
(2008) 08 PAT CK 0139

In the Patna High Court

Raptakos Brett and Company Ltd. and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 14-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256
Minimum Wages Act, 1948 — Section 12(1), 22A

Citation : (2008) 3 LLJ 649 : (2009) 2 PLJR 50

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—Raptakos Brett & Company Ltd. (hereinafter referred to as "the Company"), through its Branch Executive Rajesh Kumar Sinha, its Directors, Vice-President and other officials in the senior Managerial Cadre are sought to be prosecuted in Misc. Case No. 257/2003, wherein cognizance has been taken for offences u/s 22-A of the Minimum Wages Act (hereinafter referred to as "the Act") by the learned Chief Judicial Magistrate, Saharsa on December 2, 2003. Accordingly a prayer has been made for quashing of the entire criminal proceeding including the order taking cognizance.

The Labour Superintendent-cum-Inspector, Minimum Wages Act, Saharsa, the complainant, impleaded herein as O.P. No. 2, filed the aforesaid complaint, inter alia, alleging that in M.W. Case No. 69/2003 President, B.S.S.R., Union v. Raptakos Brett and Company Limited, Patna on the claim of payment of less wages than the fixed minimum wages the Court of Assistant Labour Commissioner and the Authority under the Act gave decision in favour of the complainant and as Amit Kumar Sinha, a Medical Representative working at Saharsa office did not get the benefit of the decision of the Labour Commissioner at the hands of the accused persons which was in contravention of the provisions of Section 12(1) of the Act, a prayer was made for taking cognizance u/s 22-A of the Act and to award appropriate punishment adopting the prescribed procedure.

The further prayer was that the complainant being a public servant he be exempted from personal attendance as envisaged in Section 256, Cr.P.C. As many as 7 of the Company's officials were arrayed as accused.

2. It appears that one Amit Kumar Sinha appointed as a Medical Representative by the Company w.e.f. March 12, 1996 was posted at Nepal Headquarters after completion of full training and in the year 2000 on his personal request he was transferred from Birat Nagar area to Saharsa Headquarters vide order dated August 18, 2000. Thereafter in view of the administrative exigencies he was transferred from Saharsa Headquarters to Ahmadabad Headquarters where he did not join in open flouting of the order and as his non-joining was a source of inconvenience to the Area Manager, he reported the matter to the Manager, Field Operations, on November 28, 2001. However, the audacious Amit having flouted the transfer order moved the Assistant Commissioner of Labour, whereupon a conciliation proceeding as envisaged by Section 12 of the Industrial Disputes Act was initiated. The Company in response to the notice submitted its reply asserting that there was absolutely no illegality with the transfer order as the same was by reason of administrative and business exigency and that Amit was not a "workman" as defined in Section 2(s) of the Industrial Disputes Act. The Company even challenged the jurisdiction of the Assistant Labour Commissioner, Saharsa initiating the conciliation proceeding. Having found that the conduct of Amit amounting to wilful insubordination, disobedience, subversion of discipline etc. the Company noticed him by order dated December 18, 2002 to show cause why disciplinary action be not initiated against him and having held a domestic inquiry wherein he was found guilty of 7 charges and after a second show cause notice he was discharged from service of the Company by paying one month's compensation as per the stipulation incorporated in the contract of employment.

3. It has been submitted by the learned Counsel for the petitioner that Amit Kumar Sinha is neither a "workman" as defined in Section 2(f) of the Industrial Disputes Act nor is he an "employee" as defined u/s 2(i) of the Minimum Wages Act. Referring to Section 2(i) it was submitted that an "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled; employment in respect of which minimum rates of wages have been fixed. It would therefore mean that the condition precedent for the application of the Minimum Wages Act with respect to the employee is that employment of, the employee should be "scheduled employment" which in other words would mean an employment specified in the schedule to the Act. But employment as a sales promotion employee does not figure in either, Schedules I and II of the Act. On this premise it was submitted that a person working as Medical Representative would not fall within the ambit or mischief of the Act and the Act as such was not applicable to the said Amit Sinha and; accordingly the cognizance taken against the petitioners herein for contravention of the provisions of the Act was not only unwarranted but also not sustainable in the eye of law and was, in fact, an abuse of the process of the Court.

4. Assailing the submissions advanced by the learned Counsel for the petitioners, the learned Counsel for O.P. No. 2, the Labour Inspector, sought to submit that by virtue of Sub-section (d) of Section 2 of Sales Promotion Employees (Conditions of Service) Act, 1975 (hereinafter referred to as "the 1976 Act") the said Amit Sinha would fall within the ambit of "sales promotion employee" which includes any person by whatever name called (including an apprentice) employed or engaged in any establishment for hire or reward to do any work relating to promotion of sales or business, or both,... and by virtue of Sub-section (3) of Section 6 of the 1976 Act the Minimum Wages Act was made applicable to "sales promotion employees" as they apply to, or in relation to, the employees within the meaning of this Act. It was, therefore, submitted that there was no illegality in the taking of the cognizance since the said Amit Sinha was governed by the provisions of the Act by virtue of the provisions of 1976 Act.

5. The learned Counsel for the petitioners raised strong objections to the submissions advanced by the learned Counsel for O.P. No. 2 regarding the application of the Minimum Wages Act and 1976 Act to the said Amit Sinha. In this context it was sought to be submitted that the learned Counsel for O.P. No. 2 had not placed the whole of Sub-section (d) of Section 2 of the 1976 Act since by virtue of Sub-clauses (i) and (ii) the definition of "sales promotion employee" does not apply to or include any such person who being employed or engaged in a supervisory capacity towards wages exceeding Rs. 1,600/- per mensem; or who is employed or engaged mainly in a managerial or administrative capacity and in that view of the matter the wages of the said Amit Sinha being over Rs. 3,000/- per mensem; he could not be termed to be a "sale promotion employee" within the meaning of Section 2(d) of the 1976 Act and as a corollary the provision of the Minimum Wages Act would not apply to him.

6. The pay chart of said Amit Sinha for the period under employment has been appended to the petition as Annexure-3 and it is evident therefrom that the said Amit Sinha was being paid from first month of employment a sum of Rs. 3,130/- per mensem which increased gradually.

7. Due regard being had to the facts "and circumstances of the case the said Amit Sinha being in a position to draw more than Rs. 1,600/- per mensem could not be deemed to be a "sales promotion employee" and hence is not a "workman" and as such he is not competent to raise a dispute before the Labour Court. Accordingly the cognizance taken against the petitioners for contravention of the provisions of the Minimum Wages Act cannot be sustained in the eye of law being an abuse of the process of the Court and is required to be quashed.

Accordingly this application succeeds and the impugned order taking cognizance is hereby quashed.