

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16092 of 2021

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Anil Kumar Singh S/o Devendra Prasad Singh Resident of Argra Chowak,
Binodpur, Katihar, P.S. and District-Katihar, Bihar, 854105.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Labour Department, Government of Bihar, Patna.
3. Deputy Labour Commissioner, Bhagalpur, District Bhagalpur
4. Certificate Officer Cum District Minority Welfare Officer, Katihar, District-Katihar.
5. Puja Mishra Wife of Late Awdhesh Mishra @ Awdhesh Kumar, Resident of Mohalla- Naya Tola Phulwari, Ward NO. 36, P.S.-Nagar Katihar, District-Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar, Adv.
For the Respondent/s : Mr. Sarvesh Kumar (Gp24)

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

Date : 01-04-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“i. That the petitioner is filing this writ petition for issuance of a writ of certiorari to quash the order dated 19.10.2020 passed in W.C. Case No. 11/19 (Puja Mishra Vs. Anil Kumar Singh) passed by the Deputy Labour Commissioner cum Authority under Workman Compensation, Act, 1923, Bhagalpur, whereby and where under the Respondent No. 3 has allowed the aforesaid Workman Compensation Case in favour of Respondent No. 4 and ordered this petitioner to pay a sum of Rs. 6,46,168.00/- (Rs. Six Lakh, Forty Six Thousand, One Hundred and Sixty Eight Only). That further the Respondent No. 3 had directed that in case the compensation amount is not paid by the petitioner within stipulated time, the amount will be



recovered along with a simple interest of 12% via certificate case from the date of incident.

ii. That the petitioner further prays for quashing of the notice dated 17.07.2021 issued by the Certificate Officer cum District Minority Welfare Officer, Katihar bearing Memo No. 267/अल्प ० क ० निलाम कटिहार in certificate case no. 01/2020-21 (Deputy Labour Commissioner cum Authority under Workman Compensation, Act Bhagalpur Division, Bhagalpur Vs. Anil Kumar Singh) where under the petitioner has been demanded to pay the compensation amount of Rs. 8,83,962/- (Rs. Eight Lakhs, Eighty Three Thousand, Nine Hundred and Sixty Two Only) failing which an arrest warrant/attachment of property shall be issued against the petitioner”.

3. The present writ petition has been filed for assailing the order of the Deputy Labour Commissioner passed in W.C. Case No. 11/19 dated 19.10.2020.

4. Learned counsel for the petitioner has stated that as per the provisions of the Workmen's Compensation Act, 1923 and also the notification issued by the Government whenever the case filed by an employee is contested, it is only the Presiding Officer of the Labour Court who is having the necessary jurisdiction for passing the orders. Learned counsel has stated that in the present case, the petitioner on receipt of the notice has filed his written statement/counter contesting the matter but the order has been passed by the Deputy Labour Commissioner. Further, learned counsel has stated that without there being any iota of evidence, the Deputy Labour Commissioner has given a finding that the deceased husband of the respondent No. 5 was an employee of the



petitioner. Learned counsel has relied on the judgements of this Hon'ble Court passed in the case of *Moti Lal Yadav @ Moti Yadav Vs. The State of Bihar & Ors.* reported in *2007 3 BLJR 2249* and in the case of *Messrs Raj Kishan & Company Vs. The State of Bihar & Ors.* reported in *1991 1 PLJR 803* to buttress his contentions.

5. *Per contra*, learned counsel appearing on behalf of the respondents has vehemently opposed the very maintainability of the present writ petition and stated that the petitioner has an alternative remedy of filing an appeal. That the petitioner after the death of the husband of the respondent No. 5 has entered into an agreement with the respondent No. 5 agreeing to pay Rs. 10 lakhs or compensation and out of which he has paid Rs. 2 lakh but subsequently refused to pay the balance amount. Therefore, left with no other alternative, the respondent No. 5 had to approach the Labour Court under the Workmen's Compensation Act, 1923. Learned counsel has therefore, prayed this Hon'ble Court to dismiss the present writ petition.

6. Learned counsel appearing on behalf of the respondent No. 5 while adopting the arguments advanced by the counsel for the official respondents has stated that the Deputy Commissioner duly taking into consideration all the relevant



documents and that the petitioner is a principal employer, has passed the impugned order. Further, it is also stated that the petitioner is having an efficacious remedy of filing an appeal. Though the petitioner has entered into an agreement with the respondent No. 5 for agreeing to pay a lump sum compensation amount of Rs. 10 lakhs, no amounts have been paid under the said agreement till date. The fact that the petitioner has entered into an agreement with the respondent No. 5 agreeing to pay Rs. 10 lakhs proves that the deceased husband of the respondent No. 5 was an employee of the petitioner and, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

7. The relevant portion of the Government's Notification

S.O No. 1188 L&E dated 31st December, 1991, reads as such;

“In exercise of the powers conferred by Sub-Section (1) and (2) of Section 20 of the Workmen's Compensation Act, 1923 (Act VIII of 1923) and in supersession of all previous notifications issued on the subject the Governor of Bihar is pleased to appoint the officers named in Column 2 of Schedule hereto annexed to be ex-officio commissioners for Workmen's Compensation within the local limits of their respective jurisdiction as specified in Column 4 of the said Schedule and to declare that;-

(a) The Presiding Officers of the Labour Court, as ex-officio Commissioners for Workmen's Compensation shall deal with all contested cases arising under the said Act and the Rules framed thereunder;

(b) The officers other than the Presiding Officer of the Labour Courts as ex-officio Commissioners for workmen's compensation shall deal with non-



contested cases only arising under the said Act and the Rules framed thereunder; ”

8. Whenever a case is filed and the matter is contested by the employee, the Presiding Officers of the Labour Court is the competent authority for passing the orders. However, as seen from the impugned order, the order has been passed by the Deputy Labour Commissioner-cum-Authority under the Workmen's Compensation Act, 1923, which is contrary to the notification issued by the Government.

9. It is a well settled proposition of law that jurisdiction cannot be conferred by the parties and if any order is passed by the officer not having jurisdiction, the same shall have to be treated as non est in the eye of the law.

10. Admittedly, in the present case, the matter has been contested by the petitioner by filing a written statement, the petitioner has denied that the husband of the respondent No. 5 was employed in his firm and contested the matter. However, the authority has passed the order without adverting to the same, therefore, the impugned order dated 19.10.2020 passed in W.C. Case No. 11/19 has to be declared as non-est and passed without jurisdiction and has to be necessarily set aside. Accordingly, the impugned order passed by the Deputy Labour Commissioner-cum-Authority under the W.C. Act, 1923 in W.C. Case No. 11/19 dated



19.10.2020 is set aside and the matter is remanded back to the Presiding Officers of the Labour Court under the Workmen’s Compensation Act, 1923 for deciding the matter afresh. The authority shall duly take into consideration the evidence on record and also the written statement filed by the petitioner herein before passing a reasoned order.

11. It is needless to mention that before passing any orders, the Labour Court shall put the parties on notice and give them an opportunity of hearing. The entire exercise shall be completed as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of the copy of this order. It is made clear that this Court has not gone into the merits of the case and is leaving all issues open to be decided.

12. With the above direction, the present writ petition stands disposed of to the extent indicated.

(A. Abhishek Reddy, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.05.2024.
Transmission Date	N/A

