

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8290 of 2014

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1. Gauri Shankar Prasad, Son of Late Nand Kishore Prasad
2. Prabhat Kumar Son of Sri Gauri Shankar Prasad
Both residents of Mohalla Bekapur Road, at P.S and District- Munger, having their
shop M/s Janta Stores at Mohalla Bekapur Road at P.S and District Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Labour Commissioner, Bihar at Patna.
2. The Deputy Labour Commissioner- cum- Prescribed Authority, Munger Division
at Begusarai at and District- Begusarai.
3. The Presiding Officer, Industrial Tribunal at Patna.
4. Bajrang Prakash Singh Son of Late Saryug Prasad Singh Resident of Mohalla
Kasim Bazar at P.S and District- Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Sinha, Sr. Advocate
Mr. Bhola Kumar
For the Respondent No. 4 : Mr. Chandra Sen Prasad Singh
AC to SC 27

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 07-10-2015

Heard Sri Alok Kumar Sinha, learned senior counsel, who
was assisted by Sri Bhola Kumar, learned counsel for the petitioners,
learned AC to SC No. 27 as well as Sri Chandra Sen Prasad Singh,
learned counsel, who has appeared on behalf of the respondent no. 4.

The petitioners invoking writ jurisdiction of this court
under Article 226 of the Constitution of India have prayed for
quashing of an order dated 2.6.2012 passed by the Deputy Labour
Commissioner- cum- Prescribed Authority, Munger Division at
Begusarai in B.S.E. Case No. 7 of 1999. By the said order the Deputy

Labour Commissioner while allowing the claim of the respondent no. 4 has directed the petitioners to pay the total amount of Rs. 1,15,384/-. Rs. 19,564/- has been hold to be deducted amount and that has been calculated at five times.

Short fact of the case is that the respondent no. 4 had filed a case under Section 28 of the Bihar Shops and Establishment Act, 1953 claiming that from his salary huge amount was deducted unauthorizedly by the petitioners. It was claimed that he was employed in the shop of petitioners in the name and style of "Janta Stores". After filing of the case notices were issued. The case was filed in the year 1999 and after appearance, on perusal of the impugned order it is evident that on number of dates recall petitions were filed for recalling the employee/ workman i.e. the respondent no. 4 for cross- examination and on number of dates he was cross-examined. From the order impugned it is further evident that no plausible explanation was given from the petitioners' side nor they produced any evidence in their support, and as such, after a long delay the order was passed on 2.6.2012 whereas, claim was filed by the respondent no. 4 in the year 1999 itself.

Learned senior counsel for the petitioners submits that it is true that on number of dates the employee was cross -examined but fact remains that no proper opportunity was given to the petitioners



for adducing evidence. Sri Sinha, learned senior counsel by way of referring to the last paragraph of internal page no. 2 of the impugned order submits that the date for evidence of petitioners was fixed on 26.11.2007. However, since witness was not produced it appears that on the same date evidence was closed, and as such, he submits that the order impugned has been passed in violation of the principle of natural justice. He further submits that the order impugned though was passed on 2.6.2012 same was communicated to the petitioners in the year 2014 through post. On the aforesaid grounds he has made a prayer for quashing of the impugned order.

Sri Chandra Sen Prasad Singh, learned counsel for the respondent no. 4 has opposed the prayer of the petitioners. By way of referring to the averments made in the counter affidavit he has raised preliminary objection on the point of maintainability of the writ petition. He submits that against the impugned order there was statutory provision of appeal under Section 28(7) of the Bihar Shops and Establishment Act, 1953 and Rule 24 of the Bihar Shops and Establishment Rules, 1955. Accordingly he submits that the writ petition is fit to be rejected on the ground that it is not at all maintainable since the petitioners have invoked the writ jurisdiction bypassing the statutory provision. On merit he submits that unauthorizedly from the salary of Respondent No. 4 amount was



deducted by the petitioners, and as such, the respondent no. 4 left with no option approached the Deputy Labour Commissioner under the provisions of the Bihar Shops and Establishment Act, 1953. He had filed the case in the year 1999 itself but one way or the other the petitioners succeeded in delaying the matter for a long time and only thereafter the final order was passed in the year 2012. Now a technical plea is being raised that it was communicated to them in the year 2014. He further submits that despite the fact that adequate opportunity was given to the petitioners, the petitioners failed to produce any oral or documentary evidence to demolish the claim of respondent no. 4 and as such, he makes a prayer for rejecting the writ petition.

Besides hearing learned counsel for the parties I have also perused the materials available on record. On perusal of the impugned order it is evident that one way or the other the petitioners succeeded in delaying the conclusion of the case for a very long period. It is evident from the impugned order that respondent no. 4 was cross-examined on 21.5.2002. Thereafter again on 30.8.2003, 19.4.2005, 17.8.2006 and 26.11.2007 the respondent no. 4 was cross-examined on the basis of a petitions filed on behalf of the petitioners for recall of the witness. It is also evident that no documentary or oral evidence was produced by the petitioners

side. However, keeping in view the fact that there was statutory remedy available to the petitioners itself, the writ petition may not be entertained, and as such, the writ petition stands dismissed.

Keeping in view the fact that claim was filed in the year 1999 itself and for such a meager amount the respondent no. 4 has suffered for such a long time, the court was proposing to impose cost on the petitioners. However, the court is refraining to pass any order of cost on the petitioners.

The writ petition stands dismissed.

(Rakesh Kumar, J)

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