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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16063 of 2004

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1. Shankar Prasad , son of Sheobachan Prasad, resident of village- Bagahi, P.S. Bairiya, District- West Champaran
2. Sheonath Baitha, son of Bindeshwari Baitha, resident of village- Bagahi, Kanu Tola, P.S. Bairiya, District- West Champaran

.... Petitioners

Versus

1. The State of Bihar
2. The Collector, West Champaran, Bettiah
3. The Additional Collector, Bettiah, West Champaran
4. The Sub Divisional Magistrate, Bettiah, West Champaran
5. Hindustan Lever Limited,9, Shakespear Sarani, Kolkata, West Bengal through its General Manager, Kolkata
6. M/S. Kanhaiya Lal Satyanarayan through its proprietor Sri Madan Lal Goenka, resident of Mohalla- Lal Bazar, P.S. Bettiah Town, District- West Champaran
7. Madan Lal Goenka, son of Late Ram Niwas Goenka, resident of Mohalla- Lal Bazar, P.S. Bettiah Town, District- West Champaran

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar I, Adv.
For the Respondent/State	:	Mr. AC to GP-32
For the Respondent no.5	:	Mr. N.K.Agrawal, Sr. Adv. Mr.Sri Jayanta Ray Choudhary, Adv Mr. Binay Kumar, Adv.
For Respondent nos.6 and 7:		Mr. K.N.Gupta, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

12 01-10-2015 Heard Sri Sanjeev Kumar no.1, learned counsel for the petitioners, learned AC to GP-32, who has appeared on behalf of Respondent nos. 1 to 4, Sri Jayanta Ray Choudhary, learned counsel for Respondent no.5 and Sri K.N.Gupta, learned counsel, who has appeared on behalf of Respondent nos.6 and 7.

The petitioners, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for

quashing of an order dated 26.02.2003 passed by Respondent no.3/ Addl. Collector, Bettiah, West Champaran, whereby the learned Addl. Collector had condoned the delay in entertaining Minimum Wage Case no.57/2002. The petitioners have further prayed for quashing of order dated 16.09.2003 passed by Respondent no.3 / Addl. Collector, Bettiah in Minimum Wage Case no.57/2002, whereby he has allowed the appeal preferred by Respondent nos. 6 and 7, which was preferred against the order dated 23.02.2002 passed by the Respondent no.4/ Sub Divisional Magistrate, Bettiah, West Champaran in Minimum Wage Case no.21/95/532/95-96.

Short fact of the case is that the petitioners claiming to be ex-employees of Respondent nos.6 and 7 had filed separate applications vide Annexures 1 and 1/1 to the writ petition before the Addl. Collector, Bettiah, West Champaran. In the petition, petitioner no.1 had claimed that he had worked for 21 years in the firm of M/S Kanhaiya Lal Satyanarayan (Respondent no.6) and 15 days prior to the filing of the application, he was removed from his job. The application is dated 11.02.1993. The petitioner no.1 had claimed that total amount of Rs.18,900/- as bonus, which was disbursed by Hindustan Lever Limited for payment to the petitioner no.1 for last 21 years was not given to the petitioner and

also for about 1008 days i.e. Sunday, he was not paid wages. Total amount, the petitioner no.1 had claimed for about Rs.50,000/-. Similarly, petitioner no.2 by filing an application dated 30.03.1993 had claimed that he had worked for 15 years in the employment of Respondent nos. 6 and 7 and he was also not paid bonus and wages for 60 Sundays. Total amount, according to his claim, was Rs.15,900/-. Subsequently, conciliation proceeding was initiated and, thereafter a case was initiated as Minimum Wage Case no.21/95/532/95-96. In the said Minimum Wage Case, both petitioners were arrayed as petitioners /claimants. The Sub Divisional Officer, Bettiah, West Champaran after examining each and every evidences on record and recording depositions of witnesses produced from the side of the petitioners, finally concluded that the petitioners were not having any genuine claim and proceeding was dropped by its order dated 28.12.1998/05.03.1999. The said order has been brought on record as Annexure-5 to the supplementary affidavit filed on behalf of the petitioners.

Aggrieved with the order of the Sub Divisional Officer, petitioners preferred Minimum Wage Revision Case no.220/99 before Respondent no.3, which was finally allowed and the matter was remitted back to the Sub Divisional Officer for re-

examining the case after conducting thorough enquiry. Thereafter, after the case was remitted back, the Sub Divisional Officer, Bettiah passed an order on 23.02.2002 and allowed the claim petition. Besides allowing the claim petition, the learned Sub Divisional Magistrate vide its order dated 23.02.2002 directed Respondent nos.6 and 7 to pay Rs.2,26,800/- to petitioner no.1 and Rs.1,55,352/- to petitioner no.2. After the order was passed by the Sub Divisional Officer, Respondent nos.6 and 7 preferred an appeal vide Minimum Wage Case no.57/2002. At the first instance, the appeal preferred by Respondent nos.6 and 7 was rejected on the ground of limitation, against which Respondent nos. 6 and 7 filed a writ petition before this Court vide C.W.J.C.No.9390 of 2002. A Bench of this Court by order dated 22.01.2003 quashed the order of dismissal of Minimum Wage Case no.57/2002 and directed the parties to appear before the appellate authority and the appellate authority was directed to give proper opportunity to show that appeal was filed within time and, thereafter pass appropriate order. After the order of this Court, the parties were heard on limitation by the Addl. Collector and by order dated 26.02.2003, the appeal was admitted after condoning the delay. Finally, the appeal was heard and after hearing the parties and considering the materials on record, the

learned Addl. Collector allowed the appeal and quashed the order passed by the Sub Divisional Officer dated 23.02.2002 in Minimum Wage Case no.21/95/532/95-96, which has been assailed in the present writ petition by the petitioners.

