Jai Prakash Yadav Vs The State of Jharkhand and Others

Court: Jharkhand High Court

Date of Decision: Sept. 7, 2011

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 9 Rule 13
Minimum Wages Act, 1948 â€" Section 20

Citation: (2011) 1 JLJR 468

Hon'ble Judges: Prakash Tatia, Acting C.J.; P.P. Bhatt, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Heard learned Counsel for the parties on the merits of the case.

2. The learned Single Judge dismissed the writ petition of the writ Petitioner on the ground of availability of alternative remedy u/s 20 of the

Minimum Wages Act with the aid of the State amendment by which Sub-clause 6 has been inserted to provide an appeal by any employer or

worker aggrieved by any direction made under Sub-section (3) by an authority appointed under Sub-section (1), on an application made under

Sub-section (2), may prefer an appeal within 30 days from the date of the direction given in the impugned order.

3. Learned Counsel for the Appellant vehemently submitted that the Appellant was never served with the notice, which is apparent from Annexure-

1, which clearly indicates that Appellant was transferred from the place of his posting and he was a public servant posted as Panchayat Sewak

only. It is also submitted that the work was completed on 24.03.2003 whereas the claimant-workers claimed that they worked from 26.2.2002 to

31.3.2003. Therefore, when work itself was not in existence the workers could not have worked under the employment of the Appellant and,

therefore, the award passed by the authority under Minimum Wages Act is absolutely illegal and contrary to the facts. Learned Counsel for the

Appellant also submitted that the Appellant submitted an application for setting aside the ex-parte order passed by the authority under the

Minimum Wages Act but that has been wrongly rejected; therefore, the Appellant is challenging both the orders, the order of awarding of minimum

wages to the applicants-respondents as well as the order of rejecting of the application of the Appellant seeking setting aside of the ex-parte order

passed by the authority under Minimum Wages Act.

4. Learned Counsel for the Appellant has submitted a very strange argument, that in case of any ex-parte order, the court is bound to set aside the

ex-parte order and relied upon the judgment rendered by Hon''ble Supreme Court delivered in the case of Rabindra Singh Vs. Financial

Commissioner, Coopration, Punjab and Others, .

5. It appears that the Appellant is under impression that the Court has no jurisdiction to pass ex-parte decree and even if passes, the Court is

bound to set aside the said decree. The argument raised is liable to be rejected summarily and since the counsel has relied upon the judgment of the

Supreme Court in the case of Rabindra Singh(supra), we may look into that judgment. The learned Counsel for the Appellant has relied upon the

observation of the Hon''ble Supreme Court made in paragraph 18 thereof, the paragraph 18 is reproduced below:

18. The Tahsildar, in his judgment, has resortd to a peculiar logic. According to him, the provisions of review were attracted and not under Order

9 Rule 13 for setting aside the ex-parte proceeding. Even if that be so, the ex-parte decree, in our opinion could have been set aside. He could

have exercised his power of review. The commentary on which, reliance was placed, was made on the basis of a decision of the Financial

Commissioner in Hukam Chand v. Malak Ram. The said decision, with respect, does not lay down the correct law. All Courts in a situation of this

nature have the incidental power to set aside an ex-parte order on the ground of violation of the principles of natural justice. We will deal with this

aspect of the matter a little later.

6. A bare perusal of the above paragraph, which has been relied upon by the learned Counsel for the Appellant, it is clear that the judgment

nowhere says that that in every case, the Court is bound to set aside the order, if it has been passed ex-parte and therefore, the judgment has also

been mis-understood and wrongly relied upon.

7. It appears that the Appellant wants to raise disputed question of fact in writ jurisdiction by bye-passing the remedy of appeal and wants to state

that this Court should accept whatever document produced in the writ jurisdiction for the first time without placing before the authority concerned

which has passed the impugned order at the time of passing the original order. Learned Counsel for the Appellant fairly stated that documents,

which have been relied upon by the Appellant, were placed before the authority along with the application for getting the order set aside i.e., when

the Appellant submitted an application under Order IX Rule 13 CPC In that situation also those documents which have been relied upon cannot

become gospel truth to prove any fact and those documents could have been considered by the authority to find out whether there is any just cause

for setting aside the ex-parte order.

8. Be that as it may be, there remains the question of fact whether the notice was served on the writ Petitioner and that can be yet examined by the

appellate authority even after taking help from the documents placed on record by the Appellant along with the application filed under Order IX

Rule 13 Code of Civil Procedure, provided they are relevant for this purpose

9. Learned Counsel for the Appellant stresses the argument to state that the authority had no jurisdiction to pass the order because there was no

relationship of employer and workmen between the Appellant and the Respondents, but ignoring the fact that this is a question of fact and

contention of the Appellant only is contention and not the admitted or proved fact. The Appellant could get an opportunity to prove the fact with

the help of evidence after giving an opportunity of hearing to other parties and cannot be considered to be a fact which is bound to be accepted by

the Court. Therefore, the contention of the Appellant that the authority under the Minimum Wages Act had no jurisdiction to pass the order cannot

be sustained while considering the matter in writ jurisdiction by taking away the jurisdiction of the appellate authority.

10.In view of the above reasons, the facts do not warrant any interference by this Court in writ jurisdiction and therefore, the learned Single Judge

observed that the Appellant could have availed the remedy of appeal. The question which has not been raised by the Appellant is that the authority

under Minimum Wages Wages Act has passed the order against Government Servants in their personal capacity and the State was not a party in

the proceedings taken by the authority under the Minimum Wages Act and the Appellant could have raised that argument in appeal so as to find

out what is the effect of it.

11. In view of the above facts, we are of the considered opinion that the issue cannot be decided in writ jurisdiction and therefore, we do not find

any merit in this L.P.A. However, the Appellant is free to avail the remedy of appeal and may move an appropriate application for condonation of

delay and upon submission of such application, the appellate authority may consider to condone the delay in preferring the appeal sympathetically.

12. With this observation, this appeal is dismissed.