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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th November 2006

No. 10595—li/1(B)-75/2004-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th November 2006 in Industrial Disputes Case No. 2 of 2005 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of Chairman-*cum*-Managing Director of M/s Orissa State Commercial Transport Corporation, Old Secretariat Campus, Cuttack-1 and its workman represented through the General Secretary, Orissa State Commercial Transport Corporation Employees Union, At/P.O. Rahama (754140), Dist. Jagatsinghpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 2 OF 2005
Dated the 6th November 2006

Present :

Sk. Jan Hossain, o.s.J.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

The Chairman-*cum*-Managing Director .. First Party—Management
M/s Orissa State Commercial
Transport Corporation
Old Secretariat Campus, Cuttack-1.

And

The General Secretary .. Second Party—Workman
Orissa State Commercial
Transport Corporation Employees Union
At/P.O. Rahama (754140)
Dist. Jagatsinghpur.

Appearances :

For the First Party—Management	..	None
For the Second Party—Workman himself	..	Shri Raghu Arakhita Sinha, General Secretary of the Union.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide their Order No. 6233—li/1(B)-75/2004-L.E., dated the 23rd July 2005 :—

“Whether the action of the management of M/s Orissa State Commercial Transport Corporation Limited, Cuttack in giving employment to 21 Nos. of Old Junior employees and 14 Nos. of fresh employees from the 1st August 1998 onwards ignoring the claims of Shri Premananda Das, Shri Nityananda Swain, Shri Prana Krushna Lenka and Shri Padma Charan Pujari for re-employment is legal and/or justified ? If not, to what relief these workmen are entitled ?”

2. Shortly stated, the case of the second party-workmen, represented through the General Secretary, O.S.C.T.C. Employees’ Union, Cuttack is that the workmen, namely, Shri Premananda Das (Watchman), Shri Prana Krushna Lenka (Peon), Shri Nityananda Swain (Peon) and Shri Padma Charan Pujari (Orderly Peon) had joined the services of the first party-management, which is a Corporation fully owned and controlled by the Government of Orissa, on the 14th August 1989, the 12th November 1967, the 15th April 1967 and the 15th March 1967, respectively. While working as such at Headquarters office, Cuttack at Balipadar they were retrenched from service with effect from the 25th July 1998. It is the specific case of the second party that after their retrenchment, the management gave employment to 35 numbers of persons out of whom 21 were old employees and were junior to the second party-workmen and 14 numbers of new/fresh hands ignoring their claim for re-employment. In Para. 7 of the statement of claim the list of such junior employees along with their dates of appointment and place of work have been detailed described. According to the second party, the management having violated the provisions of Section 25-F of the Industrial Disputes Act, a direction for their re-employment with effect from the 26th July 1998 along with continuity of service and payment of all back wages and other benefits may be issued to the first party-management.

3. At a belated stage the management filed its written statement, which was allowed to be taken into record subject to payment of cost to the workmen. The management thereafter did not choose to appear for which it was set *ex parte* vide order, dated the 12th April 2006.

4. In course of *ex parte* hearing, all the four workmen have been examined and so also their General Secretary Shri Raghu Arakhita Sinha. In addition to the oral evidence, the workmen have produced documentary evidence, which have been marked as Exts. 1 to 27.

5. Except the four workmen and the General Secretary of the Union, no other person has given evidence in the case. The onus is upon the workmen to prove the employment of 35 persons from the 1st August 1998 onwards ignoring the claims of the workmen for re-employment.

W. W. No. 1, Shri Padma Charan Pujari in support of his claim has contended that the Corporation was declared closed with effect from the 25th July 1998 illegally but it is still functioning and some workers are continuing. He came to know that they were appointed by the Corporation. He has also contended that two persons were engaged from their cadre, namely, Kadari Anandam on the 1st August 1998 and Shri Jay Krushna Patnaik on the 9th March 2000 and 38 outsiders were appointed as Watchmen, Peon with effect from the 1st August 1998. The facilities of E. P. F. and pension etc. are provided to them. Similar is the evidence of W. W. Nos. 2 and 3. W. W. No. 4 has said that his service was regularised in the scale of pay of Rs. 570 to Rs. 790 with effect from the 6th September 1989. As per the norms of the Corporation he was selected and appointed as a Field Mate in the scale of pay of Rs. 800—1,050 with effect from the 16th December 1995. He made several representations for his continuation in the post but no intimation was given to him.

W. W. No. 5 in his evidence has stated that after the closure of the Corporation, 68 persons were appointed illegally and Serial Numbers 31 to 58 in Ext. 24 were outsiders. I have perused the documents filed in this case. Ext. 24 contains only names of some persons with other particulars such as account numbers, Father/Husband's name, age, etc. The other documents relate to the appointment letters of the workmen, letters to Provident Fund Commissioner, representations, gradation lists and regularisation of service. Except the bald assertion, I find no acceptable materials on record to satisfy this Tribunal that some persons were appointed by the Corporation. Appointments to the post must be made in terms of existing rules. There is nothing in the record to show that any appointment was made and they were employed in accordance with the recruitment rules framed by the Corporation. For want of materials brought on record by the workmen, it is difficult to say that the Corporation has actually appointed 35 persons as alleged after the closure ignoring the claim of the workmen.

In the circumstance, I hold that the workmen have failed to establish their claim and consequently they are not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me.

Sk. JAN HOSSAIN
6-11-2006
Presiding Officer
Industrial Tribunal
Bhubaneswar

Sk. JAN HOSSAIN
6-11-2006
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government