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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th July 2006

No. 6793—li/1(B)-21/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2006 in Industrial Dispute Case No. 61/1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of the General Manager, M/s Ballarpur Industries Ltd., Choudwar, Dist. Cuttack and its workman Shri Pradipta Kumar Satpathy, At Ladukeswar, P. O. Hatsahi, P.S./Dist. Nayagarh was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 61 OF 1997

Dated the 30th June 2006

Present :

Shri P. K. Sahoo, o.s.J.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The General Manager .. First Party—Management
M/s Ballarpur Industries Ltd.
Choudwar, Dist. Cuttack.

And

Shri Pradipta Kumar Satpathy .. Second Party—Workman
At Ladukeswar, P. O. Hatsahi
P. S./Dist. Nayagarh.

Appearances :

For the First Party—Management .. Shri B. B. Subudhi Ray

Second Party—Workman himself .. Shri P. K. Satpathy

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. 9448(4)-L. E., dated the 31st July 1997 for adjudication and Award.

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

“Whether the action of the management of M/s Ballarpur Industries Ltd., Choudwar Unit, Choudwar in refusing re-employment to Shri Pradipta Kumar Satapathy casual Electrical Helper of erstwhile M/s Titaghar Paper Mills Ltd., No. III with effect from the 24th December 1992 is legal and/or justified ? If not, to what relief Shri Satapathy is entitled ?”.

3. Workman Shri Pradipta Kumar Satapathy by way of this reference has challenged the legality and justifiability of the action of the management of M/s Ballarpur Industries Ltd., Choudwar Unit, Choudwar (in short the management) in refusing re-employment to him with effect from the 24th December 1992.

The facts in brief as narrated in the statement of claim tend to reveal that the workman concerned was engaged as Motorman (Electrician Assistant) in Electrical Department of erstwhile management of Titaghar Paper Mill Company Ltd., No. III, Choudwar (in short erstwhile management) with effect from the 27th December 1981. He continued to work as such in the said Electrical Department up to the 3rd November 1988. In the meanwhile the said erstwhile management was partly closed due to sickness with effect from the 4th November 1988 but the concerned workman was asked to continue in the said Electrical Department as essential service holder and accordingly he worked till the final closure of the unit in the month of May, 1989. Subsequently the said erstwhile management was taken over by the present management with effect from the 1st May 1991 as per the Memorandum of Understanding (in short M. O. U.) the present management took over entire assets, liabilities and the manpower on the 1st May 1991. According to the workman, he stayed at Choudwar till June, 1992 with a hope to be absorbed under the present management when he became ill and was shifted to his permanent native place at Ladukeswarpur for better care and treatment. He was under treatment at S. D. Hospital, Nayagarh from the 1st July 1992 to 23rd December 1992. After recovery from his ailment he returned back to Choudwar and submitted an application duly annexed with medical fitness certificate for his reinduction in his former post. But his application for reinduction was not considered by the management as a result he approached the labour machinery for taking immediate action at this end but to no effect. The matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication, the workman has claimed for his reinstatement in service with back wages. Hence the reference.

4. The management, on the other hand, has filed its written statement opposing the claim of the workman *inter alia* contended that the records of the erstwhile management clearly disclose that the concerned workman was working as a casual unskilled worker with effect from the 27th December 1981 being engaged intermittently on daily wage basis as

and when the work was available for him. According to the management due to irrecoverable sickness of the erstwhile management which owned No. III Mill at Choudwar besides two other paper Mills at West Bengal, the Company was referred to B.I.F.R. under the Sick Industrial Company (Special Provisions) Act, 1986. As per the Award of the B. I. F. R. in case No. 1/1987 the Government of Orissa purchased the No. III Mill from the said Company. Thereafter by virtue of M. O. U., dated the 20th April 1991 the present management purchased the said Mill from the State Government and as per the M. O. U., dated the 20th April 1991 the assets and liabilities were taken over by the present management. As per the said M. O. U., on the 27th April 1991 an agreement was signed between the workers Union and the present management wherein it was agreed upon to take back the permanent workman on roll as on the 1st May 1991 on the terms and conditions contained in the said agreement subject to such workman exercising their option in writing for acceptance and re-employment under the present management. There was no decision of the Government to re-employ any casual worker working in the erstwhile management. Pursuant to M. O. U., dated the 31st October 1991 the ex-casual workers were to be re-employed as per requirement of the management. The concerned workman on coming to know that some ex-casual workers of the erstwhile management had come to be re-employed on casual basis by the management, he directly approached the Conciliation Officer-cum-Assistant Labour Officer, Choudwar for his reinduction. It is categorically averred in the written statement that the workman working under the erstwhile management were freshly appointed in terms of the M. O. U., dated the 27th April 1991 and the 31st October 1991. The concerned workman who was working as a casual worker under the erstwhile management was not borne in the roll of the said erstwhile management as on the 1st May 1991. According to the management the workman concerned was never in employment under the management. Neither he had any right for re-employment nor there was any post for him. In such premises, the workman concerned is not entitled for any relief. On the above backgrounds the rejection of the claim of the workman has been prayed for by the present 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 action of the management of M/s Ballarpur Industries Ltd., Choudwar Unit, Choudwar in refusing re-employment to Shri Pradipta Kumar Satapathy, casual Electrical Helper of erstwhile M/s Titaghar Paper Mills Ltd., No. III with effect from the 24th December 1992 is legal and/or justified ?
- (ii) If not, to what relief Shri Satapathy is entitled ?”.

