
(1990) 01 PAT CK 0014
In the Patna High Court
Case No : C.M.W. No. 2489 of 1982

Sadha Ram Satnami

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-01-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Payment of Wages Act, 1936 — Section 17

Citation : (1991) 39 BLJR 824 : (1991) 63 FLR 783 : (1999) 3 LLJ 1271

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Advocate : Vijay Nandan Sahay, for the Appellant; Ram Nandan Prasad, Standing Counsel IV, Dinu Kumar J.C. and Vishnu Mohan Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

Binod Kumar Roy, J.—The present writ application is an unfortunate dispute between the petitioner, an Ex-Trolleyman of the Bokaro Colliery, P. O. Bermo, district Hazaribagh which has been nationalised and now under the control of Respondent No. 3, National Coal Development Corporation, which during the pendency of this writ application reached the Apex Court of the country and had resulted in compromise therein in Civil Appeal No. 709 of 1981 at the instance of the petitioner filed against the Judgment and order dated March 13, 1990 of this Court in S. A. No. 743 of 1977 (which in its turn had arisen out of T.S. No. 18 of 1967 filed by the Appellant of the Court of Subordinate Judge, Hazaribagh) in which the Hon'ble Supreme Court had passed the following order:

"The Appeal above-mentioned being called on for hearing before this Court on April 29, 1988 and upon being mentioned on March 10, 1988 and upon perusing the record and hearing counsel for the parties herein--this Court in substitution of the High Court's order under appeal DOTH PASS the following ORDER:

*Shri C. V. Subha Rao, learned Counsel for the respondents, Central Coal Fields Limited, after consulting the Officer of Central Coal Fields Limited who has to come to the Court to instruct him, submits that in full settlement of the claims of the appellant, Central Coal Field Limited is willing to pay the appellant a sum of Rs. 80,000 on the appellant vacating the quarters in which he is living and handing over possession thereof to the Central Coal Fields

Limited. He also further submits that Dhan Kumar Tandon one of the appellants, would be appointed within six months in any suitable vacancy, in which he can be appointed under Central Coal Fields Limited.

Shri M. P. Jha, learned Counsel for the appellant accepts the proposal of Shri C. V. Subha Rao, and submits that the appellant will receive in full settlement of all his claims the sum of Rs. 80,000 after handing over the possession of the quarters to the Central Coal Fields Limited within four months."

This COURT DOTH FURTHER ORDER THAT THE ORDER of this Court dated March 27, 1981, passed in the Civil Miscellaneous Petition No. 5296 of 1981, in the said appeal, be and is hereby vacated;

AND THIS COURT DOTH LASTLY ORDER that this order be punctually observed and carried into execution by all concerned.

WITNESS THE HON"BLE Shri Raghunandan Swarup Pathak, Chief Justice of India
At the Supreme Court, New Delhi, dated this April 29, 1988" :

May 10, 1988.

2. The petitioner has come to this Court for quashing of the orders passed by the Original as well as Appellate Authorities under the Payment, of Wages Act, 1936 (respondent Nos. 5 and 4 respectively) as contained in Annexures 2 and 1 respectively. The petitioner claims that he was in occupation of quarter No. 530 till May 1, 1960 which was allotted to him and in terms of Exhibit-B, and award of the Appellate Tribunal at Calcutta, he was entitled to his accommodation free of rent. The petitioner as dismissed from service in 1964 with effect from April 10, 1964 through Memo dated September 10, 1964 (Annexure-3) passed by the Manager, (respondent No. 2) for being in unauthorised occupation of the said quarter. The rent of Rs. 28-50 was illegally deducted from his salary on account of his occupation of the said quarter. On November 2, 1962 the petitioner filed Payment of Wages Case Nos. 80 of 1962, 61 of 1962 on July 2, 1962 and 47 of 1964 on September 2, 1964 for illegal deductions. The Respondents illegally took up stand that the said quarter was never allotted to the petitioner as it was meant for the officers and not for him and thus his occupation was unauthorised and thus the management was entitled to deduct rent u/s 7(2)(d) read with Section 11 of the Payment of Wages Act. The petitioner also filed T.S. No. 18 of 1967 for granting a decree declaring that his dismissal was wrongful, illegal, void and inoperative and against natural justice and also for granting decree of Rs. 5,673 with interest. According to the petitioner he was allotted the said quarter

