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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th July 2006

No. 6903–Ii/1(BH)-90/1995-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. 450 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between theMmanagement of the Executive Engineer, National Highway Division, Dhenkanal and its Workman Shri Pranabandhu Pradhan and others was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 450 OF 1995
Dated the 30th June 2006

Present :

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

Between :

The Executive Engineer National Highway Division Dhenkanal.	. .	First Party—Management
And		
Shri Pranabandhu Pradhan and others, At Motanga Post Meramundali Dist. Dhenkanal.	. .	Second Party—Workmen

Appearances :

For the First Party–Management	. .	Shri S. K. Mishra, Advocate
For the Second Party–Workman	. .	Shri S. B. Mishra, Advocate

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. 18067(5)-L.E., dated the 12th December 1995 for adjudication and Award.

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

> "Whether the termination of services of Shri Giris Chandra Maharana, Shri Pranabandhu Pradhan, Shri Anirudha Naik, Shri Rabi Narayan Swain, Shri Mayadhar Sahoo, Shri Iswar Chandra Sahoo, Shri Chandramani Jena, Shri Narahari Sahoo from January, 1993 and Shri Ashok Kumar Sahoo from the 8th September 1994 by the management of the Executive Engineer, National Highway Division, Dhenkanal is legal and/or justified ? If not, what relief the workmen are entitled ?"

3. By way of this reference all the above named workmen under the present reference have challenged the legality and justifiability of the action of the Executive Engineer, National Highway Division, Dhenkanal (in short the management) in terminating their services with effect from January, 1993 and 8th September 1994 in respect of workman Ashok Kumar Sahoo.

The brief facts as narrated in the statement of claim tend to reveal that all the workmen under the present reference were engaged under the management with effect from 1982. They were allowed to work at different sites of Meramundali Section Office under the control of the management. They were in watch and ward duties of old damaged Lingara Bridge and were also performing their duties in road repairing works, bush cutting and painting white colour on road side trees etc. They continued to work as such under the management till the date of their termination with effect from January, 1993 and in case of workman Ashok Kumar Sahoo from the 8th September 1994. According to the workmen, they had all performed their duties with much sincerity, devotion and to the utmost satisfaction of the concerned authorities but the management without any rhyme or reason illegally terminated their services without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). All their efforts for reinstatement when bore no fruit, they approached the labour machinery but the conciliation proceeding initiated by the District Labour Officer, Dhenkanal ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication, all the workmen have claimed for their reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workmen *inter alia* contended that at no point of time, the workmen were given employment by the management. The management had also not

terminated their services at any point of time. It is categorically averred in the written statement that the workmen were engaged by the different contractors as and when required to watch the old damaged Lingara Bridge situated at Meramundali. The workmen were not the regular employees of the management but they were all engaged by the contractor when the work was available for them. They were also paid wages through the contractors. They have also not completed 240 days of service in terms of the statutory provisions of the Act. It is further averred in the written statement that the management used to engage the contractors for different works such as, maintenance of road, bush cutting from both the sides of the road and painting white colour on the road side trees etc. and the contractors in turn used to engage the daily labourers for the above work and they also used to pay the wages to the daily labourers engaged by them. The management was only supervising the duties of the daily labourers and if there was any difficulty or non-performance of the duties by the concerned labourer, the matter was referred back to the concerned contractor only. Since the workmen were never engaged as regular employees and when the management had not terminated their services, the workmen are not entitled for any relief. 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 service of Shri Giris Chandra Maharana, Shri Pranabandhu Pradhan, Shri Anirudha Naik, Shri Rabi Narayan Swain, Shri Mayadhar Sahoo, Shri Iswar Chandra Sahoo, Shri Chandramani Jena, Shri Narahari Sahoo from January, 1993 and of Shri Ashok Kumar Sahoo from the 8th September 1994 by the management of the Executive Engineer, National Highway Division, Dhenkanal is legal and/or justified ?

(*ii*) If not, what relief the workmen are entitled to ?

6. The workmen in support of their case have examined one Shri Rabi Swain and Shri Anirudha Naik as W. Ws. 1 and 2 and have relied upon the xerox copies of the documents such as, experience certificate, letter, dated the 31st January 1989, order, dated the 22nd June 1991 and the 30th June 1990, duty slip and summons marked as Exts. 1 to 6/a respectively. On the other hand, the management has examined one Shri Pravat Kumar Bal and Shri Surya Narayan Mishra as M. Ws. 1 and 2 and have relied upon the xerox copies of the hand receipts containing 15 sheets marked as Ext. A series 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.

