IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12701 of 2017

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Umesh Prasad Choudhary Son of Late Madho Sharan Choudhary Resident of Village - Tajpur, P.S. - Tajpur, District - Samastipur Bihar.

... ... petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Labour Resources, Government of Bihar, Patna
2. The Deputy Labour Commissioner-cum-Appointing Authority under Bihar Shops and Establishments Act. 1953, Patna Division, Patna
3. M/S Sahara India through its Chairman-cum-Managing Director, Sahara India Centre, 2, Kapoorthala Complex, Aliganj, Lucknow (U.P.)
4. The Regional Manager Worker, Saharsa India Regional Office, Saharsa India Vihar, Boring Road Crossing, P.S. Buddha Colony, District Patna
5. The Sector Manager Worker, Branch Office of the Saharsa India, Hajipur, District - Vaishali Bihar.

... ... Respondent/s

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Appearance :

For the petitioner/s	:	Mr. Ajay Kumar Chakravorty, Advocate
For the Respondent/s	:	Mr. Sushil Kumar Singh, AC to AAG 10

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT
Date : 24-06-2025

1. The petitioner has filed the instant application for the following reliefs:

> *"That this is an application for issuance of an appropriate writ, order or direction to the Respondents for quashing the Order dated 21.07.2017 passed by the Deputy Labour Commissioner -Cum- Appointing Authority, Patna Division, Patna in B.S.E. Case No. 04 of 2004/06 of 2016 by which the Learned Respondent No.2*

disposed of the application of the petitioner holding that the Claim at Serial No. 1, 2, 3, 6 & 7 is not adjudicable in absence of proof and advised for the Claim No.4 to submit application before the Competent Authority under the Payment of Bonus Act, 1965 and further to pass any other Order of Orders for which the petitioner found entitled."

2. The petitioner was employed with Sahara India on 11.02.1987, with his last posting as a sector worker at Hajipur. He resigned on 01.08.1996, and his resignation was accepted on 01.09.1996. The petitioner had several monetary claims against the management which remained unresolved, prompting him to file Case No. 2 of 1997 before the District Consumer Disputes Redressal Forum, Vaishali at Hajipur. The case was dismissed on the ground that it did not fall within the purview of the Consumer Protection Act. Subsequently, the petitioner approached the Deputy Labour Commissioner, Darbhanga, who referred the matter under Section 12(4) of the

Industrial Disputes Act, 1947 to the Government of Bihar. The State referred the dispute under Section 10(1)(c) of the Act to the Industrial Tribunal, Patna, where it was registered as Reference Case No. 10 of 2001.

3. The petitioner claimed to be a "workman" under Section 2(s) of the Industrial Disputes Act. Presiding Officer, Industrial Tribunal held that the petitioner does not fall under the ambit of a "workman" under Section 2(s) of the Industrial Dispute Act and is, therefore, not entitled to relief under the Act. It is stated that the Tribunal decided only the preliminary issue and left the point of reference undecided without going into the merits of the case.

4. On 19.01.2004 the petitioner filed a case before the Deputy Labour Commissioner-Cum- Appointed Authority under Bihar Shops and Establishment Act, 1953 for payment of Rs. 9,46,289/- calculated till the year 2001. The case was registered as B.S.E. Case No. 04 of 2004.

The claims, as raised by the petitioner

were seven heads as follows:-

i.	Prize Money of Mahaparva Contest Award	Rs.30,000/-
ii.	Prize Money of King Plan Scheme	Rs.40,000/-
Iii.	Prize Money under Swarna Path Scheme along with Navin Incentive system	Rs. 40,000/-
iv	Amount of Bonus for the year 1995-96	Rs. 5,000/-
v.	Arrear of Salary deducted illegally for illegal suspension period which was revoked Salary of Suspension period	Rs. 18,325/-
vi.	T.A. Bill duly admitted and approved fro the period of May 1994	Rs. 964/-
Vii	Admitted amount towards 1000 equity shares purchased by the petitioner till 1994	Rs.2,15,000/

5. Upon notice in the B.S.E. Case No. 4 of 2004, the Management appeared and took

objections, as, (i) the claims of the employee were grossly barred by limitation, having been raised long after six months of the cause of action. (ii). The employee, having resigned, could avail of remedies not under section 28 of the Bihar Shops and Establishment Act, 1953. (iii) The claims as raised, do not come within the definition of wages within the meaning as ascribed to it by section 2(20) of the Bihar Shops and Establishment Act, and (iv) The claims were disputed.

