

(2016) 03 PAT CK 0139

In the Patna High Court

Case No : Letters Patent Appeal No. 122 of 2013 and Letters Patent Appeal No. 172 of 2013 in Civil Writ Jurisdiction Case No. 459 of 2012

Sahara India and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Bihar Shops and Establishments Act, 1953 — Section 2 (20), Section 27 (7), Section 28, Section 28 (1)
Industrial Disputes Act, 1947 — Section 10 (1) (c)

Citation : (2017) 1 CLR 82 : (2016) 149 FLR 882 : (2016) 2 PLJR 680

Hon'ble Judges : Hemant Gupta and Navaniti Prasad Singh, JJ.

Bench : Division Bench

Advocate : Umesh Prasad Singh, Sr. Adv., Rajendra Kumar and Nilanjan Chatterjee, Advocates, for the Appellant; Alok Kumar, SC-28 and Amitabh Lav, SC-30, for the Respondent

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—1. Both these Intra-Court appeals have been preferred by the Sahara India (hereinafter referred to as the "Management") against the judgment and order dated 18.09.2012 passed by a learned Single Judge of this Court in two writ applications, which were analogously heard and disposed of being C.W.J.C. No. 459 of 2012, as preferred by Sri Umesh Prasad Choudhary (hereinafter referred to as the "employee") and C.W.J.C. No. 3568 of 2012, as preferred by the Management, which writ application was filed against the order passed by the Deputy Labour Commissioner-cum-Appointed Authority, under Bihar Shops and Establishment Act, 1953, being order dated 12.03.2010 in B.S.E. Case No. 04 of 2004, which was affirmed by order dated 29.11.2011 passed by the Appellate Authority in B.S.E. Appeal No. 03 and 04 of 2010, as preferred by the Management and the employee, against the original order of the Deputy Labour Commissioner-cum-Appointed Authority.

2. As parties have appeared, with their consent, both these appeals have been

heard for final disposal at this stage itself.

3. The facts do not appear to be in dispute. One Sri Umesh Prasad Choudhary was employed in Sahara India on 11.02.1987 and was lastly posted as Sector Worker at Hajipur in this State. He resigned on 01.08.1996, which resignation was accepted by the Management on 01.09.1996. The employee had several monetary claims, to which we would refer in greater details later, as against the Management. The claims not having been settled, the employee sought a reference under the provisions of the Industrial Disputes Act, 1947. The State of Bihar referred the matter under Section-10 (1) (c) of the Industrial Disputes Act, 1947, the dispute, as between the Management of Sahara India and its workman, Sri Umesh Prasad Choudhary, for adjudication to the Industrial Tribunal, Patna, was registered as Reference Case No. 10 of 2001. The matter, after notice to parties, was heard by the Industrial Tribunal. The employee claimed that he was a workman within the meaning of the Industrial Disputes Act, 1947 and, his claims not being settled, the charter of demands is justified. On the other hand, the Management took a preliminary objection that, though the employee was termed as workman or a worker, in fact, he was working in managerial capacity, as such the Industrial Disputes Act had no application to the case. The Industrial Tribunal considered the dispute and came to a finding that the employee could not be termed as a worker within the meaning of Industrial Disputes Act and further that the dispute was raised much after the resignation and cessation of master-servant relationship. The Tribunal, accordingly, by its order dated 19.01.2004 as passed in Reference Case No. 10 of 2001, without adjudicating upon the genuineness or legality of charter of demands, discharged the reference as not maintainable, thus, holding that he was not entitled to any relief under the Industrial Disputes Act. This order attained finality, as the employee did not take up the matter any further.

4. On the same very day, i.e. on 19.01.2004, the reference case having been discharged, the employee then filed a case in terms of Section-28 of the Bihar Shops and Establishment Act, 1953 before the designated authority, Presiding Officer, Labour Court, Patna, raising claims as against the Management (employer). This case was registered as B.S.E. Case No. 04 of 2004. The claims, as raised by the employee, were seven (7), as noted hereunder:-

5. Upon notice, the Management appeared and they took objections, as noted hereunder:-

(i) The claims of the employee were grossly barred by limitation, having been raised long after six months of the cause of action;

(ii) The employee, having resigned, could not avail of remedies under Section-28 of the Bihar Shops and Establishment Act, 1953;

(iii) The claims, as raised, do not come within the definition of wages within the meaning as ascribed to it by Section-2 (20) of the Bihar Shops and Establishment Act; and lastly

(iv) The claims were disputed."

6. From the records, it appears that the question of claims, being barred by limitation, was first considered by the Deputy Labour Commissioner, who condoned the delay by appropriate order and decided to entertain the claims on merits. The Management took no steps to challenge these orders and continued to participate in the proceedings, thus, allowing these orders to attain finality.

