

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11937 of 2017

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Md. Amjad, son of Late Md. Hasim, Resident of Mohalla- Gangjala, Islamia Chowk, Ward No.15, P.S. + District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Labour Resources, Government of Bihar, Patna.
2. The District Magistrate, Saharsa.
3. The Labour Commissioner, Department of Labour Resources, Government of Bihar, Patna.
4. The Assistant Commissioner-cum-Tribunal under Minimum Wages Act, 1948, Koshi Division, Saharsa.
5. Bijendra Kumar Jha, son of Nageshwar Jha, Resident of Mohalla- Gangjala Chowk, P.S. and District- Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Pramod Mishra, Advocate
For the State	:	Mr.Anil Kumar Singh – GP26
For the Private Respondent :		Md. Aslam Ansan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT

Date : 28-06-2019

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the private respondent.

In the present case, the petitioner is challenging the order dated 21.03.2017/23.03.2017 passed by the Appellate Tribunal by which the appeal filed by the present petitioner has been dismissed on the ground of barred by limitation.

From the records, it appears that the private respondent, namely, Bijendra Kumar Jha filed an application under the Minimum Wages Act wherein the private respondent has stated



that he was employed as Munshi at a salary of Rs.5,000/-per month. During the period 2006 to 2008, certain amount used to be deducted with a promise to make payment later on. Earlier, he was running a hotel, but after closure of the same, the petitioner opened the grocery shop where he was working as Munshi and as has been claimed that total dues was of Rs.1,20,000/-, out of that, Rs.40,000/- was paid and rest Rs.80,000/- has not been paid. Notice was served upon the petitioner. He filed a written statement and denied the relationship of master and servant, emphatically stated that he never worked with the petitioner and wrongly claiming salary due against the petitioner. The Assistant Labour Commissioner after considering the material on record condoned the delay and he has found that the private respondent is entitled to Rs.80,000/- and also awarded two times cost. Against that, the petitioner filed a recall application submitting that he could not cross-examine the witnesses under the wrong impression made prayer that he should be given a chance to cross-examine the witnesses, who were examined on behalf of private respondent so claiming that a proper adjudication has not been done; that petition remained pending for a long period, ultimately, vide order dated 23.01.2015 (Annexure-6), the Assistant Labour Commissioner did not find any substance to recall the earlier order, which he has



passed. Against that, the petitioner filed an appeal vide Appeal No.1 of 2015, but the Appellate Authority rejected the appeal on the ground that the appeal was to be filed within 30 days and the same was filed after fifteen months, refused to condone the delay.

The Appellate Authority has rightly rejected the petition as the period for filing an appeal is within 30 days and it can be extended 30 days more subject to the condonation of delay. After 60 days, the Appellate Authority does not have any jurisdiction even to condone the delay, but in the present case, right from beginning the petitioner has taken a plea that the private respondent was not his employee and he has never worked with him, whereas witness who has stated in evidence said that he had seen the private respondent working as a Munshi with the petitioner except that there is no material, which has been brought by the private respondent to substantiate the claim.

This Court is not dealing with the merit in the present juncture as the appeal has been dismissed on the ground of barred by limitation and it will be in the interest of justice that his case should be heard by the Appellate Authority on merit.

In such view of the matter, the order dated 21.03.2017/23.03.2017 passed in Minimum Wages Appeal Case No.1 of 2015 is set aside and the matter is remanded back with a



direction to the Appellate Authority to decide the case of the petitioner on merit, but subject to condition that the petitioner will pay Rs.25,000/- to the private respondent, namely, Bijendra Kumar Jha.

The Appellate Authority would ensure the payment of the aforesaid amount to the private respondent. If the petitioner fails to pay the aforesaid amount to the private respondent, then the relief granted to the petitioner will be treated to have been recalled.

Accordingly, this writ application is allowed to the aforesaid extent.

(Shivaji Pandey, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.07.2019
Transmission Date	N.A

