

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.15023 of 2011

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1. Kedar Nath Singh S/O Ganesh Lal Singh R/O Mohalla- Akashvani Road,  
Khajpura, P.S.- Rajiv Nagar, Distt.- Patna

.... .... Petitioner/s

Versus

1. The State Of Bihar Through Secretary, Labour Employment And Training Govt.  
Of Bihar, Patna

2. Labour Commissioner, Department Of Labour, Employment And Training New  
Secretariat, Patna

3. Deputy Labour Commissioner Shram Bhawan Bailey Road, Patna

4. Labour Superintendent, Labour Officer, Bailey Road, Patna

.... .... Respondent/s

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#### Appearance :

For the Petitioner/s : Mr. Suresh Prasad, Advocate.

For the State : Mr. Akhileshwar Singh, Ac to GA.2

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**CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY**

**ORAL JUDGMENT**

**Date: 16-12-2016**

Heard learned counsel for the petitioner and learned for  
the State.

In the present writ petition, petitioner is challenging the  
notice dated 19.7.2011 issued by the Labour Court, Patna who  
is Inspector under The Child Labour (Prohibition and  
Regulation) Act, 1986 (hereinafter referred to as the Act).

It appears from the record that a Dhaba Dal was con-  
stituted by the Labour Department, Government of Bihar to  
make enquiry about the employment of minor children in  
different establishments. The Dhaba Dal raided the premises of  
the petitioner and found one Rajesh Yadav was employed in the  
premises was minor, on that basis of the enquiry notice was  
issued in terms of the judgment of the Hon'ble Supreme Court



in the case of M.C. Mehta v. State of Tamil Nadu and others, reported in (1991) 1 SCC 283 where it has been provided that if a child is below age of 14 years has been employed they are required to be rescued and deposit Rs.20,000/- for the purposes of their rehabilitation. Challenge has been made solely on the ground that before asking the establishment to deposit Rs.20,000/- no show cause inasmuch as challenged the age of Rajesh Yadav claiming he was not a minor rather on the day of inspection he had already attained the majority. So there was no prohibition in the employment of Rajesh Yadav.

Learned counsel for the petitioner has submitted that if there is dispute about the age of the child who was recovered from the premises he was required to be sent before the Medical Board for the purposes of determination of age which has not been done by the authority. Petitioner in support of his contention has placed reliance on the order of this Court in the case of Jitendra Kumar alias Jitendra Kumar Yadav v. The State of Bihar & others (C.W.J.C. No. 22325 of 2013) and has claimed that on the identical situation notice which was served upon the petitioner of that case has been quashed as they have not followed the procedure prescribed under the Act.

Learned counsel for the State submits that as the age of the minor who was the child was below 13 years so he could



not have been employed in the establishment on account of absolute prohibition for employment of such age of child. He further submits that the demand of Rs.20,000/- is not by way of punishment but it has been asked to deposit the said amount on account of the direction issued by the Hon'ble Supreme Court in the case of M.C. Mehta (supra). He further submits that petitioner has never challenged the age of the person and in such circumstances the notice which was served upon the petitioner cannot be said to be vitiated on account of any provision of the Act.

Having considered the rival contentions of the parties, in the case of M.C. Mehta (supra) primary consideration before Hon'ble Supreme Court the revival of the minor children as those were employed in the hazard occupation and whenever the Child is recovered the establishment has to pay amount for the purposes of rehabilitation. But one aspect is very important that when the Inspector inspects the premises and recovered a person claiming to be a child then primary duty of the Inspector as provided under Section 9(2) of the Act provides that every occupier in relation to an establishment who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the



Inspector within whose local limits the establishment is situated but in the present case such notice was not given by such occupier. When a raid was conducted then before asking the person to deposit Rs. 20,000/- was required to give a notice and to have issued show cause with respect to engagement of the Child and in the present case when petitioner is disputing the age of person who has been recovered from the establishment then in that circumstances the authority should have sent the person before the Medical Board for the purposes of determination of age. So much so at least a show cause was required to be served upon the petitioner. No such procedure has been followed.

In such view of the matter, notice dated 19.7.2001 is set aside and matter is remanded back to the Deputy Labour Commissioner, Patna who will take decision in accordance with law.

With the aforesaid observation this writ petition is allowed to the aforesaid extent.

Vinay/-

**(Shivaji Pandey, J)**

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