7. Upon adjudication, the Labour Court, by its order dated 12.03.2010 as passed in B.S.E. Case No. 04 of 2004, held that, in view of the definition of wages, as given under Section-2 (20) of the Bihar Shops and Establishment Act, 1953, which adopts the definition of wages as defined under Payment of Wages Act, 1936, except for the claim in respect of item No. (v), salary for suspension period, no other claim fell within the expressions wages as defined. He, accordingly, to the said extent, allowed the claim of the employee and further directed compensation amounting to 5 times. The said compensation was quantified at Rs. 91,625.00. Thus, the total amount, payable by the Management, was quantified at Rs. 1,09,950.00, which was directed to be paid within 30 days.

8. Being aggrieved by the said order of the Labour Court both the Management and the employee preferred appeals. The appeal of the Management was registered as B.S.E. Appeal No. 03 of 2010 and the appeal of the employee was registered as B.S.E. appeal No. 04 of 2010. The Management was aggrieved primarily on three counts:

"(i) The claim, being barred by limitation, could not have been entertained;

(ii) The Industrial Tribunal already having held that the employee was not a workman and having resigned, no claim could be entertained in terms of Section-28 of the Bihar Shops and Establishment Act; and

(iii) Even the claims otherwise could not be entertained as they were not wages within the meaning of Payment of Wages Act, 1936."

9. In the appeal, as filed by the employee, the grounds that were taken was that the amounts claimed were amounts payable to the employee as a part of terms of employment, they being various incentives and other dues including unpaid salary, traveling allowance etc. They would be covered by Section-28 of the Shops and Establishment Act and the Labour Court wrongly disallowed the entire claim by restricting the claims only to wages as defined under Payment of Wages Act.

10. The Appellate Authority heard the parties and by its common order dated 29th November, 2011, in both the appeals, held that so far as claims being barred are concerned, the Management did not challenge the orders as and when they were passed and participated in the proceedings, those orders had attained finality. Moreover, the power to condone the delay being discretionary and the delay having been condoned and the Management participated in the

proceedings, the issue could not now be raised. The Appellate Authority, accordingly, dismissed the appeal, as filed by the Management, noticing that the compensation/penalty was not excessive as the Labour Court had jurisdiction to impose compensation/penalty up to 10 times and it had consciously restricted it to 5 times. It then considered the appeal of the employee and again referred to the definition of wages under the Payment of Wages Act and sustained the order of the Labour Court, which was substantially against the employee. Thus, the Appellate Authority also allowed the claim only to the extent of item No. (v) and rejected the rest as not being wages. Accordingly, both the appeals, i.e. B.S.E. Appeal No. 03 of 2010 of the Management and B.S.E. Appeal No. 04 of 2010 of the employee, were dismissed by the Presiding Officer of the Industrial Tribunal, Patna, which was the Appellate Authority under Section-27 (7) of the Bihar Shops and Establishment Act by order dated 29.11.2011. It is, being aggrieved by the said decision, that both the Management and the employee preferred two writ applications, being C.W.J.C. No. 459 of 2012 by the employee and C.W.J.C. No. 3568 of 2012 by the Management, which, as noted above, were heard analogously and disposed of by the judgment and order, dated 18.09.2012, by the learned Single Judge of this Court. In effect, the learned Single Judge allowed the writ application of the employee holding that traveling allowance, amounts due under incentive scheme as also bonus amounts would be part of wages, as defined under Payment of Wages Act. Accordingly, the order of the Labour Court and the appellate order were modified allowing all the claims of the employee and the writ application filed by the Management was dismissed granting Management to three months time to pay the amounts. It is aggrieved by the said order in relation to the two writ applications as against the Management that the present two Intra-Court appeals have been filed by the Management.

11. Upon notice of the appeals, the employee has appeared and, as indicated above, we heard the parties at length.

12. Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the Management in support of the appeals, has raised only three issues, as noted hereunder:-

"(i) The employee who has already resigned, there being no subsisting master-servant relationship, no claim by such an employee is maintainable under Section-28 of the Bihar Shops and Establishment Act;

(ii) The claims under Section-28 of the Shops and Establishment Act, 1953 can only be in relation to wages as defined under the Payments of Wages and for no other sum; and

(iii) The claims not being covered by the Payment of Wages Act, the learned Single Judge erred in so holding that they were claims of wages."

13. Lastly, it was submitted that there being no proper quantification as to the extent of the liability of the Management, the learned Single Judge erred in law

in allowing the claims without proper quantification.

14. It may be noted that all the adjudicatory authorities under the Bihar Shops and Establishment Act, had held the claims in respect of item No. (v) as proper and had directed for its payment. The same had been quantified with compensation. For realization thereof, a certificate proceeding, upon failure of the Management to pay the amount, had already been instituted and is pending.

15. Before proceeding further reference to certain statutory provisions of the Bihar Shops and Establishment Act, 1953 would be necessary :

"2. (4) "employee" means a person wholly or partially employed for hire, wages including salary, reward, or commission in and in connection with any establishment and includes "apprentice" but does not include member of the employer's family. It also includes persons employed in a factory who are not workers within the meaning of the Factories Act, 1948 (63 of 1948), and for the purpose of proceeding under this Act, include an employee, who has been dismissed, discharged or retrenched for any reason whatsoever.