It reveals from the evidence of W. W. 1, Shri Anirudha Naik that he along with other workmen joined in the establishment of the management in different years commencing from 1982 to 1986 as D. L. R. They had also worked at different places under the management. It is categorically stated that when they demanded minimum wages, they were refused employment with effect from January 1993. Similarly, workman Shri Ashok Sahoo was also refused employment with effect from the 8th September 1994. He has further stated that the management had not given any notice or notice pay and retrenchment compensation while refusing employment to them. Even no enquiry was also conducted against them for any act of misconduct. Since the refusal of employment was illegal and unjustified, they have now prayed for their reinstatement in service with back wages. During cross-examination, he has clearly stated that he and other workmen under the present reference were not issued with any appointment order to work in the establishment of the management. He admits that he has not produced any document to show the details of his engagement at different places in different years. It has been suggested to him by the management that they were not engaged by the management rather engaged by a particular contractor as and when required by the management and that they did not have any direct link with the management and that they are not entitled for any relief to which he has categorically denied. W. W. 2 during his evidence has proved certain documents marked as Exts. 1 to 6/a respectively. In his evidence, he has clearly stated that he and other workmen used to work continuously for years together. During cross-examination, he has admitted that neither he nor the other workmen were issued with any order of appointment to work in the establishment of the management. He has further stated that he does not have any document to show that he had infact completed 240 days of work in 12 calendar months preceding the date of refusal of employment. It has been suggested by the management that they were working under the contractor and were receiving their wages from the concerned contractor to which he has replied in the negative.

8. On the other hand, the evidence led by the management through M. Ws. 1 and 2 clearly goes to show that the workmen were engaged by the different contractors as and when required by the management to watch the damaged Lingara Bridge and they were also paid their wages through the contractors who had engaged them as and when required by the management. it is categorically stated by M. W. 1 that due to damage of Lingara Bridge, another new bridge was constructed and the contruction work was completed in the year, 1988-1989. After construction of the said new Bridge, there was no necessarity to watch the old Bridge. M. W. 2 in his evidence has stated that the workmen were not the regular employees of the management and they had not worked under the management from 1983 to 1994. Both the above witnesses have categorically stated that the management had not retrenched the services of the workmen and therefore they are not entitled for any relief. Both the above witnesses have been cross-examined at length but nothing material and substantial has been elicited to discard their evidence. During evidence, M. W. 1 has admitted the documents marked as Exts. 1 to 5/c already relied upon by the workman. He has also duly proved the hand receipts issued to the contractor by the management marked as Exts. A

series. Both the witnesses have denied the suggestion with regard to the entitlement of any relief to the workman under the reference.

9. The sole contention raised by the learned counsel appearing for the management that the workmen had not worked for more than 240 days in the year preceding their termination in terms of the statutory provisions of the Act and they were not the regular employees of the management and therefore with regard to the termination of the workmen, the provisions of retrenchment are not attracted and the management was not under the obligation to comply with the provisions of Section 25-F of the Act. In such premises, the claim already made by the workmen under the present reference is not tenable and the workmen are not entitled for any relief. On the other hand, the learned counsel appearing for the workmen has strenuously urged that all the workmen had completed 240 days of service in terms of the statutory provisions of the Act but the management without any rhyme or reason terminated them from their services without following the mandate of Section 25-F of the Act. According to the learned counsel, the workmen under the reference are entitled to be reinstated in service with back wages since the mandatory provisions of Section 25-F of the Act have not been complied in the case of their termination.

10. In the case at hand, both the management and the workmen have adduced evidence in support of their respective cases. From the above discussion, the principal issue thus appears to be as to whether the workmen have completed 240 days of service in terms of the statutory provisions of the Act.

In a recent decision, the Hon'ble Apex Court in the matter between Y. M. Yellatti and Assistant Executive Engineer reported in 2006 (108) FLR 213 (Supreme Court) has taken a view that :

> "The burden of proof as to the completion of 240 days of continuous work in a year is on the claimant to show that he had worked for 240 days in a given year."

Admittedly the requirement of the Statute of 240 days can not be disputed and it is for the employee concerned to prove that he has infact completed 240 days in the last preceding 12 months period. Therefore, the proof of working of 240 days is stated to be on the employee in the event of any denial of such a factum. The above such fact has also been crystalised in other judgements in the case of Chief Engineer, Construction *Vrs.* Koshava Rao (d) by LRs. reported in 2005-II LLJ 479 (Supreme Court) and in the case of Manager, R. B. I., Bangalore *Vrs.* S. Mani and others reported in 2005-II LLJ 258 (Supreme Court) wherein the Hon'ble Apex Court has consistently taken the view that :

> "The initial burden of establishing the factum of continuous work for 240 days within a year was on the workman."

In the instant case, the evidence led by the workmen does not inspire confidence to come to an irresistible conclusion that the workmen had infact completed 240 days in the last preceding 12 months period. The documents already relied upon by the workmen also does

not reveal that they had infact, completed 240 days of service in terms of the statutory provisions of the Act. Even no proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period has been produced by the workmen. Although the workmen have relied upon the documents marked as Exts. 1 to 6/a but the above documents nowhere indicate that they had completed 240 days of service in terms of the statutory provisions of the Act. Therefore, it can not be regarded as sufficient evidence to come to a definite conclusion that the workmen had infact worked for 240 days in a year. In such premises, the submission already led by the learned counsel appearing for the workmen is without substance.Therefore, in absence of any clear, cogent and convincing evidence, the mere oral statement can not be regarded as sufficient evidence to arrive at a conclusion that the workmen had infact completed 240 days of service in terms of the statutory provisions.

11. After carefully examining the evidence led by the parties, the documents relied upon by them and keeping in view the settled position of law, I am of the considered opinion that the burden of proving as to the completion of 240 days of continuous work in terms of the statutory provisions of the Act has not successfully been discharged by the workmen in the present case. In that view of the matter, the workmen are 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

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