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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th April 2005

No.4109-li/l(B)-32/2005-L.E.—In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Award, dated the 31st March, 2005 in I.D. Case No. 130/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Similipahar Forest Development Corporation Ltd. (Utilisation), Jajpur Road Division and its workmen Shri Hadibandhu Bhol and 27 others was referred for adjudication is hereby published as in the Scheduled below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 130 OF 1994

Dated the 31st March 2005

Present:

Shri P.K. Sahoo, O.S.J.S (Jr. Br.)
Presiding Officer
Labour Court,
Bhubaneswar.

Between:

The Management of
Similipahar Forest Development
Corporation Ltd. (Utilisation),
Jajpur Road Division. . . First-party—Management

And

Its Workmen
Sarbasri Hadibandhu Bhol
and 27 others. . . Second -party—Workmen

Appearances:

Shri P. K. Swain . . For the First-Party Management

Shri Babaji Patra
Shri Kalandi Jena . . For the Second -Party Workmen

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department memo. No.9469 (5)/LE., dated 26-7-1994 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :—

“(i) Whether the termination of services of the workmen Shri Hadibandhu Bhol and 27 others (as per list) by the management of erstwhile Similipahar Forest Development Corporation Ltd., Jajpur Road (Utilisation) Division, presently under the Orissa Forest Development Corporation, Bhubaneswar with effect from 1-9-1990 is legal and/or justified? If not, what relief the workmen are entitled to ?

(ii) Are the above 28 workmen entitled to regularisation of their services under Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated, Consolidated and Daily Wage Service Regulation, 1982 ? If so, what should be the details ?”

3. The brief facts giving rise to the present case are that all the 28 workmen under the present reference were working in different capacities starting from the year 1980 on daily wage basis under the erstwhile Similipahar Forest Development Corporation an unit of Orissa Forest Corporation presently under the Orissa Forest Development Corporation Ltd., Bhubaneswar (in short the management). According to the workmen, although they had rendered continuous uninterrupted service for the years together but the management without any rhyme or reason had illegally terminated their services with effect from 1-9-1990 but subsequently they were all reinstated in their respective services on 26-10-1990 and were given their wages for the period from 1-9-1990 to 26-10-1990 as per the direction of the Hon'ble High Court of Orissa, Cuttack. It is categorically averred by the workmen in the statement of claim that no dispute now subsists so far as the first item of schedule of reference is concerned as all the workmen have already been reinstated in service with effect from 26-10-1990. In the year 1992 the Similipahar Forest Development Corporation and Orissa Plantation Development Corporation were merged with Orissa Forest Corporation and the Orissa Forest Corporation was renamed as Orissa Forest Development Corporation and after merger the services of the workmen were transferred to the present management and they are still continuing in their respective services under the management. The further case of the workmen is that although they have rendered continuous services for years together but their services have not yet been regularized by the management. According to the workmen Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated, Consolidated Daily Wages Service Regulation, 1982 provides that the employees working for more than three years on daily wages and consolidated wages will be regularized in their services by the Committee constituted by the Board in its 12th meeting held on 16-10-1982. On the basis of such rule the workmen have now prayed for regularization of their services from the date of joining in their services. They have also

further prayed to give necessary direction to the management to pay the salary and allowances as paid to their counterparts in their regular establishment with all incidental benefits. Hence the reference.

4. The management, on the other hand, filed written statement opposing the claim of the workmen *inter alia* contended that the dispute is not maintainable as framed under the provisions of law since the above workmen have already approached for regularization of their services before the Hon'ble Court along with other relief and otherwise. As the matter has already been disposed of by the Hon'ble Court the same can not be adjudicated upon by this Court at present. According to the management, the workmen were retrenched by the management of Similipahar Forest Development Corporation Ltd., with effect from 1-9-1990 and were reinstated by virtue of settlement, in service, signed on 25-10-1990. In the year 1992 the Similipahar Forest Development Corporation and Orissa Plantation Development Corporation were merged with Orissa Forest Corporation and Orissa Forest Corporation was renamed as Orissa Forest Development Corporation. After merger, due to surplus manpower no regularization has been effected. Since the management of Similipahar Forest Development Corporation has been merged with the present management and when the rules of the present management are in force the workmen can not claim regularisation under Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated, Consolidated and Daily Wage Service Regulation, 1982. It is further averred in the written statement that after merger of Similipahar Forest Development Corporation with the present management the Similipahar Forest Development Corporation Regularisation Rule is no more in force and due to excess manpower no regularisation has been taken up after merger of the Corporation with effect from 1-10-1990 and therefore the workmen are not entitled to be regularized in their services. That apart the workmen being daily rated employees are not eligible for regularisation in absence of any vacancy and they are also not eligible for equal pay with the regular employees. They have rightly been paid their wages from time to time. Since the Similipahar Forest Development Corporation rule is no more in force the workmen are not entitled to get any relief as prayed for from the present management. On the above back grounds, the rejection of the claim of the workmen has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed.

