

(1988) 05 PAT CK 0045

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 1411 of 1982

Ram Kewal Chaudhary

APPELLANT

Vs

Kashi Nath Ram and Others

RESPONDENT

Date of Decision : 27-05-1988

Acts Referred:

Minimum Wages Act, 1948 — Section 13, 14, 20, 3, 30

Citation : (1989) 37 BLJR 85 : (1989) PLJR 422

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This writ application is directed against an order dated 28-11-1981, passed by the Respondent No. 2 in Minimum Wages Case No. 3/80-81 and also the order dated 6-3-1982, passed by respondent No. 3 (appellate authority) and as contained in Annexure-3, passed in Minimum Wages Case No. 21 of 1982, whereby and whereunder the petitioner was directed to give to the respondent No. 1 five maunds of paddy for arrears of minimum wages and five maunds of paddy as his crop in the land alleged to have been given to him as wages for a year of service as ploughmen.

2. The facts of the case lie in a very narrow compass. According to the petitioner he is small farmer having only 9 acres of land in total out of which only 8 1/2 acres is agriculturable lands. The petitioner has further asserted that the respondent No. 1 was the labourer of the petitioner and he filed a false case on or about 16-11-1979 before the Labour Inspector being an Inspector under the Minimum Wages Act claiming therein that since middle of June, 1979 he began to work as the ploughmen and in lieu of his service, he was given a piece of land measuring 1 1/2 Bighas for his own cultivation. Pursuant to the aforementioned claim, a case was registered by the authorities under Section 20 of the Minimum Wages Act, 1948 (hereinafter referred to as the Act) being Case No. 3 of 1981, before the respondent No. 2. The respondent No. 1 in his application enlarge his

earlier claim so as to include crops of wheat allegedly sown by him on the same land belonging to the petitioner over which he allegedly harvested paddy crops forcibly. The petitioner having been noticed by the respondent No. 2 to file show cause appeared in the aforementioned case and show cause inter-alia stating therein that the said case was false. The petitioner has further asserted that in the year 1979 the entire block was a drought affected and was declared as such by the Government, but inspite thereof the respondent No. 2 proceeded to hold that the some paddy must have been saved in the fields arid 25% of the normal paddy must be saved, although there was no evidence with regard thereto on records. The petitioner in his aforementioned show cause denied that the respondent No. 1 was his ploughman.

3. Although the respondent No. 1 claimed merely the paddy alleged to have been grown by him on 1 1/4 bighas of petitioner's land, the respondent No. 2 directed the petitioner to pay difference of the amount of paddy to respondent No. 1 of the minimum wages and that was payable to him allegedly being 5 maunds of the paddy. According to the petitioner, the respondent No. 1 in the impugned order allowed more than what was claimed by respondent No. 1 and where for notice was issued to him and as such the same being violative of the principles of natural justice is vitiated in law.

4. By the impugned order dated 28-11-1981 as contained in Annexure-2 to the writ application, the respondent No. 1 was held to be "attached worker" and allowed the claim of respondent No. 1 in part. According to the petitioner, although no appeal was maintainable against the said order, but inspite thereof he was advised to prefer an appeal. The respondent (Sic).

5. Mr. Shivkirti Singh, learned counsel appearing on behalf of the petitioner submitted that the claim of respondent No. 1 was not maintainable. According to the learned counsel in terms of Section 20 of the Minimum Wages Act, 1948 a claim application can be filed only if the same is presented within a period of six months from the date on which the minimum wages became payable. The learned counsel further submitted that such type of claim is not maintainable under the provisions of the said Act.

6. From a perusal of the application filed on behalf of the respondent No. 1 and as contained in Annexure-1 to the writ application, it appears that although he was allegedly given 1 1/2 bighas land for ploughing the land of the petitioner, he allegedly in violation of the terms of the agreement harvested the entire paddy. From a perusal of the order as contained in Annexure-2 to the writ application it is evident that the respondent No. 1 did not make any claim that he was not paid the minimum wages purported to be payable under the provisions of Minimum Wages Act, 1948 read with relevant notification issued thereunder.

7. The Respondent No. 2 in the impugned order as contained in Annexure-2 to the writ application purported to have determined the minimum wages only on the basis of the statements made by some of the witnesses regarding the

quantum of paddy allegedly delivered by landlords to the ploughman in lieu of the work done by them and only on that basis he proceeded to determine the quantum of wages payable by the petitioner to respondent No. 1. The approach of the respondent No. 2, in my opinion is not in consonance with law. Even the respondent No. 2 would come to a conclusion that the respondent No. 1 is in fact a ploughman appointed by the petitioner he was only entitled to such wages in terms of the provision of the said Act, which is notified as Minimum Wages. However, in the instant case, the respondent No. 1, in his application as contained in Annexure-1 to the writ application did not claim any minimum wages from the petitioner at all and as such the same was not an issue before him. If that be so, he had absolutely no jurisdiction to allow the abduction of evidence by the respondent No. 1 on that point. Nor could he pass the order on the basis of such evidence which was absolutely inadmissible in law as the same had not been led at all.

