IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9906 of 1993

==

Bimal Chandra Mishra son of late Bhagirath Mishra, resident of village- Bhual Khutwania, P.S. Kuchaikot, District- Gopalganj.

.... Petitioner

Versus

1. The State of Bihar
2. The Additional Collector, Gopalganj
3. The Anchal Adhikari, Kuchaikot, District- Gopalganj.
4. Labour Inspector, Kuchaikot.
5. Sona Devi wife of Mahatam Gond, resident of village- Bhual Khutwania, P.s.- Kuchaikot, District- Gopalganj.

.... Respondents

==

Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay, Advocate
Mr. Ajay Nandan Sahay, Advocate
Mr. Randhir Kumar NO. 1, Advocate

For the Respondent no.5 : Mr. Chandra Mohan Jha, Advocate

==

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-02-2018

Heard Mr. Ajay Nandan Sahay, learned Advocate for the petitioner and Mr. Chandra Mohan Jha, learned Advocate for respondent no. 5.

2. This writ petition was initially filed by one Bhagirath Mishra, who died on 15.08.1999 and, after his death, his son Bimal Chandra Mishra has been substituted in his place.

3. The petitioner is aggrieved by the order dated 29.06.1993 passed by the Additional Collector, Gopalganj, being

the Appellate Authority under the Minimum Wages Act, 1948 (for short 'the Act') in Minimum Wages Case No. 3/93-94. By the said order, as the petitioner failed to deposit 50 per cent of the claimed amount, as directed by the Appellate Authority, the appeal preferred against the order dated 16.04.1993 passed in Minimum Wages Case No. 24/92-93/1/93-94 by the Circle Officer, Kuchaikot, being the Authority under the Act whereby he had awarded Rs.6480/- to respondent no. 5 by way of balance of wages and the compensation has been dismissed.

4. The facts of the case, in brief, are that on the application filed by the Labour Inspector under Section 20(2) of the Act complaining payment of less wages by the petitioner, who was the employer to the respondent no. 5, an employee, than the minimum wages fixed under the Act, the Circle Officer, Kuchaikot-cum-Authority under the Act initiated a proceeding against the petitioner and issued notice to him to submit his explanation on the said complain. The Authority, after hearing the parties, vide order dated 16.04.1993 passed in Minimum Wages Case No. 24/92-93/1/93-94 directed the petitioner to make payment of Rs.6480/- to respondent no. 5 by way of balance of wages and compensation thereof.

5. Being aggrieved by the said order, the petitioner

preferred an appeal before the Additional Collector, Gopalganj-cum-Appellate Authority.

6. The Appellate Authority, after hearing the parties, vide order dated 16.06.1993 directed the petitioner to deposit 50 per cent of the amount of claim i.e. Rs.2160/- so determined and adjourned the matter to 23.06.1993. Since the petitioner failed to deposit the amount, as directed by the Appellate Authority, vide order dated 16.06.1993 on 23.06.1993, the appeal was again adjourned to 29.06.1993 for compliance of the order dated 16.06.1993. Since the petitioner failed to comply with the direction given by the Appellate Authority, vide order dated 16.06.1993, the Appellate Authority dismissed the appeal, vide order dated 29.06.1993.

7. Mr. Ajay Nandan Sahay, learned Advocate appearing for the petitioner assailing the impugned order dated 29.06.1993 passed by the Appellate Authority contended that the same is bad in law. He submitted that the claim petition filed by the Labour Inspector under Section 20(2) was for less payment of wages and not for non-payment of wages and, therefore, such an order could not have been passed under sub-section (6) of Section 20 of the Act. He submitted that under the Act, the power to issue direction to the employer to deposit 50 per cent of the claimed amount is

vested in the Authority and not in the Appellate Authority and, hence, such direction issued by the Appellate Authority in terms of sub-section (5-A) of Section 20 of the Act is without jurisdiction.

