IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1437 of 2015
IN
Civil Writ Jurisdiction Case No. 18554 of 2010

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1. M/s Pradip Lamp Works, Jay Krishna Road, , P.S.- Chowk, Patna City, District-Patna, through its Partner Shri Chandra Krishna Rohatgi.

.... Appellant/s

Versus

1. The State of Bihar, through the Commissioner-cum-Secretary, Department of Labour, Employment & Training, Government of Bihar, New Secretariat, Patna.
2. The Commissioner-cum-Secretary, Department of Labour and Employment, Government of Bihar, New Secretariat, Patna
3. The Labour Commissioner, Labour Department, Government of Bihar, New Secretariat, Bihar.
4. The Deputy Labour Commissioner, Government of Bihar, Labour Building, Opp. Vidyut Bhavan, Bailey Road, Patna.
5. Pradip Lamp Karmachari Sangh, Kali Asthan, Patna City, through its President.

.... Respondent/s

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Appearance :
For the Appellant/s : Mr. Shri Prakash Tiwari
Mr Radha Mohan Pandey
For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 13-01-2017

Heard counsel for the appellant.

The delay of five days in filing the appeal is condoned for the reasons indicated in I.A. No.6340 of 2015. The I.A. is allowed.

The matter is also taken up on the merits as well since the Court has privilege of hearing the counsel for the appellant extensively.

The appellant, which is a registered partnership firm, has had luxury of litigating for the last 40 years and warding off the liability to pay bonus under the Payment of Bonus Act, 1965 to its employees for the financial year 1976- 77 to 1983-84. There have been one to many rounds of litigations launched by the appellant by repeatedly moving the High Court on one ground or pretext or the other. Even the Court has been indulgent towards him giving the window of consideration on its plea of exemption of payment of bonus on the ground that it will be in the public interest to exempt the firm from paying the bonus to its employees since the firm is in a financial distress.

The latest round of litigation emerges from an order or direction issued in an earlier writ application, which was CWJC No.615 of 2000 where the High Court directed the authorities under the Payment of Bonus Act to consider the application of the petitioner for exemption after hearing the parties, who have a vested statutory right in their favour. The order of rejection passed by the Commissioner- cum- Secretary, Labour, Employment and Training, Government of Bihar, dated 17.10.2005 became the subject matter of challenge in CWJC No.18554 of 2010.

In the said writ application i.e. CWJC No.18554 of 2010 petitioner sought quashing of the order dated 17.10.2005 and

9.7.2009, which was the demand since the respondent authorities decided to reject its claim for exemption in public interest.

The writ application was heard extensively on all the facets of submissions, which were made at the bar and has been considered extensively. The learned Single Judge has taken into consideration not only the statutory provisions emerging from the Payment of Bonus Act, 1965 but plethora of Supreme Court judgments on the various aspects of the liability, exemption etc. etc. The learned Single Judge has further taken pains to trace the history of the litigation and finally came to a conclusive opinion that the writ application was fit to be dismissed on various aspects. The concluding part, which sums up the situation, is paragraphs 18 and 19 of the said decision which are reproduced herein below.

> ***"18. From the reading of Section 36 of the Act it further appears that if an establishment or class of establishments makes an application seeking exemption from the application of the provisions of the Act, then in that case, if the appropriate Government/ competent authority taking into consideration the financial position and all other relevant circumstances comes to a conclusion that in the public interest the provisions of the Act is not required to be applied, then in that case a notification is required to be issued in the official gazette granting exemption to such establishment or class of establishment for a specified period indicated in that official gazette. So far the present case is concerned, if the financial position of the petitioner- firm had deteriorated and it was not in a position to pay the statutory bonus to its employees, then the petitioner- firm was required to***

make an application before the appropriate Government/ competent authority for grant of such exemption during the period in question. However, the petitioner has not brought any document on record to show that any application was filed by the petitioner- firm during any of the accounting year when statutory bonus became payable to its employees or prior to commencement of any accounting year during the periods in question. It appears that when the State authorities took punitive action against the petitioner- firm for non-payment of statutory bonus to its employees, then suddenly it woke up from its deep slumber and approached this Court for the first time in C.W.J.C. No. 3953 of 1987 seeking a direction to the respondents to grant exemption to the petitioner-firm from liability to pay bonus to its employees. Aforesaid C.W.J.C. No. 3953 of 1987 was disposed of by the order dated 07.09.1987 (Annexure-10) to the writ petition. From the reading of Annexure-10 also it does not appear that the petitioner had challenged any order passed by the competent authority/ appropriate Government refusing to grant exemption in terms of Section 36 of the Act. Since the petitioner-firm did not approach the competent authority during the period in question, and/or before the close of each accounting year or before the commencement of each accounting year, there was/is absolutely no question for consideration of its claim for grant of such exemption in terms of Section 36 of the Act. Obviously, the claim of the petitioner has become stale one. It was obliged to pay bonus to its employee within eight months from the date of close of every accounting year during 1976 to 1984 i.e. the period in question, but that has not been done by the petitioner. In absence of the claim raised on behalf of the petitioner during the period in question, the impugned order passed by the respondent no.2 cannot be legally faulted. Furthermore, the writ petition suffers from delay and laches on the part of the petitioner. Impugned order was passed on 17.10.2005 (Annexure-1) and the present writ petition was filed on

9.11.2010. No explanation has at all been furnished by the petitioner for the delay of more than 5 years for approaching this Court. This is also fatal for the petitioner's case.

19. The present writ petition is liable to be rejected yet on another ground of constructive res judicata, since while passing the order dated 21.07.1998 in the case of the present petitioner vide C.W.J.C. No. 2867 of 1989 [1998 (3) PLJR 513] it was directed by a Bench of this Court that if on remand the petitioner is held to be not entitled to exemption in terms of Section 36 of the Act, then the petitioner will have to pay bonus along with interest at the rate of 10%. The operative part of the said observation has been reproduced in paragraph-6 of the present judgment. In above view of the matter, since claim of the petitioner was rejected on remand, it ought to have paid bonus to its employees along with interest at the rate of 10%, but that has not been done by it. Therefore, the whole claim of the petitioner is hit by the principles of constructive res- judicata."

The submissions, which have been made at the bar on behalf of the appellant, are nothing but repeat of the submissions, which had already been made before the learned Single Judge and the learned Single Judge has given the answers in the words, which have been reproduced in the earlier part of the order. In totality, therefore, the Court does not find any aberration in the rational, reasoning or application of law to the issue of the prayer of the appellant for exemption. The appellant has had a free run for 40 years and time has come when curtains must be drawn to such litigation and the obligation and liability created upon the appellant must be enforced strictly now so that the workmen or the employees get their rightful legal dues to which they are entitled to in terms of the statute.

The appeal has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.1.2017
Transmission Date	NA