

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20335 of 2010

=====

Mahfuzul Hussain S/O Late Sher Mohammad R/O Vill.- Telarh, P.O.-
Agiaon Bazar, Distt.- Bhojpur (Bihar), At Present Electrician in
Transmission Sub Division, Sone Nagar, Post and P.S.- Barun, Distt.-
Aurangabad (Bihar).

.... Petitioner/s

Versus

1. The Bihar State Electricity Board, Patna through Its Secretary
2. The Secretary, Bihar State Electricity Board, Patna
3. The Electrical Superintending Engineer Transmission Circle, Dehri-On-Sone, Aurangabad
4. The Executive Engineer, Transmission Division, Dehri-On-Sone
5. The Assistant Executive Engineer, Transmission Sub-Division, Sone Nagar Aurangabad (Bihar).

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh, Advocate.
For the Respondent/s : Mr. Vinay Kirti Singh, Advocate.

=====

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL JUDGMENT

3 30-06-2015 Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application
filed on 15.12.2010, was for a direction to the respondents for
making payment of overtime bill of the petitioner for the period
July 1996 to December 2003 which has been quantified over Rs.
4,00,000/- by him.

3. Learned counsel for the petitioner, in this regard,
relies, *inter alia*, on an office order of the Electrical



Superintending Engineer, Transmission, Dehri-On-Sone dated 06.08.2002 who has also referred to certain earlier orders recommending for payment of over time bill of the petitioner by the concerned Assistant Executive Engineer, Transmission. Learned counsel for the petitioner also has referred to the order of this Court dated 21.07.2009 in C.W.J.C. No. 4034 of 2008 (*Krishneshwar Kumar Sinha vs. the Bihar State Electricity Board & Ors.*), another order dated 09.10.2009 in C.W.J.C. No. 9035 of 2009 and the order of the Division Bench dated 04.01.2010 in LPA No. 1655 of 2009 affirming the order dated 23.03.2009 in C.W.J.C. No. 4034 of 2008.

4. Learned counsel for the respondents, on the other hand, having filed a counter affidavit, has submitted that the petitioner has been paid the amount of Rs. 64,470/- for the period July 1996 to December 2002 by a cheque dated 17.11.2005 and again the amount for January, 2003 to December, 2003 to the tune of Rs. 15,096/- by another cheque dated 24.08.2005. There being no reply to the counter affidavit, learned counsel for the respondents has submitted that the petitioner will be deemed to have admitted payment of such amount to him.

5. Thus, the only question, which now arises, is as to whether the amount paid by the respondents to the petitioner in the

year 2005 is adequate for the work done by him. The respondents have taken a plea that as per the Board's decision, they have paid over time bill of the petitioner.

6. As noted above, there is no documentary evidence of the over time work done by the petitioner for each of the month commencing from July 1996 to December 2003. There is only one sanction order of the competent authority, namely, Superintending Engineer, Transmission, which gives certain detail of the working hours of the petitioner of over time from September, 2000 to May, 2002. If the petitioner having been paid the amount found payable as per the Board's rule way back in the year 2005 and even then despite of filing of a writ petition, C.W.J.C. No. 6884 of 2005 disposed of on 11.12.2006, he has not been found entitled for any further amount either on account of Board's decision to pay over time confined to 50 hours in a month or on account of lack of sanction order of over time done by the petitioner, the remedy for him cannot be a writ petition under Article 226 of the Constitution of India.

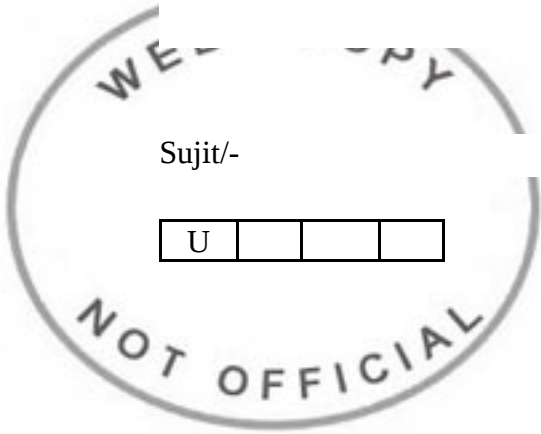
7. The petitioner is a workman governed by the standing order of the then Bihar State Electricity Board. Over time is nothing but it is payment of wages and, therefore, the petitioner has a remedy either under the payment of Wages Act or under the

Industrial Disputes Act. This Court cannot go into the comparative evidence of over time under the limited jurisdiction under Article 226 of the Constitution of India. Here in this case, whatever amount was found payable on the head of over time, has already been paid to the petitioner in the year 2005.

8. The reliance placed by the learned counsel for the petitioner on a judgment of this Court in the case of **Krishneshwar Kumar Sinha** (supra) is also wholly misplaced. In that case, the Board, having made payment, had sought to make recovery on account of enforcing the Board's decision restricting payment of over time for 50 hours and unlike in the case of the petitioner there were also due sanction orders which was not in dispute and, therefore, whatever has been said by this Court in the case of **Krishneshwar Kumar Sinha**(supra) cannot be made applicable to the facts of the present case.

9. If the petitioner, therefore, has still a grievance of being paid lessor amount than what he claims to have performed by way of over time work, he may approach the competent Labour Court, wherein he and his employer, the then Bihar State Electricity Board, will have liberty to lead evidence as with regard to actual hours of performing duty of the petitioner and the Board's liability for making such payment on the head of over time.

10. With the aforementioned observation and direction,
this writ application is disposed of.



Sujit/-

(Mihir Kumar Jha, J)