6. The workman in support of his case has examined himself as W. W. 1 and other two witnesses namely Shri Gopal Chandra Das and Shri Dinabandhu Nanda as W. Ws. 2 and 3 respectively but has not relied upon any document. On the other hand, the management has examined one Shri Bipin Bihari Subudhi Ray as M. W. 1 and has relied upon the xerox copies of the Award of B. I. F. R., M. O. U., dated the 20th April 1991 and the 27th April 1991 notice, dated the 29th April 1991, another M. O. U., dated the 30th October 1991 and the sale deed, dated the 5th January 1994 marked as Exts. A to F respectively in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman Shri Pradipta Kumar Satapathy clearly emerges that he was working as a casual labourer in the establishment of the erstwhile management from the 27th December 1981. He was also working as an Assistant of the Electrician. He continued as such till June, 1992. After June 1992 he became ill and had been to his native place. On the 24th December 1992 he reported for duty but no work was given to him. He has now claimed for his reinstatement in service with back wages. During cross-examination he has stated that the present management took over the erstwhile management from the State Government after entering into an agreement. He has further stated that the Mill was closed from 1988 to 1991. But some essential workers were working in the Mill during its closure. The new management came in the month of May, 1991. There was an agreement regarding the appointment of old workers in the Mill in the year 1991 and the management absorbed the old workers in phasewise from May, 1991 till the November, 1992 both permanent and casual employees. Due to his illness he remained absent from July, 1992 to the 23rd December 1992 and therefore, he could not be absorbed under the management. He submitted his joining report on the 24th December 1992 along with the medical certificate. It has been suggested to him that he had not submitted any joining report to the management on the 24th December 1992 and that he had directly submitted an application before the Assistant Labour Officer and that he is not entitled to be reinstated in service with back wages to which he has negatively replied. It is in the evidence of W. W. 2, Shri Gopal Chandra Das that the workman was working under the management from 1981 to 1992. He continued to work under the erstwhile management till July, 1992. He was sick from the 1st July 1992 to the 24th December 1992. After he was cured, he reported for duty but the management did not allow him to work and refused employment with effect from the 24th December 1992. He has further stated that the workman was working under the erstwhile management which was closed in the month of November 1988. In the year 1991 the State Government purchased the erstwhile management and handed over to the present management. At that time the workman was absent due to his illness for which he could not be able to work under the present management. After his recovery he intended to join his duty but the management did not allow him to work rather refused employment to him. During cross-examination he has categorically stated that the erstwhile management was closed in the year 1988 and was referred to B. I. F. R. The Government of Orissa purchased the Unit from B. I. F. R. in the year 1988 and sold the same to the present management on the 19th April 1991. Thereafter the present management made an agreement with the representative of the workman then working under the erstwhile management on the 27th April 1991 indicating the terms and conditions of re-employment and payment, etc. of all the workers. It is agreed upon by both the management and the workman that the present management would offer re-employment to permanent workers on roll of erstwhile management as on the 1st May 1991 and the attendance as on the 1st May 1991 would be taken as consent of the workman to continue their employment in the establishment of the present management as per the terms

