

(2010) 09 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (L) No. 5747 of 2009

Rajeshwar Nath Tripathy

APPELLANT

Vs

Presiding Officer and Another

RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 26

Jharkhand Shops and Establishments Rules, 2001 — Rule 21(7)

Citation : (2010) 09 JH CK 0075

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

2. By this writ petition the petitioner has prayed for issuance of a writ of certiorari for quashing the orders as contained the Annexures- 3 and 4.

3. It is submitted by the learned Counsel for the petitioner that earlier, in pursuance of the notice issued by the Lower Court in B.S. Case No. 3 of 2002, the petitioner-company appeared and filed a petition that the application is not maintainable u/s 26 of the Bihar Shops & Establishment Rules and the said application was rejected by the Court below. Thereafter, he preferred a writ petition before this Court being W.P.(C) No. 351 of 2003 and after hearing the parties this Court, by its order dated 07.01.2009, gave a direction that the matter of jurisdiction will be decided by the trial Court along with all other issues and directed the Labour Court, Ranchi to dispose of the entire case within four months. It is submitted by the learned Counsel for the petitioner that it will appear from the order sheet of the Labour Court, which he annexed as annexure 2 to the writ petition, that the order of this Hon''ble Court was received on 20.01.2009 and since there was a direction to conclude the case within four months, which was known to both the lawyers, he fixed a date on 30.01.2009

and directed the parties to file their documents and subsequently, since the petitioner did not appear even within four months, the judgment was passed on 29.05.2009. The petitioner, after more than thirty days, filed another application for setting aside the aforesaid order and after hearing both the parties, vide Annexure 3, the Labour Court, Ranchi by, its order dated 16.10.2009, came to a finding that since the application for setting aside the order was filed on 23.07.2009, much after expiry of thirty days and there is no ground given for such a long delay, as per Rule 21, Sub-rule 7 of Jharkhand Shops and Establishment Rules, the application after thirty days of order can not be entertained and hence, he rejected the same. The petitioner submits that the court below should have issued second notice to him, if he was not appearing after the receipt of the order.

4. On the other hand the learned Counsel for the workman has opposed the same and submitted that the petitioner has full knowledge of the case and he has filed a preliminary objection petition before the Labour Court in B.S. Case No. 3 of 2002, which was rejected on 28.11.2002 and, thereafter, the petitioner filed W.P.(C) No. 851 of 2003 before the High Court and on 07.01.2009, in presence of the petitioner and the workman, the Court passed order directing that the matter will be disposed of within four months, so the petitioner had full knowledge that the matter will be disposed of by the trial Court within four months from the date of receipt of this order. As such, the trial court, after lapsed of more than four months, rightly passed the judgment on 29.05.2009. Even after that order, the petitioner failed to file an application for restoration for setting aside the said order within thirty days as per Rule 21, sub Rule 7 of Jharkhand Shops and Establishment Rules.

5. In that view of the matter, the entire order is based on a finding of fact, which requires no interference by this Court. After hearing the both parties and going through the records, I also find that the petitioner has not appeared in B.S. Case No. 3 of 2002 before the Labour Court, Ranchi, while in his presence W.P.(C) No. 851 of 2003 was disposed of on 07.01.2009 directing the court below to dispose of the matter within four months. In spite of that, in the case, in which he was party, failed to appear even after four months and the court has no option but after receiving the said order on 20.01.2009 waited for more than four months and thereafter passed order on 29.05.2009. Even the prayer of setting aside the order was rightly rejected by the court below as per Sub-rule 7 of Rule 21 of Jharkhand Shops and Establishment Rules, since there was no ground made for filing the application after thirty days.

6. I find no merit in this writ petition, which is, accordingly, dismissed.