

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12512 of 2006

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Ram Chandra Yadav, son of Late Sampati Lal Yadav, resident of village Arnama,
Police Station Laukaha, Anchal – Khutauna, District Madhubani

.... Petitioner/s

Versus

1. The State of Bihar
2. The Additional Collector, Madhubani
3. The Circle Officer, Khutauna, District Madhubani
4. The Labour Pravartan Officer, Khutauna, District Madhubani
5. Malik Yadav, son of Late Jagti Yadav, resident of village Arnama, Post Office
Basdeopur, Police Station Laukaha, District Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : **Mr. Uday Chand Prasad, Advocate**

For the Respondent/s : **AC to GP No. 31**

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 21-08-2015

Heard Sri Uday Chand Prasad, learned counsel for the
petitioner and learned AC to GP No. 31.

Despite valid service of notice, the respondent no. 5 has
preferred not to appear.

In this case earlier after the death of the sole petitioner a
substitution petition was filed vide I.A. No. 6411 of 2008, which was
allowed on 19.7.2012 and notice was also directed to be issued to
respondent no. 5 by both process i.e. ordinary process as well as
registered cover with A/D. Despite valid service of notice the
respondent no. 5 did not appear. Then, on 26.11.2012 the writ
petition was admitted for hearing and in hearing matter also notice
was issued. Again notice was validly served on respondent no. 5 but

he preferred not to appear. Accordingly, the writ petition has been heard ex- parte against the respondent no. 5.

Short fact of the case is that earlier the respondent no. 4 / Labour Enforcement Officer, Khutauna, district -Madhubani filed a complaint under Section 20(2) of the Minimum Wages Act, 1948 alleging therein that original petitioner had employed respondent no. 5 in his agriculture work. However, the respondent no. 5 was not paid wages in accordance with the provisions of the Minimum Wages Act, 1948. It was alleged that in the year 2000 continuously for four months work was taken from the respondent no. 5 by the original petitioner and instead of paying wages in accordance with law, the respondent no. 5 was given 3 Kilogram food grains with Rs. 20/- only. The complainant i.e. Labour Enforcement Officer requested for total payment of Rs. 27,698/- by the petitioner in favour of the respondent no. 5. After receipt of notice reply was filed on behalf of the employer in which a plea was taken that complete false allegation has been made. It was stated that respondent no. 5 was never employed by the original petitioner in agriculture work, rather being pataidar, litigation in between the original petitioner and the respondent no. 5 was continuing. It was further pleaded that the original petitioner was himself a poor labourer, and as such, there was no question of giving employment to the respondent no. 5.



Finally, by order dated 13.12.2002, the Circle Officer, Khutauna, allowed the Minimum Wages Case No. 2 of 2001-02 and directed the original petitioner to pay Rs. 2,518/- as wages, which was lesser to the minimum wages with compensation of Rs. 10,072/-. The total amount which was directed to be paid is Rs. 12,590/- only. Against the order dated 13.12.2002 passed in Minimum Wages Case No. 2 of 2001-02 the original petitioner preferred an Appeal vide Appeal Case No. 48 of 2002-03 which too, stood dismissed on 23.5.2006. Being aggrieved with both the orders, the original petitioner approached this court invoking its writ jurisdiction. However, during the pendency of the writ petition the original petitioner died, and thereafter, the legal heir of the original petitioner, who is the son of the original petitioner was substituted.

Sri Uday Chand Prasad, learned counsel for the petitioner submits that even in the complaint which was filed by the Labour Enforcement Officer i.e. Annexure - "1" in a perfunctory manner allegation was made that respondent no. 5 was employed by the original petitioner and the respondent no. 5 was given lesser wages contrary to the provisions of the Minimum Wages Act, 1948. He submits that in the complaint itself no specific date or month has been stated, nor it has been stated as to what was the minimum wages at the relevant time. Only in a mechanical manner complaint was



filed. He further submits that though on behalf of the original petitioner show cause was filed vide Annexure – “2” in which a specific stand was taken that the original petitioner being a poor labourer was not at all in a position to employ respondent no. 5. It was also claimed that the respondent no. 5 was in litigation term with the original petitioner. However, ignoring the show cause filed by the petitioner and without whispering about the show cause filed by the original petitioner, the original authority has passed order, that too, in a perfunctory manner. He submits that in the complaint it was recommended to pay total amount of Rs. 27,698/-, however, the learned Circle Officer to the best of his knowledge, without any reason, has come out with a different amount, that too, without any calculation. It has further been submitted that the Circle Officer while deciding the Minimum Wages Case No. 2 of 2001-02 had not bothered to examine the respondent no. 5 regarding whom it was alleged that he was paid lesser wages. In sum and substance, it has been argued that order passed in Minimum Wages Case No. 2 of 2001-02 is contrary to the provisions contained in Section 20(3) of the Minimum Wages Act, 1948. Similarly, in respect of the order of the Appellate Authority it has been argued that in a mechanical manner the Appeal has been dismissed.

Learned AC to GP No. 31 though has opposed the prayer of

the petitioner by way of referring to the averments made in the counter affidavit, he was not in a position to justify the order passed in the Minimum Wages Case No. 2 of 2001-02.

Besides hearing learned counsel for the parties, I have also perused the materials available on record.

The complaint which was filed by the Labour Enforcement Officer does not reflect specific period during which the respondent no. 5 was alleged to be engaged / employed by the original petitioner. In a vague manner it was stated that for four months in the year 2000 the respondent no. 5 was employed and paid lesser wages. In the complaint it has not been indicated regarding the minimum wages which was applicable at the relevant time. On such complaint of-course the Circle Officer was not required to proceed, but even then he proceeded and issued notice. Once in the proceeding, on behalf of the original petitioner reply was filed explaining his defence, it was minimum requirement on the part of the Circle Officer to indicate the facts disclosed in the show cause filed on behalf of the original petitioner. However, on going through the impugned order i.e. Annexure – “3” to the writ petition the Court is satisfied that nothing has been indicated as to what was the stand of the original petitioner. The order was passed as if the Circle Officer was not at all required to examine any material on record. The order impugned

is completely whimsical and assigns no reason. Accordingly, the same may not sustain in the eye of law. Since the order dated 13.12.2002 passed in Minimum Wages Case No. 2 of 2001-02 is illegal and unjust and same is set aside, consequently, the order of the Appellate Authority i.e. the order dated 23.5.2006 passed in Appeal Case No. 48 of 2002-03 too stands quashed.

The writ petition stands allowed.

(Rakesh Kumar, J)

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