

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18 of 2019

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Sushma Devi @ Sushma Kumari W/o Rajesh Paswan R/o Village-Dakra,P.S.
Makhdumpur,Distt.-Jehanabad ... Petitioner

Versus

1. The State Of Bihar
 2. The Additional Collector Revenue Jehanabad cum Appellate Authority Under Minimum Wage Act,1948
 3. The Sub-Divisional Officer, Jehanabad cum Authority Under Minimum Wage Act,1948
 4. The Labour Enforcement Officer,Makhdumpur,Jehanabad
 5. Suresh Paswan S/o Late Mathura Paswan R/o Village-Kayamchak,R/o Makhdumpur,Distt.-Jehanabad ... Respondents
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Appearance :

For the Petitioner : Mr.Vijay Kumar, Adv.
For the Respondents : Mr.Anil Kr. Singh, GP XXVI

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

7 18-09-2023 Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following relief(s) :

I. Issuance of an appropriate writ/writs/order/orders/direction/directions to quash the order dated 24.09.2018 passed by the learned Additional Collector Jehanabad Cum appellate Authority under Minimum wages Act, 1948 passed in Minimum Wages Appeal case no.01 of 2016-17 contained in Memo No. 1377/R dated 15.10.2018.

II. Issuance writ/writs/ of an appropriate orders/ direction/ directions to quash the order dated 07.12.2016 passed in Labour Case No.03 of passed by the learned 2014-15 Sub- Divisional Officer, Jehanabad cum Authority under Minimum Wages Act, 1948.

III. To grant such other consequential relief/relives as the petitioner is found entitle to in this facts and circumstances of this case.



3. It is a case of the petitioner that the order which is impugned in the present Writ Petition is contrary to the facts and the record which was available before the authority which has passed the impugned order. Learned counsel has stated that the respondent no. 5, herein, has filed a case under the Minimum Wages Act, 1948, (hereinafter referred to as, 'the Act') before the 3rd Respondent, herein, i.e., the Sub-Divisional Officer, Jehanabad-cum-Authority under Minimum Wage Act, 1948. The Respondent No. 3 without there being any shred of evidence has passed the order fixing the minimum wages in respect of the Respondent No. 5 vide order, dated 07.12.2016, passed in the Labour Case No. 3 of 2014-15. Thereafter, the petitioner has preferred an appeal before the Respondent No. 2, herein, who is the Appellate Authority under the Minimum Wages Act, 1948. However, the Appellate Authority without considering the facts or the grounds of Appeal raised by the petitioner has dismissed the appeal vide order, dated 24.09.2018, in Minimum Wages Appeal Case No. 1 of 2016-17. Learned counsel has stated that the Respondent No. 5 was neither the employee of the petitioner nor he was appointed by the petitioner at any point of time, therefore, the question of fixing the minimum wages by the authority concerned is without any legal basis. More over, the



Respondent No. 5 has not filed any evidence to show that he was employed by the petitioner at any point of time. That the Respondent No. 5 has filed a case stating that he was an employee of the Sushma Bharat Gas Agency which is owned by the husband of the petitioner, but, the husband of the petitioner was not arrayed as party-respondent. That the petitioner is not the owner of Sushma Bharat Gas Agency, therefore, the passing of the order by the authority concerned against the petitioner is without any legal basis. Learned counsel for the petitioner has drawn the attention of the Court to the application filed by the Respondent No. 5, herein, wherein it is shown that the Respondent No. 5 has filed a case against the petitioner showing her as proprietor of Sushma Bharat Gas Agency.. Further it is stated by the learned counsel for the petitioner that the case filed before the authority for fixation of minimum wages was barred under the Act, more particularly under Section 20 of the Act, therefore, prayed this Hon'ble Court to allow the present Writ Petition and set aside the impugned order passed by the Primary as well as Appellate Authority.

4. Even though the Respondent No. 5 has received notice and vakalatnama has been filed on his behalf, till date no counter affidavit has been filed on behalf of Respondent No. 5



and, therefore, this Court vide order, dated 04.09.2023, has forfeited the right of Respondent No. 5 to file his counter affidavit.

5. Even today when the matter is heard the counsel for Respondent No. 5 is not present.

6. A formal counter affidavit has been filed by the official Respondents 1 and 4 wherein they have stated they are only the proforma parties.

7. A perusal of the application filed by the Respondent No. 5 before the authority, i.e., Respondent No. 3, herein, reveals that the Respondent No. 5 has filed the case under Minimum Wages Act against Sushma Bharat Gas Agency. The petitioner has filed a detailed counter in the said case stating that she is not the owner of the Sushma Bharat Gas Agency and that the petitioner was not the employee of the said Sushma Bharat Gas Agency. Even though the specific stand has been taken in the counter affidavit filed by the petitioner before the 3rd Respondent stating that the said Sushma Bharat Gas Agency is owned by the husband of the petitioner and the case is liable to be dismissed for non-joinder of the necessary parties, the authority has not dealt with the said issue. Further the petitioner has also stated that due to the local politics in the village, the



people inimical to the petitioner have got filed a false case, the authority has not considered the said aspect and passed the impugned order. The Respondent No. 5, herein, has not taken step to get the cause title corrected by impleading the owner of the Sushma Bharat Gas Agency even after the counter has being filed by the petitioner, therefore, on this ground also the application filed by the Respondent No. 5 before the 3rd Respondent ought to have been rejected for not impleading the employer of Respondent No. 5.

8. Both the Primary as well as Appellate Authority have not considered this crucial aspect. More over, as seen from the material on record, the Respondent No. 5 has not filed any other material to substantiate his claim that he was an employee of the petitioner herein, in the absence of any material, it is not understandable as to on what basis the authority has passed the impugned order.

9. Having regard to the fact that the Respondent No. 5, herein, has not filed the case against the original owner of the Sushma Bharat Gas Agency and also the fact that he has not filed any evidence to substantiate his claim that he was employed by the petitioner, herein, the impugned order passed by the 3rd Respondent has to be necessarily set aside and the



same is set aside. Once the order passed by the 3rd Respondent is held to be bad, the order of the Appellate Authority also has to be set aside as it does not have any legal basis to stand and the same is, accordingly, set aside.

10. In view of the above facts and circumstances, the impugned orders passed by the Respondent No. 3, dated 07.12.2016, in Labour Case No. 3 of 2014-15, and the Respondent No. 2, dated 24.09.2018, in Minimum Wages Appeal Case No. 1 of 2016-17, are set aside. The Writ Petition is, accordingly, **allowed**. No order as to costs.

(A. Abhishek Reddy , J)

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