and conditions of M. O. U. On the 1st May 1991 the permanent workers gave their consent regarding their engagement. It has been suggested to him that the concerned workman had not given his consent to the management and that he remained absent from 1988 to 1992 and that the management had not refused re-employment to the workman and that the workman instead of approaching the management had directly raised a dispute before the Assistant Labour Officer, Choudwar to which he has given a negative reply. He admits that the said management is now functioning partly and 99% of the workers have opted V. R. S. and have taken their financial dues from the management. The evidence of W. W. 3, Shri Dinabandhu Nanda shows that the workman was working under the erstwhile management from 1981 to 1992. In the year 1981 he was working under the erstwhile management as Motorman and worked there till 1988. The Paper Mill was sick in the year 1988 and it was finally closed. He has categorically stated that from the year 1988 to June, 1992 the workman was working as Motorman in the essential service of the management. He became ill and had been to his native place. After his recovery he intended to resume his duty in the month of December, 1992. In the year 1991 the erstwhile management was handed over to the present management by the Government. In the month of December, 1992 the workman submitted his joining report along with medical certificate. Although the management assured to re-engage him but finally refused employment. During cross-examination he has clearly stated that the Mill is now closed and he had opted V. R. S. and received all his dues from the management. He has categorically stated that the workman had never worked in the establishment of the present management after reopening of the Mill on the 1st May 1991. It is also in his evidence that although there was an agreement between the present management and the Government but he has denied his knowledge about the exact date of execution of the said agreement. He has also denied his knowledge regarding the agreement, dated the 27th April 1991 effected between the workers representatives and the present management and the terms and conditions of the said agreement. It has been suggested to him that the management had not assured to re-engage the workman and that the management had not refused employment to which he has denied.

8. On the other hand, the evidence led by the management through M. W. 1, Shri Bipin Bihari Subudhi Ray goes to prove that the workman concerned was a casual unskilled worker under the erstwhile management. Due to sickness the Mill was closed and was referred to B. I. F. R. under the Sick Industrial Company (Special Provisions) Act, 1986. An Award in case No. 1/1987 was passed on the 21st December 1990 approving the rehabilitation scheme. As per the said scheme the Government of Orissa purchased the No. III Mill from the said Company and sold the said Mill to the present management by drawing a M. O. U. on the 20th April 1991. As regards giving employment to the employees of the erstwhile management as per the said M. O. U., dated the 20th April 1991 the management entered into another agreement with the employees of erstwhile management on the 27th April 1991 and it was agreed upon to take back the permanent employees of the erstwhile management on roll as on the 1st May 1991. As per the terms of the said M. O. U., dated the 27th April 1991 the management employed the permanent employees on roll as on the 1st May 1991. The concerned workman working as a casual worker was not borne in the roll of the erstwhile management as on the 1st May 1991. Therefore he approached the Assistant Labour Officer,

Choudwar alleging his non-induction in the establishment of the present management. He has categorically stated that the workman was never in employment under the present management. During evidence he has duly proved the Award of B. I. F. R., M. O. U., dated the 20th April 1991 and the 27th April 1991, notice dated the 29th April 1991, another M. O. U., dated the 30th October 1991 and the sale deed, dated the 5th January 1994 marked as Exts. A to F respectively. The evidence given by M. W. 1 has not been cross-examined by the workman and therefore, the evidence on the above aspect remains unchallenged.

9. From the above discussion it is clearly evident that the concerned workman was working as a casual worker under the erstwhile management with effect from the 27th December 1981. The said company had owned No. III Mill at Choudwar. Due to irrecoverable sickness of the said erstwhile management, the said Company was referred to B. I. F. R. under the Sick Industrial Company (Special Provisions) Act, 1986. As per the Award of the B. I. F. R. in case No. 1/1987 the Government of Orissa purchased the said No. III Mill from the erstwhile management. By virtue of M. O. U., dated the 20th April 1991, the present management purchased the said Mill from the State Government. On the 27th April 1991 as per the said M. O. U., dated the 20th April 1991 an agreement was made and signed between the Workers Union and the present management. It was agreed upon by the parties that the present management would take back the permanent employees on roll as on the 1st May 1991 on the terms and conditions contained in the said agreement (M. O. U.) subject to such employees exercising their option in writing for acceptance and re-employment under the present management. It is categorically submitted on behalf of the management that the concerned workman then working under the erstwhile management was not borne in its roll as on the 1st May 1991. Accordingly the learned representative of the management has strenuously urged that since the name of the concerned workman was not reflected in the roll of the erstwhile management as on the 1st May 1991 he is not entitled for any relief. It is further submitted on behalf of the management that the management had neither refused employment nor terminated the services of the concerned workman with effect from the 24th December 1992. The evidence already led on behalf of the workman goes to show that concerned workman was working as casual labourer under the erstwhile management with effect from the 27th December 1981 till June, 1992. He became ill after June, 1992 and was undergoing treatment till the 23rd December 1992. Due to such illness he remained absent for the above period and therefore, he could not be absorbed in the establishment of the present management. After he was fully cured he submitted his joining report along with medical certificate on the 24th December 1992 but his joining report was not accepted by the management. The application submitted to that effect was also not considered by the management for which he approached the labour machinery. It is admitted by W. W. 2 that it was agreed upon by both the present management and the workers Union that the present management would offer re-employment to permanent employees on roll of the erstwhile management as on the 1st May 1991 and the attendance as on the 1st May 1991 would be taken as consent of the employees to continue their employment in the establishment of the present management as per the terms and conditions of the M. O. U. Accordingly on the 1st May 1991 the permanent workers were re-employed by the present management. W. W. 3 in his evidence has categorically stated that the workman had never worked in the establishment

of the present management after re-opening of the Mill on the 1st May 1991. Although W. W. 3 was aware of the M. O. U., dated the 27th April 1991 but he denied his knowledge about the terms and conditions mentioned in the said M. O. U. It is undisputed between the parties that the management is now closed and 99% of the employees have opted V. R. S.

