

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 8784 of 2006

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1. Ram Manohar Pandey son of late Ram Bahadur Pandey
 2. Chandra Bhusan Sharma son of Ram Manohar Pandey
 3. Bipin Choudhary son of Rameshwar Choudhry
All resident of Kalambagh Road, Lichi Bagan, P.O. Ramna Maidan and
P.S. Kaji Mohammadpur, District Muzaffarpur.

.... Petitioners

Versus

1. The State of Bihar through the Secretary Department of Labour &
Employment New Secretariat, Patna-1.
2. The Deputy Labour Commissioner cum Appellate authority under
minimum wages Act, Tirhut Pramandal, Muzaffarpur.
3. Asst. Labor Commissioner, Authority under MW Act, Muzaffarpur.
4. Shambhu Sahni son of late Chandrika Sahni Village - Gabsara P.O. -
Aima Bishunpur via Patahi, Dist. Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. V.N.Sahay
 Mr. B.K.Sinha
For the Respondent/s : Mr. Avinash Kr. AC to GA-10
 Mr. Arvind Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL JUDGMENT
Date: 04-09-2015

Heard the parties.

2. In the present writ petition, filed under Article 226 of the Constitution of India, a prayer has been made to set aside order dated 19-07-2005 passed by the Assistant Labour Commissioner, Muzaffarpur, an authority under Minimum Wages Act in Minimum Wages Case No. 328 of 2003.

3. The petitioner has further prayed for setting aside order dated 01-06-2006 passed by the Deputy Labour

Commissioner-cum-Appellate Authority, Muzaffarpur under the Minimum Wages Act, Muzaffarpur in Appeal Case No. 04 of 2005.

4. The private respondent no. 4 claiming to be driver of the petitioner had filed a case under Section 20(2) of the Minimum Wages Act, 1948 claiming that he was paid salary. The said case i.e. Minimum Wages Case No. 328 of 2003 was allowed ex-parte and direction was given to the petitioner to pay Rs. 30,000/- to respondent no. 4.

5. Aggrieved with the order passed by the Assistant Labour Commissioner, the petitioner preferred an appeal before the Deputy Labour Commissioner-cum-Appellate Authority, Muzaffarpur under the Minimum Wages Act, vide Appeal Case No. 04 of 2005. The appellate court, on objection being raised by the employee i.e. respondent no. 4 on the question of delay in filing the appeal, considered that the appeal was filed after five days of expiry of period of limitation and accordingly, without entering into the merit, the appeal stood dismissed. Aggrieved with both the orders the petitioners approached this Court by filing the present writ petition.

6. Sri V.N.Sahay, learned counsel for petitioners



submits that since appeal was filed within thirty days from the date of receipt of the certified copy of the order, there was no question to reject the appeal on the ground of limitation. He submits that ofcourse, as per provision contained in Section 20(6) of the Minimum Wages Act, thirty days period has been prescribed for filing appeal from the date of order, in any event, the period of limitation, as per Limitation Act, was commenced from the date of receipt of the copy of the certified copy to provide time for obtaining certified copy is excluded. In any event, he submits that the delay was hardly for five days and since some reason was assigned in the memo of appeal itself, the appellate authority, instead of rejecting the appeal, was required to examine the appeal on merit and dispose it of in accordance with law. However, without entering into the merit, the appeal was dismissed only on technicality. He submits that order of the appellate authority may be set aside and matter may be remitted back to the appellate authority.

7. Sri Arvind Kumar Sinha, learned counsel for the respondent no. 4 submits that there is no error in either of the orders. He submits that the appeal was filed five days after the period of limitation and that too without any limitation petition



and as such, the appellate court had rightly rejected the appeal. He further submits that since the first court i.e. Assistant Labour Commissioner cum Authority under the Minimum Wages Act had passed order on 19-07-2005 ex parte under sub-rule 4 of Rule 28 of the Minimum Wages Rules, 1951, the petitioner was having remedy available getting the said award set aside by approaching the said authority. Instead of availing statutory remedy, the petitioner preferred the appeal.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that appellate authority, without entering into the merit of the case, has rejected the appeal only on the ground of delay of five days in filing appeal. From the order the appellate authority, it is evident that in memo of appeal itself, the explanation was given by the petitioner that appeal was filed immediately after receipt of the certified copy of the order, in such event, the learned appellate authority, instead of rejecting the appeal on its technicality, was required to examine the same on merit. However, since the original order was passed ex-parte against the petitioner, in normal course, the petitioner instead of filing appeal was required to avail remedy under Rule 29(4) of the Bihar Minimum Wages

Rules, 1951. Obviously, the original authority had passed order ex-parte and since there is already remedy under such rules, it would be appropriate to grant liberty to petitioners to avail remedy under Rule 29(4) of the Bihar Minimum Wages Rules, 1951.

9. Accordingly, the order of the appellate authority i.e. order dated 01-06-2006 passed in Appeal No. 4 of 2005 by respondent no. 2/Deputy Labour Commissioner is, hereby, set aside with an indication that if the petitioner files an application under Rule 29 (4) of the Bihar Minimum Wages Rules, 1951 within a period of eight weeks from today, the original court i.e. Assistant Labour Commissioner-cum-Authority under the Minimum Wages Act may examine the same on its own merit and pass order in accordance with law.

10. The writ petition stands disposed of.

(Rakesh Kumar, J.)

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