

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1071 of 2019

Om Prakash Singh Son of Durga Prasad Singh, Resident of Sree Nagar Hata,
P.S. K. Hatt, District- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors through the Principal secretary, Labour Resources Department, Government of Bihar, Patna.
2. The Deputy Labour Commissioner, Bhagalpur.
3. The Assistant labour Commissioner, Purnea Division, Katihar.
4. The Certificate Officer, Katihar.
5. District Manager Bihar State Food and Civil Supply Corporation, K-Hatt, District- Purnea.
6. Managing Director, Bihar State Food and Civil Supply Corporation, Sone Bhawan, Veer Chand Patel Path, Patna.
7. Kanta Mahto, Sardar Tola, Gulabbagh, Thana- Sadar Purnea.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate.
For the Respondent/s	:	Ms. Anuradha Singh, SC to GP-21
For the Respondent no. 7:	:	Mr. Ashok Kumar, Advocate.
		Mr. Ram prawesh Kumar, Advocate.
For the BSFC	:	Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 21-12-2022

Heard Mr. Sanjeev Kumar, learned counsel for the petitioner; Mr. Ashok Kumar, learned counsel for the respondent no. 7; Mr. Shailendra Kumar Singh, learned counsel for the Bihar State Food and Civil Supply Corporation and Ms. Anuradha Singh, learned SC to GP-21 for the State.

The present writ petition has been filed for the following reliefs:-

(i) Issuance of writ in the nature of certiorari for quashing the order dated 28.11.2018 passed in



M.W. Appeal Case No. 02/2018 passed by the Deputy Labour Commissioner-cum-Appellate Tribunal, Bhagalpur whereby and where under the Respondent No. 3 has been pleased to dismiss the said case ex-parte without hearing the petitioner on the grounds of limitation without going into the merits of the case.

(ii) Issuance of writ in the nature of certiorari for quashing the order dated 21.12.2016 passed by the Respondent No. 4 in favour of Respondent No. 8 in Case No. M.W.(1)-12/2016 and ordered the petitioner, Respondent No. 6 and Respondent No. 7 to pay a total sum of Rs. 11,99,856/- (eleven lacs ninety nine thousand eight hundred and fifty six only) to the Respondent No. 8 and sixteen other labourers ex-parte without hearing the petitioner.

(iii) Further issuance of order/direction to quash the order dated 29.10.2018 passed by the Certificate Officer, Katihar in Certificate Case NO. 01.17-18 by which the Distress warrant (D.W.) has been issued against the petitioner.

(iv) To pass such other orders as may deem fit and proper.

The short facts which led to the filing of the present writ petition is that the Respondent No. 8, framing himself to be leader of the Labour Union along with 16 other labourers, filed a case of Minimum Wages Act, 1948 before the Assistant Labour Commissioner-cum-Authority under the Minimum Wages Act, Purnea Division, Katihar on 05.04.2016, registered as Case No. M.W. (1) 12/2016 stating therein that Respondent No. 8 along with 16 other labourers had done the unloading work of rice and wheat



from godown no. 1 & 2 situated at Gulab Bagh Bazar Samiti, Purnea from 25.10.2014 to 18.01.2015 and for the said period they have not been paid minimum wages.

It is the case of the petitioner that in the aforesaid case, notices were issued to the petitioner but he could never receive any notice and further, first time he came to know when a warrant against him was issued in the Certificate Case No. 01 of 2018 on the basis of the order dated 21.12.2016 passed by the Assistant Labour Commissioner-cum-Authority under the Minimum Wages Act for recovery of the said amount.

Having come to know about the order passed by the Assistant Labour Commissioner-cum-Authority, the petitioner preferred an Appeal bearing No. (M.W.)-02/18 before the Deputy Labour Commissioner-cum-Appellate Authority, Bhagalpur, however, the same stood dismissed on the ground of limitation vide its order dated 28.11.2018.

The petitioner has assailed the impugned order dated 21.12.2016 as also the order dated 28.11.2018 by filing the present writ application on various grounds including the same is hopelessly time barred in view of Section 20(2) of the Minimum Wages Act, 1948, which clearly stipulates as follows:-

“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 authorized in writing to act on his behalf, or any Inspector, or any person acting with 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.”

Learned counsel for the petitioner further submits that from the record, it is evident that the claim of the private respondents regarding minimum wages is with respect to the period from 25.10.2014 to 18.01.2015 and as such the same is completely barred under Section 20(2) of the Minimum Wages Act, 1948, thereafter at no point of time any application for condonation of delay has been filed, save and except the statements made in paragraph no. 10 of the application filed before the Assistant Labour Commissioner that delay has occurred on account of conciliation between the employer and the employee. Reliance has also been made on a judgement rendered by the learned Division Bench of this Hon'ble Court in the case of



Gango Sharma Vs. The State of Bihar & Ors. reported in 2003

(2) PLJR 671 and further relied upon one another judgement of the Division Bench of this Hon'ble Court rendered in the case of ***Hira Lal Vs. The State of Bihar & Ors. reported in 2014 (2) PLJR 714.***

Learned counsel for the petitioner vehemently submits that the ratio laid down by this Court in the aforementioned judgements is as follows:-

“if an employee making an application for non-payment of minimum wages, his initial claim could only be considered provided an application was filed within a period of six months to lay claim on payments not made during this period, only thereafter, for sufficient cause shown should the appellant sustain an application for claims beyond this period and on this also there has to be a reasoned order why the extended claim has been permitted”.

He further submits that there is neither any application filed by the private respondents nor the impugned order speaks the reason for condonation of delay.

Mr. Shailendra Kumar Singh, learned counsel for the BSFC also submits that prima facie from the order impugned herein suggests that the impugned order is not based on any evidences



nor the witnesses were examined and though there was a dispute in between the transporter and the labourers, however, the direction has been given to the BSFC also to compensate the laborers, which is wholly without jurisdiction.

Per contra, Mr. Ashok Kumar, learned counsel for the private respondent submits that as the respondent has already made a prayer in the petition for condonation of the delay, the same would be enough for the authority to consider for condonation of delay and there is no infirmity in the impugned order passed by the Assistant labour Commissioner, Purnea Division, Katihar as well as Deputy Labour Commissioner-cum Appellate Authority, Bhagalpur.

Having heard the learned counsels for the parties and considering the materials available on record, this court finds substance in the submissions made on behalf of the learned counsel for the petitioner as well as the respondents no. 5 & 6.

It is pertinent to observe that Section 20(2) of the Minimum Wages Act, 1948 clearly bars the presentation of any application, if not filed within six months, from the date on which the minimum wages become payable, provided the applicant has sufficient cause for not making the application within time.



From the materials, it also appears that at no point of time any application for condonation of delay has been filed and the impugned order also does not speak with regard to any consideration for condoning the delay. The judgement rendered by the learned Division Bench of this Hon'ble Court also covers the issue involved in this writ petition and as such, in view of the aforesaid facts, circumstances and the position obtaining in law, the writ petition is hereby allowed and the impugned order dated 21.12.2016 passed by the Assistant Labour Commissioner, Purnea Division, Katihar, order dated 28.11.2018 in appeal bearing no. (M.W.)-02/18 passed by the Deputy Labour Commissioner-cum-Appellate Authority, Bhagalpur and any consequential orders are hereby set aside.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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