IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.583 of 2011
In
Civil Writ Jurisdiction Case No.14384 of 2009

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Mahabir Ojha, son of Late Shankar Dayal Ojha, Resident of Village & P.O. Chhota Singhanpura, P.S. Simari, District- Buxar, presently resident of N-19, Professor's Colony, Chitragupta Nagar, Patna- 800 020

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Labour Department, Govt. of Bihar.
2. The Presiding Officer, Industrial Tribunal Cum-Appellate Authority u/s 28(7) of Bihar Shops and Establishment Act, 1953, Bailey Road, Patna-1
3. The Presiding Officer, Labour Court, Patna
4. Popular Nursing Home through its trustee namely Raj Kumar Jaiswal, Popular Nursing Home, Chauhatta, Ashok Raj Path, Patna-4
5. Raj Kumar Jaiswal, son of Late Brij Nandan Lal, Trustee of Popular Nursing Home, Resident of Mohalla Chauhatta, Ashok Raj Path, P.O. Bankipur, P.S. Pirbahore, District- Patna-4

... ... Respondent/s

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with

Letters Patent Appeal No. 606 of 2011
In
Civil Writ Jurisdiction Case No.11268 of 2009

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Popular Nursing Home Through it trustee Raj Kumar Jaiswal, Ashok Raj Path, Chauhatta Patna-800 004.

... ... Appellant/s

Versus

1. State of Bihar through the Secretary Labour & Employment, New Secretariat, Patna.
2. Presiding Officer, Industrial Tribunal, Baily Road, Patna.
3. Presiding Officer, Labour Court Baily Road, Patna.
4. Mahabir Ojha S/O Sri Sankar Dayal Ojha C/O Sri Bishram Singh, N/19 Professor Colony Chitra Gupta Nagar Patna-20.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Vijoy Nandan Sahay, Advocate
		Mr. Arun Srivastava, Advocate
For the Respondent/s	:	Mr. M. Prasad, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

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(Per: HONOURABLE THE CHIEF JUSTICE)
Date : 02-11-2017

Both these appeals seek exception to a common order passed by the learned Writ Court deciding, writ petitions being C.W.J.C. No. 14384 of 2009 (Mahabir Ojha Vs. The State of Bihar & Ors.) and C.W.J.C. No. 11268 of 2009 (Popular Nursing Home Vs. State of Bihar & Ors.).

Appellant Mahabir Ojha in L.P.A. No. 583 of 2011 was working in the establishment of Popular Nursing Home, appellant in L.P.A. No. 606 of 2011. In the orders passed by the Writ Court they are referred to as “Workman” and “Management” respectively. Be it as it may be, the services of the workman was terminated on 26.03.1981. This led to his raising a dispute under the Bihar Shops & Establishment Act, 1953 (hereinafter referred to “the Shop Act”) before the Labour Court under Section 26 of the Shop Act. The Labour Court allowed his claim and on 27.03.1992 directed for his reinstatement with back wages and all other consequential benefits. The management challenged the Award before this Court in a writ petition being C.W.J.C. No. 4008 of 1992. This was dismissed on 20th of December, 1994 and an L.P.A. being No. 24 of 1995 filed was also dismissed on 12.12.2002, meaning thereby that the Award passed by the Labour Court on

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27.03.1992 attained finality and should have been implemented in its letter and spirit. However, when the Award was not implemented, the workman approached the Labour Court again under Section 28(1) of the Shop Act raising a claim for payment of wages and other benefit along with penalty and compensation. This was allowed vide order passed on 21.02.2003 by the Labour Court and aggrieved by this, both the management and the workman preferred appeal before the Tribunal being Appeal No. 01/2003 and 03/2003. The Tribunal dismissed the appeal filed by the Management and the workman's appeal was allowed in part directing for payment of certain amount with interest. The writ petitions in question were filed challenging these proceedings both by the management and the workman. The management challenged the quantification done and the workman also was aggrieved by the manner in which the benefit of penalty and compensation was assessed and paid to him. The learned Writ Court has dismissed both the writ petitions and, therefore, these appeals by the management and the workman.

