
(2006) 10 PAT CK 0027
In the Patna High Court

Rana Bahadur Singh

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 112 FLR 589 : (2007) 2 LLJ 637 : (2006) 4 PLJR 628

Hon'ble Judges : J.N. Bhatt, C.J.; Shailesh Kumar Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.N. Bhatt, C.J.—Heard learned Counsel appearing for the parties and perused the records, as well as, the impugned judgment of the learned single Judge.

2. The short question, which has emerged in this Letters Patent Appeal is as to whether the dismissal of the petition for the claim of Rs. 19.875/- together with compensation ten times of the same amount, allegedly, having been deducted by the employer is justified or not?

3. Let there be a skeleton projection of the; factual matrix. The appellant-original writ petitioner's case, shortly stated, has been that he was appointed as a Salesman of the Firm known as Keshri Medical Hall, Kaprapatti, Saharsa in May, 1965 on the monthly salary of Rs. 250/- and that his salary was raised from time to time and at the relevant time he was drawing an amount of Rs. 500/- per month by way of salary.

He has further averred that in order to see that his daughters are happily married, he used to get an amount of Rs. 400/- deducted from the salary of Rs. 500/- by an oral agreement with the employer and upon the occasion of the marriage the claim, being made by him before ? the employer, came to be rejected on the ground that there was no such an oral/ agreement or any deduction and as a result of which the matter was brought by way of a petition before the competent authority under the Bihar Shops & Establishment Act, 1953

(hereinafter referred to as the Act).

4. u/s 28 (1) of the Act the claim came to be made. Section 28 the Act reads hereinunder:

28. Claims arising out of deduction from wages or delay in payment of wages and penalty for malicious or vexatious claims, -(1) Where contrary to the provision of the Act any deduction has been made from the wages of an employee, or any payment of wages has been delayed, or any suit is otherwise due from the employer to the employee, such employee or any legal practitioner or any authorized agent or any officer of a registered trade union or any Inspecting Officer may make an application in such manner, within such time, and to such authority as may be prescribed for a direction under Sub-section (2).

(2) When an application under Sub-section (1) is entertained, the prescribed authority shall hear the application in the prescribed manner and may, without prejudice to any other penalty to which an employer is liable under this Act, direct the refund of the amount deducted, or payment of the delayed wages or any other sum, to the employee together with the payment of a compensation not exceeding ten times the amount deducted in the first case and not exceeding ten rupees, in other cases:

Provided that no direction for the payment of compensation shall be made in case of delayed wages if the authority is satisfied that the delay was due to-

(a) A bona fide error or bona fide dispute as to the amount payable to the employed person, or

(b) The occurrence of an emergency, or the existence of exception circumstances, such that the person responsible for the payment of the wages was unable, though exercising responsible diligence to make prompt payment.

Or

(c) The failure of employed person to apply for or accept payment

(3) If the authority hearing any application under this Section is satisfied that it was either malicious or vexatious, the authority may direct that a penalty not exceeding twenty-five rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application.

(4) Any amount directed to be paid under this Section shall be recovered in the prescribed manner.

(5) A single application may be presented under this Section on behalf or in respect of any number of employed person belonging to the same unpaid group, and in such case the maximum compensation that may be awarded under Sub-section (2) shall be ten rupees per head.

5. It would be very clear that the claim becomes entertainable in terms of Sub-section (1) of Section 28 of the Act, provided there is material and evidence to

show that the so-called deduction from the wages were as such made by the employer out of his salary. Even it provides further that penalty can be levied for malicious and vexatious claim. The broad underlying design of the provision seems to see that the money is refunded by the employer after making an application in terms of the provision of Sub-section (1) of Section 28 of the Act and hearing of the matter.

6. The matter was heard after filing of such a petition before the competent authority and came to be decided by the Assistant Labour Commissioner, Saharsa in B.S.E. Case No. 1 of 1986, whereby, the Assistant Labour Commissioner found no substance in the claim of an amount of Rs. 19,875/- together with claim of compensation amount and, therefore, there was a direction accordingly and the petition was, rightly, returned under Order VII Rule 10 of the Code of Civil Procedure.

7. Being aggrieved by the said order of the Assistant Labour Commissioner, the appellant went into statutory appeal provided in Sub-section (7) of Section 28 of the Act, which empowers and authorizes a party to prefer an appeal against the order of dismissal either wholly or in part an application made under Sub-section (1) or against a direction made under Sub-section (2) or Sub-section (4) may be preferred in such a manner as provided in Sub-section (7) of the Act.

8. The appeal came to be heard by the appellate authority, a Presiding Officer of the Industrial Tribunal, Muzaffarpur. The appellate authority u/s 28(7) of the Act upon a detailed judgment dismissed the appeal holding that it is devoid of any merits. The evidence before the authorities laid by the parties came to be scanned and screened and both the authorities below found on facts that there was no substance in the claim of the original writ petitioner-appellant before us.

9. Being dissatisfied by the two concurrent finding of facts of the authorities below under the Act, the appellant preferred the writ petition as aforesaid unsuccessfully.

10. We have heard the arguments and considered the factual profile of the case. The basic requirement for an order in favour of a party under Sub-section (1) of Section 28 of the Act is that there must be a rightful proved claim. If the claim is not established on facts unfortunately the law does not help. Since two authorities the Assistant Labour Commissioner and the Industrial Tribunal have concurrently and consistently held on facts that the claim is unsupportable and unacceptable, therefore/the claim was not acceded to.

11. How could there be an interference with the concurrent finding of facts, which are based on appreciation of facts and materials on record by the two authorities below under the Act, by intercepting it with the legal missile under the constitutional writ jurisdiction under Articles 226 or 227 of the Constitution of India?

12. In fact, the petition ought to have been filed and decided under Article 227 of

the Constitution of India. The learned Counsel for the appellant has, rightly, agreed because the supervisory jurisdiction of the writ Court is provided under Article 227 of the Constitution of India and any petition, which is considered and decided on merits in accordance with law under Article 227 of the Constitution of India, no Letters Patent Appeal would lie. We have not gone into this aspect. Since we were addressed on all points, we have decided it, as if, it was considered under Article 226 of the Constitution of India.

13. In the overall assessment of facts, appreciation of the relevant proposition of law, as well as, the factual matrix and two concurrent finding of facts of two authorities below under the Act, as well as, the clear verdict based on reasons given in the impugned order of the learned single Judge, we are of the opinion that this is, totally, not fit case to exercise our power in terms of the provision of Clause 10 of the Letters Patent.

14. The appeal, therefore, shall stand dismissed at the admission stage. No cost.