

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.663 of 2015

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Satendra Kumar son of Shri Harihar Prasad, resident of Mohalla- Gufapar
Dhaneshwa Ghat, P.O. and P.S.- Biharsharif, District- Nalanda.

.... Petitioner

Versus

1. The State of Bihar
2. The District Collector-cum- District Magistrate, Nalanda, District- Nalanda.
3. The Additional Collector-cum- the Additional District Magistrate, Nalanda.
4. The Sub-divisional Judicial Magistrate (SDJM), Biharsharif, Nalanda, District- Nalanda.
5. The Labour Enforcement Officer, Biharsharif, District- Nalanda.
6. The Secretary, Magadh Homeopathic Medical College and Hospital, Biharsharif, Nalanda.
7. The Principal, Magadh Homeopathic Medical College and Hospital, Biharsharif, Nalanda.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binit Kumar, Advocate
For State : Mr. Arbind Kumar, AC to GP-23
For Respondent Nos. 6 & 7 : Mr. Rjani Kant Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 18-03-2017

Heard Mr. Binit Kumar, learned counsel for the
petitioner and Mr. Madhav Prasad Yadav, learned Government
Pleader 23 for the State.

2. The claim of the petitioner filed under the provisions of Minimum Wages Act, 1948 (for short 'the Act') having being allowed by the Authority vide order dated 19.06.2013 under Section 20(3)(ii) of the Act, has been reversed by the Appellate Authority vide order dated 26.05.2014 in Minimum



Wages Appeal Case No. 1 of 2013-14 preferred by the private respondent nos. 6 and 7. Hence this writ application has been filed challenging the aforesaid order dated 26.05.2014.

3. The facts of the case, in brief, are that the petitioner was employed as dresser in Magadh Homeopathic Medical College and Hospital, Biharsharif, Nalanda (for short 'the College'). The College is a private institution running under its Governing Body under the control of Central Council of Homeopathic and its acts and regulations. The College put him under suspension on 11.08.2010 on account of his misconduct and misbehaviour in the college premises with other employees as well as college administration. Thereafter, a show-cause was issued against him and a departmental proceeding was also initiated. The reply of the show-cause was found unsatisfactory and, as a consequence thereof, the governing body terminated him from service with effect from 08.01.2011.

4. Thereafter, the petitioner raised a claim in respect of payment of less than the minimum rates of wages paid to him during the period of suspension.

5. Vide order dated 19.06.2013, the Authority under the Act, i.e. the Sub-Divisional Magistrate, Biharsharif, Nalanda after hearing the parties in Minimum Wages Case No. 2 of



2011-12, directed the respondent college to pay Rs.23556/- as wages due to the petitioner with ten times compensation amounting to Rs.2,35,560.00/- till 23.09.2013.

6. Being aggrieved by the aforesaid order dated 19.06.2013, the College challenged the same in appeal before the Appellate Authority, who vide order dated 26.05.2014 passed in Minimum Wages Appeal Case No. 1 of 2013-14 set aside the order dated 19.06.2013 passed by Appellate Authority. Being aggrieved by the aforesaid order dated 26.05.2014, the instant writ application has been filed by the petitioner.

7. Mr. Binit Kumar, learned Advocate for the petitioners raised the following points for consideration :-

- (i) The petitioner being a non-teaching employee of the college was entitled to be paid minimum wages prescribed under the Act.
- (ii) The College being private hospital apart from imparting education is covered in part 1 of the schedule under the Act.
- (iii) Between the period 11.08.2010 and 08.01.2011 while being employed in the college on the post of dresser, the petitioner was being paid a sum of Rs.2035/- (two thousand thirty five only) per month, which was less than the admissible minimum wages



fixed by the State of Bihar for skilled labours.

- (iv) There was no illegality in the order passed by the Authority whereby the less than the minimum rates of wages with ten times compensation was allowed to be paid to the petitioner.
- (v) The order passed by the Appellate Authority is erroneous both on facts and in law.

8. Mr. Rajani Kant Pathak, learned Advocate for the respondent nos. 6 and 7 raised the following points for consideration :-

- (i) The order passed by the Authority under the Act was completely erroneous and hence the same was rightly set aside by the Appellate Authority.
- (ii) The cause of action, if any, had arisen on 11.08.2010, the date on which the petitioner was suspended and continued till 08.01.2011, the date on which he was terminated, but the claim application was filed beyond the stipulated period of six months as provided under the first proviso to Section 20(2) of the Act, and hence the same was not maintainable.
- (iii) There was neither any application before the Authority as to why the claim was filed



beyond six months nor the Authority recorded his finding that he was satisfied with the cause of delay.