As far as the case of the management is concerned, they have primarily challenged the execution proceeding mainly on the ground that it is the trust who is the employee and after

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death of one of the trustees the proceedings for execution were not maintainable. The learned Writ Court has dealt with this aspect, has taken note of the provisions of the Indian Trust Act and has rejected the contention.

We find no error in the order passed by the learned Writ Court dismissing the writ petition filed by the Management i.e. C.W.J.C. No. 11268 of 2009.

The contention of the management that the execution was not maintainable against one of the trustees or that after death of the trustees the execution against the trust was not tenable, in our considered view cannot be accepted now. It is a case where the termination of service ordered in the year 1981 is found to be illegal. After 11 years of litigation the Labour Court passed the Award on 27.03.1992. The Award passed has been upheld after dismissal of the writ petition and the L.P.A. filed by the management and now when the Award is being put to execution, these objections in our view, are unsustainable and, therefore, we see no error in the order passed by the learned Writ Court dismissing the writ petition filed by the Management.

However, the order passed by the Appellate Authority allowing the appeal of the workman has also been

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quashed by the learned Writ Court and while dismissing C.W.J.C. No. 14384 of 2009, the learned Writ Court has found that Appeal No. 03 of 2003, preferred by the workman, was beyond the period of limitation prescribed under the Shop Act and in condoning the delay by invoking the provisions of Section 5 of the Limitation Act the Appellate Tribunal has committed an error. It is this part of the order which is challenged by the workman and further the prayer made is that adequate penalty and compensation should have been awarded.

Having heard learned counsel for the parties at length, we are of the considered view that the learned Writ Court committed an error in quashing the order passed by the Appellate Tribunal in Appeal No. 03.2003 and holding that the appeal was barred by limitation.

To answer this question and to take note of this, we are required to refer to certain provisions of the Bihar Shop Act. The Bihar Shops & Establishment Act contemplates a detailed procedure for adjudication of certain disputes between the employer and the employee who are in employment in various establishments as defined under the Act. It is a beneficial piece of legislation for the purpose of granting benefit to certain categories of employees working in establishment as defined

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under the Act. Provisions are contained in the Act vide Sections 26, 27 and 28 for raising of claims pertaining to disputes that arise in the course of employment. Under Section 28 a claim can be filed by the workman concerned arising out of deduction for wages or delay in payment of wages and seek penalty and compensation on such count. Admittedly in this case after the Award was passed and the wages payable to the workman in accordance with the Award was not paid, he raised the claim under Section 28 and aggrieved by the order passed, appeal was preferred under Section 28(7). Section 28(7) contemplates a provision for appeal against an order passed under sub section (1) of Section 28 in accordance to the manner prescribed and the manner for filing of the appeal is prescribed in the Bihar Shops & Establishment Rules, 1955 and under Rule 24 it is contemplated that an appeal under sub section (7) of Section 28 shall be preferred within 30 days of the date on which the order is passed. It is because of this provision that the learned Writ Court has held that the appeal filed beyond the period of 30 days was not maintainable and as under the provisions of the Shop Act there is no provision for condonation of delay and as Section 5 of the Limitation Act is not applicable to an appellate proceeding, therefore, the appeal was not maintainable. In our

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considered view this finding of the learned Writ Court was not correct.

Section 29 of the Limitation Act, 1963 and sub section (2) thereof provides that where any special or local law prescribes a period of limitation for filing of a suit, appeal or application which is different from the period prescribed in the schedule to the Limitation Act then the provisions contained from sub section (4) to Section 24 (inclusive) shall apply to such special law until and unless the applicability of the provisions from sub section (4) to Section 24 are not expressly excluded by such special or local law. For the sake of convenience sub section (2) of Section 29 is reproduced hereunder which reads as under:-

> "29(2). Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 3 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law."

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The aforesaid provision of the Limitation Act has been considered by the Hon'ble Supreme Court in the case of **Mukri Gopalan Vs. Cheppilat Puthanpurayil Aboobacker- (1995) 5 SCC 5** and it has been held that if the conditions stipulated in Section 29(2) of the Limitation Act are made out in a particular case under a special law then the consequence contemplated under Section 29 (2) would apply.