10. The perusal of the M. O. U., dated the 27th April 1991 vide Ext. C clearly emerges that it was agreed upon by the present management and the employees of the erstwhile management that the present management will offer employment to permanent employees on roll of erstwhile management as on the 1st May 1991. The attendance on the May, 1st 1991 shall be taken as consent of the employees to continue their employment with the present management as per the terms and conditions of M. O. U. In the present case the claim of the workman is that he joined in the establishment of the erstwhile management with effect from the 27th December 1981 and continued as such till June, 1992. After June, 1992 he became ill and had been to his native place. After he was fully cured from his ailment he submitted his joining report to the management on the 24th December 1992 but he was not given any work. He had also submitted another written application to the management but the same was not considered by the management. The other witnesses examined on behalf of the workman have also given the similar evidence. They have clearly stated that the workman concerned joined in the establishment of the erstwhile management in the year 1981. He continued till June, 1992. Thereafter he became ill from the 1st July 1992 to the 24th December 1992. On the 24th December 1992 the concerned workman submitted his joining report along with the medical certificate but he was refused employment. But the above evidence given by the concerned workman and his witnesses is completely denied and challenged by the management. Besides, the stand taken by the management before this Court is that the records of the erstwhile management show that the concerned workman was working as casual unskilled worker with effect from the 27th December 1981 intermittently on daily wage basis. He was not borne in the roll of the erstwhile management as on the 1st May 1991. Accordingly it is urged on behalf of the management that the workman is not entitled for any relief. In support of his case the workman has not adduced any documentary evidence. There is also no cogent material on record to prove and establish that he had worked under the erstwhile management till June, 1992. Even no proof of receipt of salary or wages for the above period or order or record of appointment or engagement till June, 1992 has been produced by the workman in the present case. In absence of any supporting documentary evidence the move oral statement given by the concerned workman to the effect that he continued in the establishment of the erstwhile management till June, 1992 can not be regarded as sufficient evidence to come to an irresistible conclusion that he had in fact worked till June, 1992 under the said erstwhile management. Besides, no medical certificate is also filed by the workman to show that he was in fact ill from the 1st July 1992 to the 23rd December 1992. From the above discussion it is therefore, crystal clear that the workman concerned was not in the roll of the erstwhile management as on the 1st May 1991. Rather the evidence led by the workman goes to prove that the erstwhile management was closed in the year 1988 and was referred to B. I. F. R. As per the Award of the B. I. F. R. the Government of Orissa purchased the Unit from the said Company and by virtue of M. O. U., dated the 20th April 1991 the present management purchased the said Mill from the Government. Since the erstwhile

management was closed in the year 1988 and was referred to B. I. F. R. It can not be definitely said that the concerned workman was continuing as such till June, 1992 under the said erstwhile management. Therefore, the stand taken by the workman is without substance. On the other hand, there is evidence on record to prove and establish that due to irrecoverable sickness of the erstwhile management it was referred to B. I. F. R. and as per the Award of the B. I. F. R. the Government of Orissa purchased the said Unit and by virtue of M. O. U., dated the 20th April 1991 the present management purchased the said Unit from the Government. As regards the employment of the employees working under the erstwhile management, the present management entered into another agreement excuted between the employees of the erstwhile management and the present management on the 27th April 1991 and it was agreed upon by the parties that the present management would take back the permanent employees on roll as on the 1st May 1991 but the concerned workman working under the erstwhile management as a casual unskilled worker was not in the roll as on the 1st May 1991. Therefore, he was not given any employment as his name did not find place in the roll of the erstwhile management as on the 1st May 1991. In such premises, there is considerable force in the submission already led on behalf of the management.

11. After carefully examining the evidence led by the parties and the documents relied upon by the management, I am of the considered view that the workman concerned has not succeeded in proving his own case with regard to his claim. In that view of the matter, the workman concerned is not entitled for any relief.

The reference is thus answered accordingly

Dictated and corrected by me.

P. K. SAHOO
30-6-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
30-6-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government