Learned counsel for the petitioners initially tried to assail the order dated 26.02.2003, whereby the appeal filed by Respondent nos.6 and 7 was admitted after condoning the delay. After being asked as to whether if the appeal was admitted, the petitioners are entitled to raise the issue of limitation, learned counsel for the petitioners fairly conceded that after the appeal was admitted and finally adjudicated, this question is not required to be examined. So far as final order dated 16.09.2003 is concerned, learned counsel for the petitioners submits that the learned Addl. Collector has incorrectly held that claim of the petitioner was barred by limitation. He tried to persuade the Court that in view of provision to Section 20(2) of the Minimum Wages Act, six months time has been prescribed for raising the claim. It does not indicate that claim beyond six months cannot be raised if the application is filed within six months. He has also assailed the order impugned and submits that at least it is a fit case for remitting back the matter to the court below for fresh adjudication.

Sri K.N.Gupta, learned counsel for Respondent nos.6

and 7 and Sri Jayanta Ray Choudhary, learned counsel for Respondent no.5 have vehemently opposed the prayer of the petitioners. Sri Gupta, learned counsel for Respondent nos. 6 and 7 submits that on perusal of the order of the Sub Divisional Officer, i.e. Annexure-2 to the writ petition, it is evident that without any rhyme and reason, the Sub Divisional Officer had enhanced the claim of the petitioners. He submits that it was specific case of the petitioners that they had claimed total amount of Rs.50,000/- and 16,300/- respectively, whereas the learned Sub Divisional Officer contrary to the materials on record or any cogent evidence has passed an order directing Respondent nos. 6 and 7 to pay the amount of Rs. 2,18,047/- to petitioner no.1 and Rs.1,55,352/- to petitioner no.2. He further submits that it was a case of the petitioners that they were Paldars of Respondent nos.6 and 7, not the employees of Hindustan Lever Limited and, as such, the claim in respect of bonus, which was being paid by Hindustan Lever Limited was not at all applicable in respect of the petitioners.

Learned counsel for Respondent no.5 has also argued that the petitioners were never employed in the establishment of Hindustan Lever Limited and, as such, the claim of bonus from Hindustan Lever Limited even through Respondent nos. 6 and 7 was not at all sustainable. So far as the claim of wages in respect

of Sundays is concerned, Sri Gupta, learned counsel for Respondent nos. 6 and 7 by referring to order dated 16.09.2003 submits that the learned Addl. Collector had categorically examined the statements of witnesses, who were produced from the side of the petitioners before the court below. He submits that all the witnesses, who were examined on behalf of the petitioners before the court below, had taken a consistent stand that on Sunday, no work was being taken. Of course, one of the witnesses had said that even if on Sunday, the work was taken from Paldars, they were separately paid for that work. Accordingly, he submits that both claims, which were raised by the petitioners, were not sustainable and, as such, learned Addl. Collector has rightly interfered with the order of the Sub Divisional Officer. He further submits that as per provisions of the Minimum Wages Act, the period of limitation for claim is six months, whereas in the present case, the petitioners had claimed for wages of Sunday for last 21 years in respect of petitioner no.1 and 15 years in respect of petitioner no.2. On this issue, both counsel i.e. learned counsel for Respondent no.5 and learned counsel for Respondent nos. 6 and 7 have reiterated that the claim raised by the petitioners was barred by limitation and, as such, at the very outset, the claim applications were required to be rejected.

Sri Gupta, learned counsel for Respondent nos.6 and 7 further submits that Annexures 1 and 1/1 to the writ petition were required to be rejected on the ground that claim was not filed in proper format. On the aforesaid ground, it was submitted that the impugned order requires no interference.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. On going through the impugned order, it is evident that the learned Sub Divisional Officer had minutely examined the evidences, which were brought on record. Witness Ramji Prasad, who was examined in support of the claim of the petitioners, had stated that he was also a Paldar along with the petitioners. However, he made specific statement that Sunday was not the working day. He has not supported the claim that Sunday was the working day. One another witness, namely, Rajendra Prasad, who was examined on behalf of the claimants, had also not said that Sunday was the working day. Witness Sri Shanti Ranjan Ghosh had made specific statement that Sunday was closing day and on the said day, the shop always remained closed. One another witness, namely, Om Prakash Srivastava, who was examined on behalf of the petitioners, has stated that he worked in the establishment upto 1992. He has said that if on any holiday, work was taken, payment was separately

made. Accordingly, so far the claim of the petitioners in respect of wages for Sundays is concerned, is also demolished by the witnesses of the petitioners. So far as claim of bonus is concerned, it is admitted position that the petitioners were not employees of Hindustan Lever Limited, rather they had worked as Paldars in the establishment of Respondent nos.6 and 7 and, as such, there was no point to raise the claim for bonus. Once the Court is satisfied that both the claims of the petitioners were not sustainable, there is no point to examine further in the matter. Though learned counsel for the petitioners has argued that the learned Addl. Collector had observed that the claim was barred by limitation, on perusal of the impugned order, it is clear that the appeal was not allowed solely on the ground that the claim was barred by limitation, but discussing each and every material and evidences, same was allowed

Accordingly, I do not find any ground for interference with the impugned order. The writ petition stands dismissed.

(Rakesh Kumar, J)

NKS/-

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