

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2363 of 2007

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The State of Bihar through the Executive Engineer, Minor Irrigation Division,
Bhabhua, District- Bhabhua (Kaimur)

.... Petitioner

Versus

1. Ramayan Paswan son of Mewa Paswan, resident of village- Palka, P.O. Pahadiya, P.S. Bhagwanpur, District- Bhabhua(Kaimur)
2. The Labour Inforcement Officer-cum- Labour Inspector, Bhagwanpur Division, District- Bhabhua (Kaimur)
3. The Sub Divisional Officer-cum- Wages Payment Officer, Bhabhua (Kaimur)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar (JC TO AAG6)

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 08-05-2015

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Heard Sri Sanjay Kumar, learned AC to AAG-6,
who appears on behalf of the State/ petitioner and learned
counsel, who has appeared on behalf of Respondent no.1

The present writ petition has been filed on behalf
of the State of Bihar through the Executive Engineer, Minor
Irrigation Division, Bhabhua, District-Bhabhua(Kaimur),
wherein a prayer has been made for quashing of an order
dated 29.08.2005 passed in Minimum Wages Case
No.02/2001-02 passed by the Sub Divisional Officer-cum-
Wages Payment Officer, Bhabhua (Kaimur). The petitioner
has further prayed for quashing of proceeding and notice
issued in Certificate Case No.1 (Minimum Wages)/2006-07.



By order dated 29.08.2005, the learned Sub Divisional Officer-cum- Wages Payment Officer has directed the petitioner/ employer/ Executive Engineer, Minor Irrigation Division for payment of Rs.1,09,713/- i.e. wage amount of Respondent no.1. Besides this, the petitioner has also been directed to pay compensation amount of Rs.50, 000/-. After the order, contained in Annexure-5 to the writ petition i.e. order dated 29.08.2005 passed by the Sub Divisional Officer-cum- Wages Payment Officer, it appears that a certificate proceeding was initiated and notice under Section 7 of the Public Demand Recovery Act was issued.

Learned counsel for the petitioner assailing the order passed by the Wages Payment Officer submits that though a detailed reply was filed on behalf of the petitioner, same was not considered and only on the basis of report submitted by the Labour Enforcement Officer as well as submissions of Respondent no.2 and materials produced by him, said order has been passed.

Learned counsel for the petitioner accepts that Respondent no.1 had worked, but he had discharged his duty only for one year and after noticing irregular and unauthorised appointment of Respondent no.1, his

appointment was already cancelled. According to learned counsel for the petitioner, those facts were disclosed in the application filed by the petitioner before Wages Payment officer. However, no such fact was noticed by the authority concerned and order has been passed, which is without jurisdiction.

Learned counsel for the petitioner further submits that after the order of the Wages Payment Officer incorrectly Certificate Proceeding was initiated. According to learned counsel for the petitioner, the certificate proceeding is also liable to be set aside.

Learned counsel for the Respondent no.1 has opposed the prayer of the petitioner.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. The petitioner in the writ petition has accepted that the Respondent no.1 had worked for one year as daily wager. However, the claim for remaining period has been disputed. The Respondent no.1 claimed that he has rendered his services in the Pump House, which was established in the district of Kaimur, Bhabhua for the irrigation purpose. The petitioner worked from 01.01.1989 to 11.11.2000. However,



he was not paid his wages. Thereafter, a complaint was filed under the provisions of Payment of Wages Act and, thereafter, Labour Enforcement Officer conducted an enquiry and submitted a detailed report. It appears that the Labour Enforcement Officer during enquiry has found that Respondent no.1 had worked, but he was not paid wages from 01.01.1989 to 1.11.1998. Thereafter, a report was submitted by the Labour Enforcement Officer and finally the impugned order was passed. From the order, it is also evident that in the proceeding from petitioner's side, written statement was also filed and, thereafter, the Sub Divisional Officer-cum-Wages Payment Officer has passed order for payment of the same. Of course, the order impugned was passed under the Payment of Wages Act under Section 15(2) of the Act, there was statutory remedy available to the petitioner. The petitioner preferred to slumber over this right for a long time and only when in certificate proceeding, notice was issued to the petitioner, the petitioner directly approached this Court. As per the Act, there was specific provision of appeal against the impugned order, however no statutory remedy was availed. Even in certificate proceeding once notice was issued to the petitioner, which was received, the petitioner was having

remedy for filing objection which too was ignored and belatedly this writ petition has been filed. The enactment of Payment of Wages Act was purposely done to protect the right of the employee against their employer.

In view of the fact that there was already statutory remedy, which has not been availed, the Court is of the opinion that in the facts and circumstances of the present case, the writ jurisdiction may not be invoked. The writ petition stands dismissed.

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(Rakesh Kumar, J)