8. Per contra, Mr. Chandra Mohan Jha, learned Advocate appearing for private respondent no. 5 submitted that the order impugned has rightly been passed by the Appellate Authority after appreciating the relevant provisions of law prescribed under the Act. He submitted that in 1988, by Bihar Amendment Act 9 of 1988, sub-section (5-A) was inserted, which prescribes that the Authority may direct the employer to deposit at least 50 per cent of the claimed amount with the Authority including the amount of compensation. He submitted that when the amount claimed was determined under Section 20 (2) of the Act by the Authority, the Appellate Authority was legally competent to direct the employer to deposit 50 per cent of the amount so determined.

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

10 I find substance in the submission made by the learned Advocate appearing for private respondent no. 5.

11. The Act was passed in 1948 and it came into force on 15th March, 1948. According to its preamble, it is an act to provide for fixing minimum rates of wages in certain employments. The

employments are those, which are included in the Schedule and are referred to as 'Scheduled Employments'.

12. The object of the Act is to prevent exploitation of the workers and for that purpose, its aim is fixation of minimum wages, which the employer must pay through the Act. The philosophy of the Act and its significance in the context of conditions in India has been explained by the Supreme Court in **U. Unichoyi And Others vs The State Of Kerala [AIR 1962 SC 12]** as under :-

> "what the Act purports to achieve is to prevent exploitation of labour and for that purpose empowers the appropriate Government to take steps to prescribe minimum rates of wages in the scheduled industries. In an under-developed country which faces the problem of unemployment on a very large scale it is not unlikely that labour may offer to work even on starvation wages. The policy of the Act is to prevent the employment of such sweated labour in the interest of general public and so in prescribing the minimum wage rates, the capacity of the employer need not be considered. What is being prescribed is minimum wage rates which a welfare state assumes every employer must pay before he employs labour."

13. The term 'employee' and 'employer' have been defined under Section 2(i) and 2(e) of the Act respectively. The term 'scheduled employment' has been defined under Section 2(g) of the Act, which reads as under :-

> "(g) ''scheduled employment'' means an employment specified in the Schedule, or any process or branch of work forming part of such employment."

14. The Schedule is divided into two parts, namely, Part-1 and Part-II. Part-II relates to employment in agriculture. It was visualized that it would be necessary to fix minimum wages in course of time and, thus, powers were given to appropriate Government to add employments to the schedule by following the procedure laid down in Section 21 of the Act as a result of which, the State Government and the Central Government have made several additions to the Schedule and it differs from State to State.

15. So far as the present case is concerned, the case of respondent no. 5 was that she was employed as a labour in the field of the petitioner for doing the work relating to agriculture and was paid less than the minimum wages for certain period of time.

16. It is not the case of the petitioner that the employment in agriculture does not come in the entries made in Part-II of the 'scheduled employment'. The only grievance of the petitioner is

that the Appellate Authority was not competent to pass order directing him to deposit 50 per cent of the claimed amount.

17. At this stage, it would be relevant to take note of Section 20 of the Act, which is extracted hereunder :-

> "**20 Claims**. —(1) The appropriate Government may, by notification in the Official Gazette, appoint [any Commissioner for Workmen's Compensation or any officer of the Central Government exercising functions as a Labour Commissioner for any region, or any officer of the State Government not below the rank of Labour Commissioner or any] other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of payment of less than the minimum rates of wages [or in respect of the payment of remuneration for days of rest or for work done on such days under clause (b) or clause (c) of sub-section (1) of section 13 or of wages at the overtime rate under section 14,] to employees employed or paid in that area.
>
> (2) [Where an employee has any claim of the nature referred to in sub-section (1)], the employee himself, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf, or any Inspector, or any person acting with the permission of the

Authority appointed under sub-section (1), may apply to such Authority for a direction under sub-section (3):

Provided that every such application shall be presented within six months from the date on which the minimum wages [or other amount] became payable:

Provided further that any application may be admitted after the said period of six months when the applicant satisfies the Authority that he had sufficient cause for not making the application within such period.

