

Patna High Court

Bali Ram Sarraf vs State Of Bihar And Ors. on 30 August, 1967

Equivalent citations: AIR 1968 Pat 299

Bench: R Narasimham, K Singh

ORDER

1. The petitioner, who is the employer, has filed this application under Article 226 of the Constitution against the order passed by the appropriate authority under Section 20 (2) of the Minimum Wages Act, 1948, directing the petitioner-employer to pay Rs. 300/- as arrear wages plus compensation and cost.

2. The workman concerned filed the application under Section 20 (2) of the Act on the 15th November, 1965, claiming arrear wages due to him for the period from the 1st February 1963, to the 31st July, 1963. The claim was prima facie barred by limitation unless, by virtue of the second proviso to Sub-section (2) of Section 20 of that Act, the delay in filing the application could be condoned by the authority. No express prayer for condoning the delay was however, made in the application (An-nexure A). But, on receipt of the same, the authority issued a notice on the petitioner (Annexure B) to show cause on the 21st July, 1966. The petitioner, however, did not enter appearance but sent his show cause petition (Annexure C), dated the 11th July, 1966, by post. In this show cause petition, the petitioner did not raise any objection to the claim of the workman on the ground of delay. It appears that thereafter, when the case was fixed for hearing on the 5th September, 1966, the petitioner did not enter appearance, and, on the ex parte evidence of the worker, the authority, by one order, condoned the delay, and then granted him relief, as prayed for.

3. Mr. Uday Sinha for the petitioner urged that the authority should have, first, given the petitioner an opportunity to oppose the prayer for condonation of delay. He also urged that the notice served on the petitioner should have been in the form prescribed (Form IX) attached to the Minimum Wages (Central) Rules, 1950, and not in the form as was sent in Annexure B.

4. There is doubtless some force in this contention. When the application appeared to be prima facie time-barred, the authority might have first decided the question as to whether sufficient cause was made put for condoning the delay. But there is no illegality if, in one composite order, the authority first condones the delay in filing the application on being satisfied about the sufficiency of the cause, and then disposes of the application on merits. The question is ultimately, one of prejudice. The petitioner was clearly informed of the date to which the case was posted viz., the 21st July, 1966, and, had he cared to enter appearance on that date, he would have been aware of the next date of adjournment, to which the case was posted for hearing. But, apart from sending a show cause petition by post, the petitioner did nothing else, and absent himself. The result was that an ex parte order was passed against him.

5. It is always desirable that, in giving notice, the statutory forms, attached to the Rules, are utilised. But the omission to use such statutory forms will not by itself invalidate the proceeding so long as the substance of the application of the worker was disclosed to the employer, and he was given an opportunity to object on a date fixed in the notice.

6. For these reasons, we are not satisfied that there is any illegality which would justify our quashing the order of the appropriate authority The order is undoubtedly an ex parte order. The petitioner's remedy is, therefore, as provided in Sub-rule (4) of Rule 29 of the Minimum Wages (Central) Rules, 1950, read with the provisions of the Limitation Act. 1963.

7. With these observations, the application is dismissed but without costs.