6. Despite these objections, the Deputy Labour Commissioner-cum-Appointed Authority, passed the order dated 12.03.2010 (Annexure-3), directing the Management of Sahara India to pay the arrears of wages for the month of March to June 1996 amounting to Rs. 18,325/-, along with five fold penalty amounting to Rs. 91,625/-, totaling Rs. 1,09,950/-. However, the petitioner's claims for Travelling Allowance (T.A.) and amount payable under various incentive schemes were rejected on the ground that these claims did not qualify as "wages" under the Payment of Wages

Act.

7. Both parties filed appeals. The Management vide appeal No: B.S.E. Appeal No. 3 of 2010, challenged the direction to pay arrears of wages and penalty. The petitioner, vide appeal No: B.S.E. Appeal No. 4 of 2010, challenged that T.A. and incentive schemes comes under the defection of term "wages," under the payment of Wages Act. It is submitted by the petitioner that T.A. would become the part of the wage by virtue of inclusion of terms like "allowance" and "otherwise" in the definition under the Payment of Wages Act. The Management argued that once the incentive schemes became operative and the petitioner began working under them, such payments became part of the implied terms of employment.

8. The Presiding Officer, Industrial Tribunal, Patna-cum-Appellate Authority under Section 28(7) of the Bihar Shops and Establishments Act, 1953, heard both the appeals together and, by a common order dated 29.11.2011 (Annexure-4), dismissed them. The

Tribunal held that the plea of limitation was not sustainable and rejected the petitioner’s claims for T.A., prize money, bonus, and equity shares, ruling that they do not form part of "wages."

9. That being aggrieved by the common order passed by the Industrial Tribunal, Patna–cum-Appellate Authority under the Bihar Shops and Establishments Act, the petitioner filed C.W.J.C. No. 459 of 2012, while the respondent Management filed C.W.J.C. No. 3568 of 2012 before this Hon’ble Court. Both the writ petitions were heard together and disposed of by a common judgment dated 18.09.2012 (Annexure-5), whereby this Hon’ble Court allowed C.W.J.C. No. 459 of 2012 filed by the employee and dismissed C.W.J.C. No. 3568 of 2012 filed by the Management (respondent nos. 3 to 5), directing the Management to pay the traveling allowances due under various incentive schemes announced by it, as well as the bonus.

10. Being aggrieved by the said judgment, the Management of Sahara India

preferred two Letters Patent Appeals, namely L.P.A. No. 122 of 2013, arising out of C.W.J.C. No. 3568 of 2012, and another arising out of C.W.J.C. No. 459 of 2012, against the common judgment dated 18.09.2012. After hearing both the LPAs together, the Hon'ble Division Bench of this Hon'ble Court, by judgment dated 09.03.2016 (Annexure-6), dismissed both appeals.

11. The Hon'ble Court held that the petitioner was entitled to all seven items claimed, observing that even if some of the disputed items did not fall within the definition of "wages" under the Payment of Wages Act, Section 28 of the Bihar Shops and Establishments Act uses broader language such as "or any sum as otherwise due from the employer to the employee" (sub-section 1) and "any other sum" (sub-section 2). This includes amounts that the employer is legally obligated to pay, whether by contract or statute. However, the Hon'ble Court further held that Section 28 requires prior adjudication and quantification of the employer's liability to pay

such sums. Since, except for item no. (V), no adjudication or quantification had been done, therefore, the Hon'ble Court remanded the matter to the Deputy Labour Commissioner, Patna (respondent no. 2), for fresh adjudication on the limited issue of quantification.