(20) "Wages" means wages as defined in the Payment of Wages Act, 1936 (VI of 1936) and includes the dearness allowance as the workman is for the time being entitled to.

28. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.

(1) Where contrary to the provisions of the Act any deduction has been made from the wages of any employee, or any payment of wages has been delayed, or any sum 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."

16. Coming to the first issue that the employee having resigned there being no master-servant relationship, no claim in terms of Section-28 of the Bihar Shops and Establishment Act, 1953 (hereinafter referred to as the "Act") could lie. A reference to the terms "employee" would show that it not only contemplates a person, who is employed at the time when the claim application under Section-28 of the Act is made, but it also refers to a person who had been employed and had been dismissed, retrenched or discharged. This last

expression clearly predicates of a person who is no more in employment and there is no subsisting master-servant relationship.

17. Thus seen, the definition of employee is wide enough to cover persons who are in employment and those who have ceased to be an employee. It would lead to anomalous result if we accept the argument on behalf of the Management that once the master-servant relationship comes to an end no application under Section-28 of the Act can lie. The result, if such an argument accepted, would be that so long as you are in employment, you can dispute and demand payment but, once you resign or for any matter the master-servant relationship comes to an end, this convenient forum for adjudication and realization of payment would not be available. We do not think that such a situation is contemplated as the definition itself predicates situations where master-servant relationship has come to an end. We, therefore, find no merit in the issue as raised.

18. We may now come to the second and the third issue, which are virtually the same. In this connection, we may point out with reference to Section-28 (1) and (2) of the Act that it is wrong to suggest that Section-28 deals only with payment or deductions from wages and wages would mean wages as defined in Section-2 (20) of the Act only. A reading of Section-28 (1) & (2) would show that apart from wages the Legislature has used the expression "or any sum as otherwise due from the employer to the employee" which expression is to be found in sub-section (1) of Section-28 of the Act or similarly "any other sum" as found in sub-section (2) of Section-28 of the Act clearly predicates sums which may not be technically wages as defined under the Payment of Wages Act. Thus, any amount, which the employer is under legal obligation to pay either by way of a contract or statutorily, both would be recoverable in a proceeding under Section-28 of the Act. Needless to say, it may be wages or it may be any other sum like incentives, bonus which either the employer may itself announce as a part of reward for doing work for the Management or may be statutory in nature.

19. If we refer to the claims, as raised by the employer, it would be seen that they were amounts in relation to various incentives under various awards and schemes for the employee. Such schemes are to encourage employees to perform better to the advantage of the Company or the establishment and they are promises made by the employer to seek the best out of the employees for the benefit of the employer. It cannot be said that if an incentive is announced the employee has no right to recover the same, if it is denied by the employer. The same would necessarily be included in the expression "any sum is otherwise due". Reading the provisions of the Sections, as noted above, in any other manner would be attributing redundancy to legislation. If what was recoverable was only wages, as defined under Payment of Wages Act, then the section would have been simply worded as any amount due or any deduction from wages and there would be no necessity of use of expression "any sum otherwise due" or "any other sum", which expression itself imply any sums other than sums due or deducted as wages.

20. In fairness to Sri Umesh Prasad Singh, learned senior counsel for the Management, we must note that the learned Single Judge was clearly in error in holding that the various awards, incentives and bonuses could come or would come within the definition of the term wages because wages has been technically defined by Section-2 (20) of the Act with reference to the definition thereof given under the Payment of Wages Act, 1936. That term "wages" cannot be given an extended meaning beyond what is contained in Payment of Wages Act but, that in our view, would not otherwise change the judgment of the learned Single Judge inasmuch as the other claims could be maintained under an application under Section-28 of the Act, with reference to the phrase "any sum otherwise due" or "any other sum" as referred in sub-sections (1) & (2) respectively of Section-28 of the Act we, thus, answer the said issue as against the Management.

21. Coming to the last issue, we would to some extent agree with the submission on behalf of the Management. Section-28 predicates adjudication as to the liability of the employer to pay any quantified sum of money to the employee. This is an adjudicatory process and, being so, it is necessary for the authorities to determine the same upon evidence led by the parties.

22. As none of the authorities considered the claim of the employee to be payable in terms of Section-28 of Act, apart from the claims in respect of item No. (v) as noted above, there was no adjudication or quantification done in this regard. That would be necessary in view of the findings as recorded by us. They would be the claims, which are entertainable under Section-28 of the Act. That being so, on this limited issue, it would be appropriate for us to remand the matter to the Labour Court for fresh adjudication. While doing so, we may note that so far as the claim in item No. (v) is concerned, we have already upheld, as also all the authorities consistently, that the amount is payable and for realization thereof, certificate proceedings have already been instituted. That claim would not be re-agitated and would be recoverable as such. Subject to the aforesaid, substantially both these appeals are dismissed.