ISSUES

(i) Whether the termination of services of the workmen Shri Hadibandhu Bhol and 27 others (as per list) by the management of erstwhile Similipahar Forest Development Corporation Ltd., Jajpur Road (Utilisation) Division, presently under the Orissa Forest Development Corporation Ltd., Bhubaneswar with effect from 1-9-1990 is legal and or justified ? If not, what relief the workmen are entitled to ?

(ii) Are the above 28 workmen entitled to regularisation of their services under Rule 3(b) of Similipahar Forest Development Corporation Ltd. Daily rated Consolidated and Daily Wage Service Regulation, 1982. If so, what should be the details ?

6. The workmen in support of their case have examined three witnesses namely Babaji Patra, Niranjana Sahoo and Kailash Chandra Mallick (workmen) as W.Ws.1 to 3 and has relied upon the xerox

copies of the documents such as, office order dated 9-10-1980 agreement dated 25-10-1990, letter dated 26-10-1990 of the Project Manager (M), Orissa Forest Corporation Ltd., Cuttack, office order dated 2-3-1991 with regard to the appointment of Narendra Kumar Samal, order dated 3-8-1993 passed by the Hon'ble court in O.G.C. No. 3334/1990 and office order dated 19-4-1991 marked as Exts.1 to 6 respectively. On the other hand, the management has examined one Uttam Kumar Biswal, Gagan Bhari Mohapatra and Md. Abdul Sahid as M.Ws.1 to 3 and has relied upon the xerox copies of the documents such as, office order dated 30-06-2001 and the statistics of the Corporation marked as Exts. A and B, respectively in support of its case.

FINDINGS

7. Issue No.(i)— At the outset I would like to state herewith that the issue with regard to termination of the services of the workmen under reference is not pressed by the parties as all the workmen have been reinstated in their services with effect from 26-10-1990, and have received their wages for the period from 1-9-1990 to 26-10-1990 as per the settlement dated 25-10-1990. Since both the parties have raised no dispute the issue No. (i), in my view, needs no further discussion.

8. Issue No.(ii)— With regard to issue No. (ii) relating to the regularisation of the services of the workmen the evidence led by the workmen clearly shows that although they have rendered continuous service for years together starting from 1980 but they have not yet been regularized in their services. It is admitted by W.W.1 in his evidence that they are now getting their service benefits according to the present managements Rule W.W.2 is a seasonal staff under Similipahar Forest Development Corporation. He states that the timber felling work of the Corporation has been reduced. He has denied his knowledge if the staffs have been retrenched due to want of work. Similarly W.W.3 in his evidence has categorically stated that he can not say why the Similipahar Forest Development Corporation did not regularize their services. He admits that as he was not fit to be regularised in service, Similipahar Forest Development Corporation did not regularise him in service and at present there is no work in the forest and the work in N.H.60 is going on. He has also denied his knowledge if the process of retrenchment is going on in the corporation. It has been suggested to all the above witnesses to the effect that they are not entitled to be regularised in their services as per Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated, Consolidated and Daily Wage Service Regulation, 1982 to which all the above witnesses have denied. During evidence the witnesses have proved the office order, agreement, letter of the Project Manager, appointment order, order of the Hon'ble Court in O.J.C. No. 3334/1990 and office order marked as Exts.1 to 6 respectively.