12. Pursuant to the said judgment dated 09.03.2016, the petitioner filed an application before respondent no. 2. The Management subsequently filed preliminary objections and a parawise reply (Annexure-7 to the writ petition). However, respondent no. 2, vide order dated 21.07.2017 (Annexure-8), rejected the petitioner's claim. Hence, this writ petition.

13. Learned counsel for the petitioner submitted that respondent nos. 3 to 5 failed to rebut the petitioner's claims by any evidence showing that the announced wages were paid or that the schemes in which the petitioner participated were not announced. It was further contended that the respondents did not produce business reports or other relevant records to

dispute the petitioner’s entitlement or substantiate payments made.

14. It was argued that respondent no. 2 failed to adjudicate the petitioner’s claims in accordance with Section 28 of the Bihar Shops & Establishments Act, 1953, and instead relied solely on the terms of the appointment letter to dismiss the claims, citing lack of evidence from the petitioner. The petitioner contends that this prejudicial approach can only be ascertained by examining the records of B.S.E. Case No. 04 of 2004/06 of 2016, and prayed to call for the records for proper adjudication.

15. Learned Counsel for the petitioner further submitted that respondent no. 2 ignored the directions and ratio laid down by the Hon’ble Division Bench in its judgment dated 09.03.2016 in L.P.A. Nos. 122 and 172 of 2013 and C.W.J.C. Nos. 459 and 3568 of 2012, where the matter was remanded on the limited issue of quantification under Section 28 of the Act. It was asserted that respondent no. 2 exceeded its jurisdiction by going

beyond the scope of this remand.

16. It was also submitted that respondent no. 2 wrongly held that claims no. 1, 2, 3, 6, and 7 were not adjudicable due to lack of evidence and incorrectly directed the petitioner to pursue claim no. 4 under the Payment of Bonus Act, 1965, despite the fact that all claims relate to wages announced by the Management after the appointment letter was issued. There was no dispute regarding the petitioner's appointment or resignation, yet the appointment letter was improperly relied upon in the adjudication process.

17. The petitioner also contended that both oral and documentary evidence were ignored, and the finding that the claims are non-adjudicable reflects a misunderstanding of law and the ratio laid down by this Hon'ble Court and prayed to quash the order dated 21.07.2007 passed by the 2nd respondent.

18. Heard Learned counsel for the parties and perused the record.

19. As stated above, Being aggrieved by the common order dated 29.11.2011 passed by the Industrial Tribunal, Patna – cum Appellate Authority, the employee filed C.W.J.C. No. 459 of 2012 and the Management filed C.W.J.C. No. 3568 of 2012 before this Hon'ble Court. After hearing both the Writ petitions together the Hon'ble Court disposed of both the Writ petition by a common judgment dated 18.09.2012 (Anneuxre-5) by which the Hon’ble Court allowed CWJC No. 459 of 2012 filed by the employee and dismissed the CWJC No. 3568 of 2012 filed by the Management i.e. respondent Nos. 3 to 5. The relevant part of the judgment is quoted hereinbelow:

> “5. In my opinion, the Travelling Allowance and the amount due under incentive schemes as also the bonus amount if announced by the Management shall be part of the wages as defined under Payment of Wages Act and payable to the employee. In view of my findings above, I modify the

operative portion of the judgment of the Presiding Officer dated 29.11.2011 passed in B.S.E. Appeal No. 3,4 of 2010 and direct that amount payable to the employee Umesh Prasad Choudhary, petitioner in C.W.J.C. No. 459 of 2012 as Travelling Allowance, under different incentive schemes duly announced by the Management as also the bonus amount, if already announced by the Management be paid within a reasonable time not exceeding three months from the date of receipt/production of a copy of this order before the Management of Sahara India

6. In view of my discussion and direction above the writ application filed by the employee is allowed to the extent indicated above and the writ petition of Management is dismissed."

