
(2011) 02 PAT CK 0018
In the Patna High Court
Case No : CWJC No. 3746 of 2002

Ramesh Purbey

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Minimum Wages Act, 1948 — Section 20(2)

Citation : (2011) 59 BLJR 3400 : (2011) 3 PLJR 39

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Advocate : Raj Nandan Prasad and Brajesh Prasad Gupta, for the Appellant;
Subodh Kumar Jha and Jitendra Kumar Pandey for Respondent No. 5 and Iqbal
Asif Niazi, for State, for the Respondent

Judgement

Birendra Pd. Verma, J.—Heard the parties.

2. The Petitioner is aggrieved by the order dated 22.9.1999 (Annexure-3), passed by the Respondent-S.D.O. Rosera, Samastipur in Minimum Wage Case No. 19 of 1998 as also the appellate order dated 24.12.2001 (Annexure-4) in Minimum Wage Appeal Case No. 10 of 1999-2000, passed by the Respondent-Additional Collector, Samastipur.

3. Learned Counsel appearing on be-half of the Petitioner submits that Respondent No. 5 filed an application on 24.6.1998 (Annexure-1) before Respondent-S.D.O., an authority prescribed under the Provisions of the Minimum Wages Act, 1948 (herein-after referred to as the Act). By that application Respondent No. 5 raised a grievance that though he worked for construction of building of the writ Petitioner from August 1997 to February 1998, but he has not been paid the entire minimum wages. Out of total amount of wages of Rs. 39,443/- it was claimed that only Rs. 15,400/- was paid to him and, therefore, the amount of Rs. 24,046/- was required to be paid by the writ Petitioner-employer. Compensation amount of Rs. 6,000/- was also claimed by the Respondent No. 5. The matter was enquired into by the Labour Enforcement

Officer, Rosera and he submitted a report dated 17.7.1998 (Annexure-2), whereafter Minimum Wage Case No. 19 of 1998 was registered. Claim of Respondent No. 5 has been allowed in terms of Section 20(2) of the Act and by the impugned order dated 22.9.1999 (Annexure-3), the Petitioner was directed to pay Rs. 26,046/- to the Respondent No. 5 within a fortnight. The appeal preferred by the Petitioner against the said order, as per submission, has been mechanically rejected by the appellate authority.

4. Learned Counsel for the Petitioner has assailed the validity of the impugned orders primarily on two grounds, namely, the claim of the employee Respondent No. 5 under the proviso of Section 20(2) of the Act was barred by limitation, and secondly the impugned order is a non-speaking order and it has not been shown as to how much wages was paid by the Petitioner to Respondent No. 5 and how much wages was yet to be paid by the Petitioner to the Respondent No. 5. Further the minimum wages prescribed under the Act, has not been properly discussed and calculated.

5. Learned Counsel appearing on be-half of the Respondent-State as also Respondent No. 5 have supported the impugned orders passed by the Respondent authorities and have prayed for dismissal of the writ petition. According to them, in fact the claim of the minimum wages continued from August 1997 to February 1998 and, therefore, the petition was rightly filed on 24.6.1998 within prescribed period of six months and, as such, according to them, the claim was well within the period of limitation. Alternatively, it is submitted that even if the part of the claim is treated to be barred by limitation, the part of claim is well within the statutory period prescribed under the law and for that the Petitioner cannot skip liability from making payment of minimum wages to the Respondent No. 5.

6. After having heard the parties at length and considering the materials available on record, this Court finds that as per proviso to Section 20(2) of the Act, an application has to be filed by an employee within a period of 6 months from date on which minimum wages or other amount becomes payable. However, in a given case, power has been vested to the prescribed authority to extend the period of limitation. In the present case, there is nothing to show that limitation in filing the claim by the Respondent No. 5 was condoned by the prescribed authority and claim with respect to entire period of August 1997 to February 1998 was entertained and was finally allowed. This Court from perusal of the impugned orders, contained in Annexures-3 and 4, does not find that what was the minimum wage prescribed under the law, which was payable by the Petitioner to the Respondent No. 5 for the days of work, and out of which how much wage was paid and how much further wage was required to be paid. Thus, calculation regarding minimum wages is completely missing in the original order as also the appellate order. Therefore, the orders contained in Annexures-3 and 4 suffer from legal infirmities and cannot be sustained in the eye of law. In the opinion of this Court, the entire matter is required to be reconsidered afresh by

the prescribed authority for deciding the claim of the mini-mum wages of the Respondent No. 5.

7. For the reasons recorded above, the impugned orders contained in Annexures-3 and 4 are hereby set aside and the matter is remitted to the original authority for deciding the claim of the Respondent No. 5 afresh. The Respondent S.D.O., Rosera (District-Samastipur) either himself or any other prescribed authority under the Act shall exercise the power of original authority u/s 20(2) of the Act. The claim of minimum wages of the Respondent No. 5 against the writ Petitioner shall be decided afresh, after giving opportunity of hearing to both sides on proper appreciation of facts and law.

8. The Petitioner and Respondent No. 5 are hereby directed to appear before the Respondent-SDO on 15th March, 2011 with a certified copy of this order, whereafter, the Respondent-SDO either himself or any other prescribed authority shall be obliged to decide the claim of minimum wages of the Respondent No. 5 within a period of three months by a speaking order in the light of observations and directions made above. If the claim of Respondent No. 5 finds favour with the original authority, then the Petitioner shall be obliged to make payment of the said amount within a period of one month from the date of passing of the order by the SDO, subject to appeal, if any.

9. It is made clear that if the Petitioner does not appear before the Respondent-SDO on the date fixed i.e. 15th March, 2011 with a certified copy of this order, then it shall be construed that the present writ petition filed on his behalf has been finally rejected by this Court.

10. It is expected that both the parties shall co-operate for early conclusion of the proceeding.

11. With the aforesaid observations and directions, this writ petition is disposed of No costs.