

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7440 of 2010

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Ram Ekbal Pathak S/o Late Kedar Nath Pathak R/o Vill.- Niyalipur, P.S.-
Simri, Distt.- Buxar

... .. Petitioner/s

Versus

1. The State of Bihar
2. District Magistrate-cum-Collector, Buxar
3. The Additional Collector, Buxar, Distt.- Buxar
4. Sub-Divisional Officer Dumraon, Buxar
5. Labour Enforcement Officer-cum-Inspector Minimum Wages, Simri, Buxar
6. Shahabad Dugdh Utpadan Sahkari Sangh Ltd. through its Managing Director
Vill.- Katira, P.O. - Katira, P.S.- Nawada Ara, Distt.- Bhojpur (Ara)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Senior Advocate
Mr. Prabhat Kumar Singh and Manisha Singh, Advocates
For the Respondent no.6 : Mr. Rajesh Prasad Chaudhary, Advocates
Mr. Shyama Kant Singh, Advocates
For the Respondent-State: Dr. Mankeshwar Tiwari, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 06-12-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. This writ petition has been filed by the petitioner for
setting aside the order dated 10.12.2009 passed in Minimum
Wages Appeal No.92 of 06-07/01/09-10 by the Additional
Collector, Buxar by which he has remanded the matter for passing
speaking order after examination of relevant documents and after



taking evidence of the materials witnesses. The petitioner has further prayed for issuance of a direction to the respondents to affirm the order of the Sub Divisional Officer, Dumraon in the Minimum Wages Case No.21/06-07 dated 17.07.2007 by which he has directed the respondent no.6 to pay a sum of Rs.1,73,680/- to the petitioner.

3. Mr. Ashok Kumar Singh, learned senior advocate appearing for the petitioner submitted that the Additional Collector, Buxar had no jurisdiction to remand back the matter to the Sub Divisional Officer for fresh consideration. He contended that without condoning the delay in filing the appeal, the appellate court could not have passed any order on the appeal preferred by respondent no.6. He further pleaded that the Act does not vest power to transfer the case under Section 20(3) of the Minimum Wages Act, 1943 (for short 'the Act') from one authority to another and, hence, the District Magistrate could not have transferred the case to the Additional Collector, who has passed the impugned order. He argued that the appeal against the order of the Sub Divisional Officer was filed after lapse of sixty days and, thus, the same was fit to be dismissed at the first instance.

4. On the other hand, learned counsel appearing for the respondent no.6 submitted that the writ petition has got no merit



and the same is fit to be dismissed. There is no infirmity in the order under challenge. From a reading of the order impugned, it would be clear that the matter had been remanded for passing speaking order after examination of relevant record and documents and after taking evidence of material witnesses. According to him, since adequate opportunities were not granted to the respondent no.6 before passing the impugned order, the Additional Collector remanded the matter back. He pleaded that before passing the order dated 17.07.2007, the Sub Divisional Officer, Buxar, had taken no steps for service of notice to the respondent no.6. It was also not verified as to whether the notice sent was ever served or not.

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

6. On perusal of the record, I find that on 07.03.2007, the Labour Enforcement Officer, Simri, Buxar had filed a claim against respondent no.6 wherein it was alleged that the petitioner Ram Ekbal Pathak was paid less than the minimum rates of wages by the respondent no.6 between the period December, 2001 and June, 2002. The said claim filed by the Labour Enforcement Officer was registered as Minimum Wages Case No.2 of 2006-07 before the Sub Divisional Officer, Dumraon on 07.03.2007. While



issuing notice, he has condoned the delay caused in filing the claim and, thereafter, proceeded with the matter.

7. The petitioner had filed an application before the Labour Enforcement Officer on 28.12.2006 claiming therein that as per direction of the respondent no.6 he had counted the number of cattle in several blocks for which admissible payment was not made to him.

8. Upon receipt of the application of the petitioner, the Labour Enforcement Officer gave a direction to the respondent no.6 for making payment of the differential amount. However, no action was taken, the claim was filed before the Sub Divisional Officer, Dumraon.

9. It would be relevant to note here that after proceeding with the case, the Sub Divisional Officer, vide order dated 17.07.2007 directed respondent no.6 to pay Rs.1,75,680/- to the petitioner

10. Being aggrieved by the said order, the respondent no.6 had filed an appeal before the District Magistrate, Buxar on 22.08.2008. The District Magistrate, Buxar referred the matter to the Additional Collector, Buxar, who, vide impugned order dated 10.12.2009, remanded the matter back to the Sub Divisional



Officer for passing speaking order after looking into the relevant documents and record and the evidence of independent witnesses.

11. Being aggrieved by the appellate order passed by the learned Additional Collector, the petitioner has preferred the present writ petition.

12. Keeping in mind the relevant provisions of the Act, when I look to the proceedings before the Sub Divisional Officer, Dumraon, I find that the very condonation of delay in filing the claim by the authorized officer was bad, as the same was made without assigning any reason.

13. The first proviso to sub-section (2) of Section 20 of the Act prescribes that every claim shall be presented within six months from the date on which the minimum wages or other amount became payable. The second proviso to the said sub-section provides 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.

14. Admittedly, in the present case, the claim for payment of lesser wages relates to the period intervening between December, 2001 to June, 2002, whereas the claim was filed by the applicant before the authorized officer after more than four years.



Though, the authorized officer was vested with the power to condone the delay caused in filing the claim, he could have done so only after recording his satisfaction that the applicant had sufficient cause for not making the application within the prescribed period of six months.

15. However, on going through the record, I find that while condoning the delay, the Sub Divisional Officer had simply recorded that the prayer to condone the delay is accepted. The said order reads as under:-

“आवेदक द्वारा दिया गया काल बाधित अवधि

को छान्त करने का अनुरोध स्वीकृत किया जाता है।”

16. From the reading of the said order, it does not appear what ground was taken by the applicant for not making the application within the prescribed period or what weighed in the mind of the authorized officer on the basis of which he thought it proper to condone the delay.

17. In that view of the matter, I set aside the order dated 07.03.2007 passed by the Sub Divisional Officer, Dumraon, Buxar in Minimum Wages Case No.21 of 06-07. I am also of the opinion that the claim of the petitioner would be heard afresh by the Sub Divisional Officer on merit only if the Sub Divisional



Officer is satisfied that the applicant had sufficient cause for not making the application within the prescribed period.

18. With these observations and directions, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2018
Transmission Date	NA

