

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9692 of 2014

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1. Dr. Ajit N. Gunjkar, Managing Director, Ar. Ex Laboratories, Pvt. Ltd., 21 Sitla Devi Temple Road, Mahim, Mumbai, through Viveka Nand Regional Sales, Manager.

.... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner Labour- Cum- Appellate Authority under Minimum Wages Act, New Secretariat, Patna.
2. Assistant Commissioner of Labour- Cum- Authority under M.W.Act Bettiah, East Champaran.
3. Lokesh Kumar Son of Late Paras Nath C/o Bansidhar Prasad, Engineer, Durga Bagh, P.O and P.S- Bettiah, District- Bettiah (West Champaran)
4. District Certificate Officer, Bettiah, West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajit Kumar Sinha, Adv.
For the State : Mr. Arnit Bhushan, A.C. to GP-17
For the Respondent No.3 : Mr. Umesh Tiwari, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-02-2018

Heard learned counsel for the petitioner, learned counsel
for the State and learned counsel for the respondent no.3.

2. The petitioner in this writ petition prays for quashing of the order dated 18.03.2014 passed by the Commissioner of Labour-cum-Appellate Authority in M.W. Appeal No. 03 of 2013 (Annexure-1) whereby and whereunder he has dismissed the appeal on the sole ground as barred by limitation and further prays for quashing of the order dated 27.07.2013 passed by the Assistant Commissioner of Labour-cum-Authority under the Minimum Wages Act (for short 'M.W.Act') in M.W. Case No. 18 of 2012 (Annexure-1/1) and



subsequent proceeding and notice by the Certificate Officer, Bettiah in Certificate Case No. 7/13-14 (Annexure-1/2).

3. The petitioner is the Managing Director of M/s Ar-Ex Laboratories Pvt. Limited, a company registered under the Companies Act, having its registered office at Mumbai and doing its business in medicine.

4. The case of the petitioner, in short, is that the respondent no.3 was appointed as a Sales Representative for promoting the sale of the company by visiting doctors and wholesale medicine shops in the territory assigned for his work. He was transferred from Bettiah to Jamshedpur, vide letter dated 19.06.2011, in exigency of work. However, he proceeded on leave, which was granted by the management. Even then he neither reported for duty either at Jamshedpur or at Bettiah. When he did not resume duty, the management, vide their letter dated 08.08.2011, again reminded him to join duty at Jamshedpur by 20th August, 2011 failing which it was stated that the management will deem that he is not willing to work with the Company. However, the respondent no.3 never reported for duty at any place and left the service of the Company. By way of good gesture, the petitioner, vide his letter dated 08.08.2011, sent due salary of the respondent no.3 through registered post for the month of June and July 2011 over and above the expenses for the month of



May, 2011, vide cheque no. 167219 dated 06.08.2011. In the meantime, the respondent no.3 filed a complaint before the Assistant Commissioner of Labour-cum-Authority under the M.W. Act at Bettiah claiming therein expenses for the month of March, 2011 to July, 2011 and salary for the month of May, 2011 to February, 2012.

5. Though no notice was transmitted to the petitioner, when he came to know about pendency of the case, he appeared before the Authority through the authorized representative on 28.06.2013 and sought adjournment for filing show cause in the case. The prayer was allowed and next date was fixed on 26.07.2013. However, the case was not taken up on 26.07.2013 and, thereafter, final order was passed on 27.07.2013. The order dated 27.07.2013 passed in M.W. Case No.18 of 2012 was not communicated to the petitioner. Even without service of the order to the petitioner, which was passed behind his back, a certificate case bearing Certificate Case No. 7/13-14 was filed before the District Certificate Officer, Bettiah by the Authority for recovery of the amount awarded in favour of the respondent no.3. In the certificate case, a notice was received by the petitioner on 13.11.2013 from the office of the District Certificate Officer, Bettiah whereafter an application was filed for obtaining certified copy of the order, which was received on 25.11.2013 and an appeal was filed after contacting the lawyer at Patna on 03.12.2013



before the Commissioner of Labour-cum-Appellate Authority under the M.W. Act, which was numbered as M.W. Appeal No.03 of 2013. The Appellate Authority dismissed the appeal solely on the ground of limitation, vide impugned order dated 18.03.2014.

6. Assailing the impugned order dated 18.03.2014 passed by the Commissioner of Labour-cum-Appellate Authority and the order dated 27.07.2013 passed by the Assistant Commissioner of Labour-cum-Authority and the proceeding of Certificate Case No. 7/13-14 pending before the Certificate Officer, Bettiah, Mr. Ajit Kumar Sinha, learned Advocate for the petitioner submitted that the Authority including the Appellate Authority have committed gross illegality in deciding the case. He submitted that though the Assistant Commissioner of Labour-cum-Authority issued a notice, the same was never served to the petitioner. When the petitioner came to know about the notice, he appeared before the Authority on 28.06.2013 and filed a petition with a prayer to grant time to file show cause, which was allowed and the case was adjourned to 26.07.2013. However, the proceeding was not taken up on 26.07.2013 and final order was passed on 27.07.2013 by the Authority without affording any opportunity of hearing to the petitioner. He submitted that the order passed by the Authority was never communicated to the petitioner and when the petitioner received notice sent by the Certificate Officer



in Certificate Case No. 7/13-14, he immediately obtained the copy of the order passed by the Authority and filed appeal before the Appellate Authority, but the Appellate Authority dismissed the appeal merely on the ground of limitation without appreciating the fact that the limitation would have started from the date of knowledge and not from the date of order. He submitted that the order passed by the Authority is in the nature of an ex-parte order and the Appellate Authority ought to have set aside the same, but he also failed to apply his judicial mind and illegally dismissed the appeal.