8. The respondent No. 2 in his order as contained in Annexure-2 to the writ application after taking into consideration that the area in question was draught affected area proceeded to determine the alleged minimum wages payable to the respondent No. 1 only on the ground that in normal condition, the yield of paddy per Bigha would be 30 maunds or 20 maunds, as per the evidence of P. Ws. and, thereafter, he proceeded to determine the average thereof which came to 24 maunds per bigha and then purported to have taken into consideration that the area being a draught affected one the yield must be 20% thereof i.e. 6 maunds per bigha. He, therefore, by his order directed the petitioner to give to the respondent No. 1 ten maunds of paddy; five maunds by way of arrears of minimum wages and five maunds by way of yield in respect of 1 bigha of land. He further directed that a sum of Rs. 10 be paid by the petitioner to the respondent No. 1 by way of compensation. He further held that the value of 10 maunds of paddy would be Rs. 500.

9. The minimum wages payable to an employee is determined in terms of the provisions of Minimum Wages Act and the same is notified in the official gazette and the procedure, thereafter has been laid down in relation thereto. In terms of Section 20 of the Minimum Wages Act, an aggrieved person may file a claim arising out of payment less than the minimum wages of wages or in respect of the payment of the remuneration for days of rest or for work done on such date under Clause (b) or Clause (c) of Sub-section (1) of Section 13 or of wages at the over time rate u/s 14 against the employers in terms of Sub-section (3) of Section 20 of the said Act an application under Sub-section (2) thereof is maintainable and the authority may without prejudice to any other penalty to which the employer may be liable under the Act direct :

(i) in the case of a claim arising out of payment of less than, the minimum rates of wages, the payment of 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 or the amount due is paid by the employer to the employee before the disposal of the application.

and further direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employees before the disposal of the application.

10. The Central Government in exercise of its power conferred upon it u/s 30 of the Minimum Wages Act framed Rules known as Minimum Wages Central Rules, 1950. Rule 21 of the said Rules provide for time and conditions of payment of wages and the deduction permissible therefrom. Under the provisions of the said Act and the rules framed thereunder, minimum wages is payable either in cash or in kind. However, a Division Bench of this Court in *Bahadur Singh v. The State of Bihar* 1980 BBCJ 232, after taking into consideration the various notifications came to the conclusion that if any amount is paid at a rate lower than as provided in the Minimum Wages Act to the attached workmen, the balance is recoverable under the provisions of Minimum Wages Act. However in the instant case, as mentioned hereinafter there is no assertion whatsoever, as was in the case in *Bahadur Singh's case*(supra) that the respondent No. 1 was being paid at the rate lessor than these prescribed under the Minimum Wages Act and the land owners refused to pay to the workman in accordance with those rates.

11. As noticed hereinbefore in this case, the respondent No. 1 merely claimed that contrary to the terms of agreement, the petitioner allegedly has harvested the entire paddy even in respect of 11/4 bigha of land, which was given to him for working as his ploughman. Such being the case, in my opinion, this case is squarely covered by a decision of Supreme Court in the case of *Town Municipal, Council, Athani Vs. The Presiding Officer, Labour Courts, Hubli and Others etc.,* . In the said decision it has further been held as follows :-

The purpose of Section 20(1) seems to be ensure that the rates prescribed under the Minimum Wages Act are complied with by the employer in making payments and, if any attempt is made to make payments at lower rates, the workmen are given the right to invoke the aid of the authority appointed u/s 20(1).

12. From the decision in *Bahadur Singh's case* (supra) it appears that in Notification No. S. O. 337, dated 10th February, 1975, 5th March, 1975 issued under Clause B of Sub-section ((1) of Section 3 read with Sub-section (2) of Section 5 of the Minimum Wages Act and attached worker become entitled to get one-and-half quintals of paddy every years in addition to the Minimum Wages at the rate specified in that notification as provided in note (b) to the Second

Schedule appended thereto. In the said notification itself a distinction has been made between an "attached worker" and casual worker.

13. However, in *Md. Hassan Jan v. The State of Bihar and Ors.* reported in 1980 BBCJ 567 it has been held that in terms of Notification dated 10th February, 1975, the wage period of one year has been prescribed but as the words "Prescribed means" prescribed under the rules and in view of the fact that no rule was framed or published, the workman was not entitled to additional wages on the basis of the said notification. This aspect of the matter, however, has not been considered in *Bahadur Singh's* case.

14. In the facts and circumstances of this case, however, it is not necessary to dwell upon the aforementioned controversy in view of the fact that the respondent No. 1 did not claim himself to be an attached worker. In view of the fact that the respondent No. 1 merely prayed for an order directing the petitioner to pay the price of the paddy allegedly harvested by the petitioner. Such type of claim in my opinion is not maintainable in terms of Section 20 of the Minimum Wages Act.

15. Having regard to the facts and circumstances of the case I am of the opinion that the impugned order as contained in Annexures-2 and 3 can not be sustained.

16. In the result this writ application is allowed and the orders as contained in Annexures-2 and 3 are hereby quashed. However in the facts and circumstances of the case there will be no order as to costs.