20. It further appears that being aggrieved, the respondent management of Sahara India preferred two L.P.As. vide L.P.A. No. 122 of 2013 arising out of C.W.J.C. No. 3568 of 2012 and CWJC No. 459 of 2012 respectivley against common order dated 11.09.2012. After hearing both the L.P.A.s together, the Hon'ble Division Bench of this Hon'ble Court passed the judgment dated 09.03.2016 dismissing both the appeals filed by the Management (Annexure-6). The relevant parts of the judgment are as follows:

> "22. As none of the authorities considered the claim of the employee to be payable in terms of Section-28 of Act, apart from the claims in respect of item no.(v) as noted above, there was no adjudication or quantification done in this regard. That would be necessary in view of the findings as recorded by us. They would be the claims, which are entertainable under Section-28 of the Act. That being so, on this limited issue, it would be appropriate for us to remand the matter to the Labour Court for fresh adjudication. While doing so, we may

note that so far as the claim in item no. (v) is concerned, we have already upheld, as also all the authorities consistently, that the amount is payable and for realization thereof, certificate proceedings have already been instituted. That claim would not be re-agitated and would be recoverable as such. Subject to the aforesaid, substantially both these appeals are dismissed.”

21. Pursuant to the judgment dated 09.03.2016 passed by the Hon'ble Division Bench, the petitioner filed application before the Respondent no. 2. Thereafter, the Management filed preliminary objection and parawise reply (Annexure- No.7 of the writ petition).

22. However, the respondent No. 2 vide order dated 21.07.2017 (Annexure-8) rejected the claim of petitioner taking the consideration of provisions of Section 28 of the Bihar Shops and Establishment Act, 1953.

23. For better appreciation of the case, Section 28(9) of the Bihar Shops and Establishment Act, 1953 is quoted hereinbelow:

> "28. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims.—(9) Every authority appointed under this section shall have all the powers of a Civil Court under the Code of Civil Procedure, 1908 (V of 1908) for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority shall be deemed to be a Civil Court for all the purposes of section 195 and of Chapter XXXV of the Code of Criminal Procedure, 1898 (V of 1898)]"

24. After perusal of entire facts and circumstances of the case this Court comes to the conclusion that the respondent No. 2 rightly adjudicate the claim of the petitioner taking into consideration of the provisions of Section 28(9) of the Bihar Shops and Establishment Act, 1953. The respondent No. 2 has mentioned in his order that "both the parties appeared before the court and presented their case. The plaintiff gave his statement through affidavit and appeared in the court for cross-examination. The Learned counsel

for the defendant duly conducted the cross-examination. During the cross-examination, it emerged that there is no mention of any incentive, award etc. in the appointment letter issued to the plaintiff and neither any share related allotment letter has been issued. Also, the documents related to travel allowance were not placed by the plaintiff before the authority and in the of any documentary evidence the claims made by the petitioner be said to be unfit for determination under section 28 of the 'Bihar Shops and Establishments Act'. In the above circumstances, the authority concluded that the claims of the plaintiff at serial nos. 1, 2, 3, 6 and 7 are not worthy of assessment for want of evidence and the amount of wages shown in column no. 5 along with compensation has already been paid to the plaintiff by the defendant.

25. Therefore, the authority rejects the claim of the plaintiff under Section 28 of the Bihar Shops and Establishments Act on serial no. 1, 2, 3, 6 and 7 in the absence of original evidence and for claiming the bonus amount on serial no. 4, the

plaintiff is advised to file a claim before the competent authority under the provisions of the Bonus Payment Act, 1965 and the suit was disposed of.”

26. Section 101 of the Indian Evidence Act, 1872, defines the burden of proof. It states that the person who denies a Court to give judgment on a legal right of liability defendant on the existence of certain facts musts prove those facts. Essentially the burden of proof lies on the party who is asserting a fact to be true, and not on the party who is denying it. The second respondent / authority is deemed to be a Civil Court and burden is on the petitioner to prove his case with all oral and documentary evidence.

27. Based on the facts and circumstances stated above, this Court is of the considered view that there is no merit in the case of the petitioner. The Court does not find any error in the order dated 21.7.2017 passed by the respondent No. 2, the Deputy Labour Commissioner – cum – Appointing Authority, Patna

Division, Patna in B.S.E. Case No. 04 of 2004 / 06 of 2016.

27. Accordingly, the writ petition is dismissed as devoid of merits.

28. Interlocutory Application, if any, shall stands disposed of.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.07.2025
Transmission Date	