[(3) When any application under sub-section (2) is entertained, the Authority shall hear the applicant and the employer, or give them an opportunity of being heard, and after such further inquiry, if any, as it may consider necessary, may, without prejudice to any other penalty to which the employer may be liable under this Act, direct—

(i) in the case of a claim arising out of payment of less than the minimum rates of wages, the payment to the employee of the amount by which the minimum wages payable to him exceed the amount actually paid, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount of such excess;

(ii) in any other case, the payment of the amount due to the employee, together with the payment of such compensation as the Authority may think fit, not exceeding ten rupees, and the Authority may direct payment of such compensation in cases where the excess or the amount due is paid by the employer to the employee before the disposal of the application.]

(4) If the authority hearing any application under this section is satisfied that it was either malicious or vexatious, it may direct that a penalty not exceeding fifty rupees be paid to the employer by the person presenting the application.

(5) Any amount directed to be paid under this section may be recovered—

(a) if the Authority is a Magistrate, by the Authority as if it were a fine imposed by the Authority as a Magistrate, or

(b) if the Authority is not a Magistrate, by any Magistrate to whom the Authority makes application in this behalf, as if it were a fine imposed by such Magistrate.

(6) Every direction of the Authority under this section shall be final.

(7) Every Authority appointed under sub-section (1) shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such Authority shall be deemed to be a

> Civil Court for all the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898 (5 of 1898)."

18. It would be manifest from perusal of sub-section (1) of Section 20 of the Act that it confers power to the appropriate Government to appoint any authority of the Central Government or the State Government to hear and decide a claim arising out of payment of less amount, i.e. the minimum rates of wages by the employers. Sub-section (2) provides that where an employee has any claim of payment on less than the minimum rates of wages, he may apply to the Authority for a direction in accordance with law under the provisions of the Act. Sub-section (3) confers power upon the Authority to hear the applicant and the employer and in case of claim arising out of payment of less than the minimum rates of wages direct the employer to make payment of claimed amount with appropriate compensation. Sub-section (5) confers power upon the Authority to recover the amount, as if it directed to be paid under Section 20 and as if it were a fine.

19. By virtue of State Amendments, by Bihar Act 5 of 1983, sub-section (6) was substituted by following sub-section :-

> "(6) Any employer or worker aggrieved by any direction made under sub-section (3) by an authority appointed under sub-section (1), on an

> application made under sub-section (2), may, within 30 days from the date of the direction, prefer an appeal in such manner and to such Authority as the Sate Government may, by notification, specify in this behalf, and that Authority may, after hearing the appeal, confirm, modify or reverse the direction appealed against and no further appeal shall lie against the order made by such Authority in any Court of law:"

20. In its application to the State of Bihar, in Section 20, in 1988, by Bihar Act of 9 of 1988, which came into force with effect from 19.02.1988, the following sub-section (5-A) was inserted :-

> "(5-A) At the time of hearing, the Authority may direct the employers to deposit at least 50 per cent of the claimed amount with the Authority excluding the amount of compensation. The said amount may be paid to the claimant which shall be adjusted subsequently with the decreed amount."

21. From a perusal of the aforesaid sub-section 5-A of the Act in Section 20, it would be manifest that the Authority under the Act may direct the employer at the time of hearing to deposit at least 50 per cent of the claimed amount before determining the claim. It is true that the substituted sub-section (6) of Section 20 does not stipulate that the Appellate Authority may direct the

employer to deposit 50 per cent of the claimed amount. However, the same cannot be interpreted in the way the petitioner is trying to interpret it keeping in mind the purport of the Act, as explained by the Supreme Court in **U. Unichoyi & Others vs. The State of Kerala** (supra) and the well-established principle in law that the appeal is continuation of the original proceeding. If the Authority has the jurisdiction to direct the employer to deposit 50 per cent of the claimed amount, the Appellate Authority can certainly issue such direction after determination of the decreed amount.

22. In that view of the matter, I do not find any illegality in the impugned order 29.06.1993 passed by the Additional Collector, Gopalganj, being the Appellate Authority under the Act, in Minimum Wages Case No. 3/93-94.

23. The writ petition, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Kanchan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2018
Transmission Date	NA