- (iv) The Authority overlooked the contention of the college that the petitioner was already paid Rs.20,000/- as advance and had returned only Rs.7000/- out of the said amount.
- (v) The Authority failed to make any distinction between employment in private hospitals, nursing houses and clinics and a private homeopathic medical college and hospital.
- (vi) The Authority also failed to appreciate that the petitioner was suspended by the college pending inquiry into charges of misconduct against him and hence there was no applicability to the provisions of the Act during the period of suspension.

9. Mr. Arbind Kumar, learned Assistant Counsel to Government Pleader No. 23 appearing for the State submitted that the College does not come within the category of private hospital, nursing home and clinics but it is an educational institution, which is not listed under the schedule of the Act. He submitted that the petitioner was being paid regular salary and he never filed any complaint against the institution and after the disciplinary action



was taken against him, he filed claim under the Act, which was not maintainable.

10. I have heard learned counsel for the parties and perused the record.

11. I find substance in the arguments advanced by the learned counsel for the respondent nos. 6 and 7.

12. In the opinion of this Court, it is perfectly legal to suspend an employee in an educational institution as a form of discipline in case of charge of misconduct. The order of suspension may take many forms. Where any workman is suspended by the employer pending inquiry into charges of misconduct against him, the employer would be fully justified in making payment to such workman subsistence allowance.

13. It would be evident from the record that in the present case, the salary of the petitioner was higher than the minimum wages fixed by the State Government in respect of skilled labour. It was Rs.151/- (one hundred fifty one) per day whereas admitted case of the petitioner is that he was being paid fifty per cent of salary during the period of suspension amounting to Rs.2035/- (two thousand thirty five only). Thus, it would be evident that prior to suspension salary of the petitioner was Rs.4070/- (four thousand seventy) per month, which was certainly



more than the minimum wages fixed by the State.

14. Under the circumstances mentioned above, if any dispute had arisen regarding the subsistence allowance being paid to the petitioner, he may have referred the dispute to the Labour Court constituted under the Industrial Disputes Act, 1947 within the local limits of whose Jurisdiction the College situated and the Labour Court after giving the parties an opportunity of being heard would have decided the dispute, but such a dispute was certainly beyond the Jurisdiction of the Authority under the Act.

15. I am also of the opinion that the suspension allowance is to be decided by the terms of employment and not in terms of the Act.

16. At this stage, it would be pertinent to note that from the materials available on record, it would be evident that the petitioner was charged for his alleged act of misbehaviour with the employees and authorities of the College. He had abused them in presence of the patients, undergoing treatment. The charge levelled against him being proved culminated in his dismissal from service. There is no averment that the petitioner ever raised any dispute regarding his termination from service. Under such circumstance, even equity is not in favour of the petitioner.

17. Furthermore, from the record, it would be



evident that the claim case was entertained by the Authority pursuant to a report dated 16.08.2012 submitted by the Labour Superintendent. Admittedly, the claim relates to the period intervening between 12.08.2010 and 08.01.2011. Thus, there is no doubt that the claim of the petitioner was filed beyond the stipulated period of six months as provided in Section 20(2) of the Act. Learned counsel for the respondent nos. 6 and 7 has rightly submitted that neither the petitioner explained any plausible reason for the delay caused in filing the claim nor the Authority recorded his satisfaction that there was sufficient cause for not making the application within such period.

18. Apparently, the Authority prescribed under the Act entertained the claim of the petitioner without looking into the first and second proviso to sub-section (2) of Section 20 of the Act.

19. I further find that the Authority while deciding the claim of the petitioner completely overlooked the admitted fact that the petitioner had already received Rs.20,000/- (twenty thousand) as advance from the college out of which he had returned only Rs.7000/- (seven thousand).

20. I also find that without assigning any justifiable reason the Authority allowed the maximum compensation permissible under the Act to be paid to the petitioner. In the



background of the facts noted above, such an order cannot be sustained in law, as it would amount to rewarding a workman, who indulged in act of indiscipline and misbehaviour in the college.

21. In view of the discussion made above, I do not find any merit in the present application.

22. Accordingly, it is dismissed.

23. However, the parties shall bear their own costs.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.03.2017
Transmission Date	NA