After taking note of the provisions of sub section (2) of Section 29, Hon'ble Supreme Court holds that the machinery of the provisions contained from Section 24 (4) of the Limitation Act would apply to a case if the following two requirements are satisfied :-

(i) There must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application.

(ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the Schedule to the Limitation Act."

It is held by the Supreme Court in Paragraph 9 that if the aforesaid two requirements are satisfied then the provisions of Section 5 of the Limitation Act would apply to

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such appeals in the light of Section 29 (2) of the Limitation Act. Thereafter the provisions of Section 5 is taken note of and after considering various provisions it has been held that until and unless applicability of the provisions of Section 5 is not expressly excluded, Section 5 would become applicable in such case. The matter has been crystallized by the Supreme Court in the following manner:-

> "It has to be kept in view that Section 29(2) gets attracted for computing the period of limitation for any suit, appeal or application to be filed before authorities under special or local law if the conditions laid down in the said provision are satisfied and once they get satisfied the provisions contained in Sections 4 to 24 shall apply to such proceedings meaning thereby the procedural scheme contemplated by these sections of the Limitation Act would get telescoped into such provisions of special or local law. It amounts to a legislative shorthand. Consequently, even this contention of Shri Nariman cannot be countenanced."

In our considered view, in this case if the provisions of Rule 24 of the Bihar Shops & Establishment Rules, 1955 are taken note of, it prescribe a period of limitation i.e. 30 days for preferring an appeal and, therefore, Condition

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No. 1, as laid down by the Supreme Court in the case of Mukri Gopalan (supra), is fulfilled. The period of limitation prescribed is also different from the period prescribed for filing of an appeal under the Limitation Act and, therefore, sub section (2) is also attracted and thereafter there is nothing in the wording of Rule 24(4) to say that the provisions of Section 4 to 24 of the Limitation Act are expressly excluded from their application under the Shop Act or that these provisions will not apply.

That being the position, we have no hesitation in holding that the learned Writ Court in recording a finding that the provisions of Section 5 of the Limitation Act would not apply has committed an error. It is a case where by virtue of the provisions of Section 29(2) of the Limitation Act the provisions of Section 5 of the Limitation Act would apply to the period provided under the Shop Act.

At this stage we may note that the law laid down in the case of Mukri Gopalan (supra) has been approved by the Supreme Court again after consideration in the case of Syed Zalil Akhtar Vs. Zila Sahkari Krishi Avam Gramin Vikas Bank Mydt.- (2016) 12 SCC 365 and a contrary view taken in the case of **Noharlal Verma Vs. District Cooperative Central Bank Ltd.- (2008) 14 SCC 445** is held to be no more good law.

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In view of the above, L.P.A. No. 583 of 2011 filed by the workman is allowed. The order passed by the learned Writ Court is quashed. The order passed by the Appellate Authority is restored and it is directed that all benefit accruing to the workman by virtue of the order passed by the Appellate Tribunal be granted to him if not already done within a period of 60 days from the date of receipt of a certified copy of this order. Vide interim order passed in these proceedings on 03.10.2017 we had directed the employer to deposit certain amount before the Registrar General of this Court. The amount so deposited be disbursed to the appellant along with amount if any deposited by virtue of the earlier interim orders passed in this case. The entire amount deposited by the employer shall be disbursed to the workman herein by the Registrar General. After receipt of the aforesaid amount in case any further amount is payable to the workman, as quantified by the appellate order, he can file an application before the Statutory Authority under the Bihar Shops & Establishment Act and we direct the statutory authority under the Bihar Shops & Establishment Act to execute and make payment of the entire amount payable to the workman by virtue of the Awards and the orders passed.

Even though during the course of hearing learned

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counsel for the workman vehemently argued for modifying the order of the Labour Court and the Tribunal in the matter of payment of penalty and compensation but in the facts and circumstances of the case, we find no reason to make any modification to the order passed by the said authorities.

Accordingly, the appeal filed by the workman i.e. L.P.A. No. 583 of 2011 stands allowed to the extent indicated hereinabove and L.P.A. No. 606 of 2011 filed by the management stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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