

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17915 of 2010

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Ramayan Singh @Ramayan Rao, son of Late Yogendear Rao, resident of village- Laukariya, Modi Saw Ka Tola, Post- Laukariya, P.S. Bairiya, District- West Champaran

.... Petitioner

Versus

1. The State of Bihar
2. Labour Commissioner, Bihar-cum- Appellate Authority, under M.W.Act 1948, Patna
3. Assistant Labour Commissioner and Authority, Bettiah, West Champaran
4. Rajendar Rao, son of Late Kamal Rao, resident of village- Laukariya, Baluwa Tola, Post- Laukaria, P.S. Bairiya, District- West Champaran
5. Mahamantri Paschim Champaran, Zila- Dukan Pratisthan Karamchari Sangh, Bettiah

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Umesh Tiwari

For the Respondent/s : Mr. AC to PAAG

Mr. Bimlesh Kumar Pandey

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

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3 12-05-2015 Heard Sri Umesh Tiwary, learned counsel for the petitioner, learned AC to Principal Addl. Advocate General as well as Sri Bimlesh Kumar Pandey, learned counsel, who has appeared on behalf of Respondent no.4.

The petitioner, invoking writ jurisdiction under Article-226 of the Constitution of India, has prayed for quashing of an order dated 17.08.2004 issued under the signature of the Assistant Labour Commissioner-cum-Authority, Bettiah (West Champaran). By the said order, the Assistant Labour Commissioner has directed the petitioner to pay Rs. 46,800/- to



private Respondent in a case i.e. Minimum Wages Case no.47/2009. The petitioner has also prayed for quashing of order dated 11.11.2009 passed by the Labour Commissioner-cum-Appellate Authority in Minimum Wages Appeal Case No.5 of 2009 under the Minimum Wages Act 1948. By the said order, the appeal preferred by the petitioner against the order of the Assistant Labour Commissioner has been rejected on the ground of limitation itself.

Learned counsel for the petitioner tried to persuade the Court that in the proceeding before the Assistant Labour Commissioner, no proper notice was served upon the petitioner and ex parte order was passed. He submits that in the proceeding before the Assistant Labour Commissioner, incorrect address of the petitioner was shown. Learned counsel for the petitioner submits that since the initial order was passed without hearing the petitioner, the order of the appellate authority is liable to be set aside besides the order of the Assistant Labour Commissioner.

Learned counsel for the Respondents has argued that the order of the Assistant Labour Commissioner has attained its finality and after expiry of about five years, the petitioner preferred an appeal, which has been dismissed by the appellate authority. He submits that in terms of provision, contained in



Section 20(6) of the Minimum Wages Act 1948 even the appellate authority was only authorized to entertain an appeal up to 30 days and, thereafter, statutorily he was not authorized to entertain such appeal and, as such, the appellate authority has rightly rejected the appeal. He further submits that after the order of the Assistant Labour Commissioner, a certificate proceeding was also initiated, in which notice was issued and since the petitioner did not respond to the certificate proceeding, an order for warrant of arrest was also issued. Only thereafter the petitioner has taken steps for assailing the order impugned. He further submits that in paragraph-8 of the writ petition, the petitioner himself admits that he received notice dated 26.03.2009 issued in Certificate Case No.628/2004-05. However, in the next paragraph i.e. paragraph-9 of the writ petition, the petitioner accepts that he preferred an appeal on 19.10.2009 vide M.W. Appeal No.5/2009, which was itself barred by limitation.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Fact remains that in the case, the Assistant Labour Commissioner has directed the petitioner to pay a meager amount of Rs.46,800/- under the provisions of Minimum Wages Act. This order was passed in the year 2004 and after initiation of certificate proceeding and even

after receipt of notice, the petitioner himself had slumbered over his right and only after expiry of statutory period, he preferred an appeal, which has been dismissed by the appellate authority. Moreover in the certificate proceeding though the petitioner had asserted that certificate proceeding was initiated and notice has been issued to the petitioner, nothing has been indicated as to whether the petitioner has filed any objection in the certificate proceeding under the provisions of Public Demand Recovery Act.

If so advised, the petitioner may avail statutory remedy. At this stage, the writ petition cannot be entertained. The writ petition stands dismissed.

(Rakesh Kumar, J)

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