7. Par contra, Mr. Arnit Bhushan, learned A.C. to G.P.-17 appearing for the State submitted that from perusal of the record it would be manifest that the claimant examined himself in support of his claim before the Authority whereas even after issuance of notice, reminder notice and several adjournments in the case on 30.11.2012, 28.12.2012, 30.01.2013, 15.03.2013, 11.04.2013 and 24.05.2013, the petitioner preferred to remain absent. Though the employer appeared through his advocate on 28.06.2013, but did not file show cause. Under the circumstances, the Assistant Commissioner of Labour-cum-Authority passed the award directing the employer to make payment of a sum of Rs.61,740/- as due wages and Rs.3,08,799/- as compensation to the claimant vide order dated 27.07.2013. He submitted that as the petitioner failed to make payment of the award



amount of the claimant after appearing in M.W. Case No.18 of 2012, he cannot claim that he had no knowledge of the case. Therefore, a certificate case for recovery of the award amount before the Certificate Officer, Bettiah was filed, which was registered as Certificate Case No. 7/13-14. He submitted that since the appeal was filed after a lapse of four months period from the date of order while the limitation period is only 30 days from the date of order as per Section 20(6)(k) of the M.W. Act, which could be extended at best for a maximum period of one month, the Appellate Authority rightly dismissed the appeal holding the same to be miserably barred by law of limitation.

8. Mr. Umesh Tiwari, learned counsel for the respondent no.3 adopted the submissions made by the learned counsel for the State. He submitted that the *quasi-judicial* orders were passed by the competent authority after due consideration of the case and, thus, the instant writ petition is not tenable and is fit to be dismissed.

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

10. The entire order-sheet of M.W. Case No.18 of 2012 has been annexed to the writ petition and marked as Annexure-5. A perusal of the same would show that the claim case was filed by the respondent no.3 in the court of Assistant Commissioner of Labour-



cum-Authority on 19.10.2012. After registering the case on 19.10.2012, the Authority directed for issuance of notice to the employer and adjourned the case to 28.12.2012, 30.01.2013, 15.03.2013, 11.04.2013, 24.05.2013 and 28.06.2013. The order-sheet of the aforesaid dates does not show that the notice was actually ever sent to the petitioner, as directed by the Authority, vide order dated 19.10.2012 and was ever served upon him. It is true that from the order dated 28.06.2013 it would appear that attendance was filed on behalf of the employer and the case was adjourned to 26.07.2013, but it is equally true that on 26.07.2013 the case was not taken up and final order in M.W. Case No.18 of 2012 was passed on the next day i.e. 27.07.2013, the date on which the case was not even fixed by the Authority. It does not appear from the record that the aforesaid order dated 27.07.2013 was ever communicated to the employer.

11. In a *quasi-judicial* proceeding giving of valid notice to the concerned person of the facts of the matter and nature of action proposed to be taken is a *sine qua non* of a fair hearing. The right to know about a proceeding is part of right to defend oneself. If the notice is not validly served, it would be presumed that he had no fair opportunity to defend himself. For want of service of notice, the principle of natural justice, which is the essence of fair adjudication has clearly been violated.



12. Firstly no notice was validly served to the employer in the proceeding by the Authority and when the employer came to know about the proceeding and appeared before the Authority, no opportunity of hearing was given to him. It would be manifest from the order-sheet that on 28th June, 2013 when for the first time the employer appeared through Advocate, the case was adjourned to 26.07.2013. However, the case was not taken up on 26.07.2013 rather a final order of award against the employer was passed on 27.07.2013 the date on which the case was not even fixed for hearing or order. The manner in which the Authority passed the order is highly illegal, arbitrary and unjust and has caused miscarriage of justice. In the opinion of this Court, such an order would be a nullity in the eyes of law. There is nothing on record to show that even the final award passed by the Authority was ever communicated to the petitioner. Under the circumstances, when the petitioner could come to know about the order passed by the Authority after service of notice in the certificate case and filed appeal against the aforesaid order passed by the Authority, the Appellate Authority ought to have applied his judicial mind and entertained the appeal on merit in view of the fact that the limitation would have started from the date of knowledge to the petitioner about the order passed by the Authority and not from the date of passing of the order when the order was not passed in



presence of the parties.

13. In view of the discussions made hereinabove, the impugned order dated 18.03.2014 passed by the Commissioner of Labour-cum-Appellate Authority in M.W. Appeal No. 3 of 2013, the order dated 27.07.2013 passed by the Assistant Commissioner of Labour-cum-Authority in M.W. Case No. 18 of 2012 and subsequent proceeding and notice by the Certificate Officer in Certificate Case No. 7/13-14 are hereby quashed. The matter is remanded back to the Assistant Commissioner of Labour-cum-Authority, Bettiah to decide the case afresh after giving an opportunity of hearing to the parties concerned preferably within three months from the date of receipt or production of a copy of the order.

14. With the aforesaid observations and direction, the writ petition stands allowed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	20-02-2018
Transmission Date	