9. Now coming to the evidence of the management it is seen that M.W.1 in his evidence has clearly stated that the workmen were initially engaged by the management of Similipahar Forest Development Corporation which was subsequently merged with the present management with effect from 1-10-1990. Since 1-10-1990 the management Regularisation Rule is being applicable to all the employees of the Corporation. He has categorically stated that due to dearth of work and loss and ban on felling of timber and transfer of bamboo to the paper mill none of the employees of the Corporation has been regularised with effect from 1-10-1990. Similarly the evidence of M.W.2 clearly goes to show that after merger the present management is running in loss since 1991-92 due to surplus manpower. In the year 1997 the work of

plantation was taken back and dealt with by the Plantation Division but the staffs meant for plantation were left in the management. He has further stated that the reorganization of manpower was given to TATA Consultancy. According to the report of TATA Consultancy 3281 workers have been surplus and the management decided to implement retrenchment, introduction of V.R.S. and V.S.S. in the year, 2001-02, the management suffered a loss to the tune of Rs. 21.27 crore. In June, 2001 the management issued a circular laying down the procedure for retrenchment of daily wagger/consolidated/*ad hoc*/N.M.R. employees vide Ext.A. He has categorically stated that it is not possible for the management to regularize the services of the workmen. Similar statement is also noticed in the evidence of M.W.3. In his evidence M.W.3 has clearly stated about the loss incurred by the management from 1991 to 2003 vide Ext.B. All the above witnesses have been cross-examined at length but nothing material and substantial has been elicited by the workmen so as to discard their evidence.

10. Both the management and the workmen have adduced evidence in support of their respective cases. The positive and definite case of the workmen are that they have rendered continuous service for years together starting from the year 1980 on daily wage basis on the erstwhile Similipahar Forest Development Corporation. In the year 1992 the Similipahar Forest Development Corporation and Orissa Plantation Development Corporation were merged with Orissa Forest Corporation and the Orissa Forest Corporation was renamed as Orissa Forest Development Corporation (management). After merger, the services of the workmen were transferred to the present management. Although they have rendered continuous service under Similipahar Forest Development Corporation but their services have not yet been regularised. According to the workmen they are entitled for regularisation under Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated/ Consolidated /Rated Worker Service Regulation, 1982 which came into force with effect from 1-11-1982. On the other hand, the management has taken a plea that after merger, the Similipahar Forest Development Corporation Regularisation Rule is no more in force and due to excess manpower no regularisation has been taken up by the present management with effect from 1-10-1990. According to the management, the workmen being the daily rated employees are not entitled for regularisation in absence of any vacancy and they are also not eligible for equal pay with the regular employees. The bare perusal of the Rule 3(b) of Similipahar Forest Development Corporation Ltd. Daily rated/Consolidated/Rated Workers Service Regulation, 1982 clearly reveals that a Committee comprising of (1) Project Manager, (2) Deputy General Manager, (3) Secretary of the Corporation, if there is one and (4) Managing Director, in Project Manager level and (1) Managing Director, (2) Deputy General Manager and (3) Secretary of the Corporation, if there is one, in Head Office level was constituted. The said Rule nowhere provides the entitlement of the workmen to be regularised in their services. Rather Rule 3(c) clearly laid down that the committee constituted under Rule 3(b) shall from time to time recommend deserving cases for regularisation on the basis of the qualification and experience prescribed by the Board and the Committee will recommend the regularisation only at the initial posts. Since Rule 3(b) nowhere provides the entitlement of workmen for regularisation, the workmen are therefore not entitled to regularisation of their services under the said Rule. Apart from that the workmen have miserably failed to produce any document with regard to the recommendation of the Committee constituted under Rule 3(b) relating to their regularisation. No other court material is also forthcoming to definite that they are entitled for regularisation. In absence of any rebuttal evidence to that effect it can not be definitely said that all the above workmen are entitled for

regularisation of their services under the said Rule. Besides the present management has now surplus staff in its regular roll and therefore not in a position to take more staff on its regular roll. It's financial condition also does not point regular employment of further staff for time being. In that view of the matter all the 28 workmen under reference are not entitled to regularisation of their services under Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated, Consolidated and Daily Wage Service Regulation, 1982. The issue No. (ii) is answered accordingly.

11. Hence it is ordered :

ORDER

Issue No. (i)— Not pressed by the parties,

Issue No. (ii)— That the above 28 workmen are not entitled to regularisation of their services under Rule 3(b) of Similipahar Forest Development Corporation Ltd., Daily rated, Consolidated and Daily Wage Service Regulation 1982. Accordingly the concerned workmen are not entitled to any relief as prayed for:

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. SAHOO
31-3-2005
Presiding Officer
Labour Court,
Bhubaneswar

P. K. SAHOO
31-3-2005
Presiding Officer
Labour Court,
Bhubaneswar

By order of the Governor

D.MISHRA
Under-Secretary to Government