by the appropriate authority and the deduction by the Respondent was illegal. The findings recorded in the impugned order are perverse and thus they are liable to be set aside by this Court. It has been asserted in Paragraph-8 of the writ petition that the matter connected with this suit is pending disposal in the Supreme Court.

3. A counter-affidavit has been filed on behalf of Respondent Nos. 2 and 3 in which it has been stated that the writ application is not maintainable before this Court because an application lay under the provisions of Code of Civil Procedure. The petitioner was not entitled to the quarter in question and that since he had occupied the quarter in question forcibly rents were validly deducted from his salary. The orders in question have been correctly passed. Respondent Nos. 2 and 3 also filed a separate application on March 6, 1989 praying to pass appropriate orders in view of the disposal of the matter by the Hon'ble Supreme Court in Civil Application No. 709 of 1981 on compromise appending a photostat copy of the certified copy of the proceedings before the Supreme Court as Annexure-4.

4. Sri Vishwa Mohan Kumar Sinha, learned Counsel for the respondent Nos. 2 and 3, raised a preliminary objection. His submission is that since the appellate order has been passed by the District Judge, Patna (respondent No. 4) the only remedy of the petitioner is to file a civil revision application before this Court u/s 115 of the Code of Civil Procedure.

5. Sri Vijay Nandan Sahay, learned counsel for the petitioner, submits that since Respondent No. 4 had passed orders in the capacity of an authority prescribed under the Payment of Wages Act, 1936 thus, under the provisions of the Code of Civil Procedure, no revision lies before this Court as (sic) the petitioner had correctly moved this Court seeking relief under Articles 226 and 227 of the Constitution of India.

6. In my view, the preliminary objection has got no substance. Admittedly, the original order was passed by Presiding Officer, Labour Court (Respondent No. 5) under the provisions of Payment of Wages Act, 1936. An appeal lies against the said order u/s 17 of the Act. The appeal filed by the petitioner under said section has been disposed of by the learned District Judge, Patna under the said provisions of the Act. In the said view of the matter, it cannot be said that the only appropriate remedy left for the petitioner was to invoke the jurisdiction of this Court u/s 115 of the Code of Civil Procedure, Thus, I hold that this application under Articles 226 and 227 of the Constitution of India is maintainable.

7. Sri Sahay, learned Counsel for the petitioner, submitted, referring to the pleadings, that the impugned orders are liable to be quashed as they have been passed illegally and on unwarranted surmises and conjectures.

8. Sri Sinha, on the other hand, submits that the matter between the petitioner and the Respondent Nos. 2 and 3 was amicably settled before the Supreme Court

which is apparent from the order of the Supreme Court itself and thus for the said reason the petitioner is not entitled to any relief before this Court. He also produced before me copies of the plaint of the suit as also the order of the Supreme Court extracted by me.

9. Sri Sahay, replies that the order aforementioned was challenged by way of review application before the Hon''ble Supreme Court itself but dismissed and that the petitioner had instituted a proceeding against his counsel also.

10. From paragraph 2 of the order of the Hon''ble Supreme Court, it is clear that all disputes between the petitioner and the Respondents were settled on the terms mentioned therein. A review petition filed has already been dismissed. In the said view of the matter, I am of the view that the petitioner is not entitled to the reliefs claimed by him before this Court.

11. This writ application is accordingly dismissed, but without cost in view of the compromise aforesaid as well as that the petitioner, an Ex-Trolleyman, is no longer in service.