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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th June 2007

No. 7482—li/ 1(B) - 238/1991(Pt) - L. E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th February 2007 in I. D. Case No. 245 of 1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Kanchan Talkies, Angul and its workman Shri Kishore Kumar Dalbehera and 10 others was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 245 OF 1991
Dated the 26th February 2007

Present :

Shri S. K. Mohapatra, o.s.j.s. (Jr. Branch)
Presiding Officer
Labour Court, Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s Kanchan Talkies, Angul
District Dhenkanal

And

Their workmen .. Second Party— Workman
Shri Kishore Kumar Dalbehera and
10 others.

Appearances :

For the First Party — Management .. Shri R. C. Jena

For the Second Party— Workmen .. Shri K. K. Dalbehera

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s Kanchan Talkies, Angul and its workmen Shri Kishore Kumar Dalbehera and 10 others under Notification No. 8007-L.E., dated the 18th July 1985 read with

Notification No.14679-L.E., dated the 21st October 1991 vide Memo. No. 17319(5)-L.E., dated the 13th December 1991 for adjudication by this Court .

2. The terms of reference by the State Government is as follows:—

“Whether the termination of services of Shri Kishore Kumar Dalbehera, Bijaya Kumar Biswal, Sudhakar Das, Khetrabasi Nayak, Jitendra Nath Burman, Maheswar Naik, Sudhakar Sahoo, Dinabandhu Dehury, Suresh Ch. Kar, Shyam Gochhayat and Debaraj Sahoo by the management of M/s Kanchan Talkies, Angul with effect from the 21st November 1990 is legal and/or justified ? If not, to what relief are they entitled ?”

3. Shorn of all unnecessary details, the case of the workmen in brief is as follows :—

The workmen were working under the management of M/s Kanchan Talkies, Angul (hereinafter referred to as the management) since the 4th January 1962 without any interruption till the 20th November 1990 when the management suddenly gave one notice in the Notice Board indicating closure of the said Talkies (Cinema Hall) of the management *sine die*. As against that the workmen lodged a complaint before the Assistant Labour Officer who admitted the same as an industrial dispute and started a conciliation proceeding. During the conciliation proceeding the then Employer, Mr. Mansuklal Damjee gave assurance that there would not be any interruption in the service of the workmen till the reopening of the Cinema Hall and further assured that other works like official work and maintenance of the Cinema Hall would continue as before and that the workmen would continue to get their salary. In spite of such assurance by the then employer the conciliation failed. Thereafter the Government of Orissa referred the present industrial dispute to this Court for adjudication. The management had never given any notice pay or other benefits as required under Section 25-F of the Industrial Dispute Act, 1947 (hereinafter referred to as the I. D. Act) while terminating the service of the workmen by way of refusal of employment. In between the period of institution of the present case and filing of the statement of claim by the workmen, one of the workman namely Maheswar Nayak, Assistant Operator died. The said Maheswar Nayak was eligible to get his E.P.F. dues but the management had not paid the said E. P. F. amount to the legal heirs of the deceased workman. The management had not followed the provisions under the I. D. Act while retrenching the workmen from their service by way of refusal to provide employment with effect from the 20th November 1991.

4. Shorn of all unnecessary details, the case put forth by the previous management of M/s Kanchan Talkies, Angul i.e. Narshidas and Company (Forest) is as follows :—

M/s Kanchan Talkies was established in the year 1965 at Angul and was owned by M/s Narshidas and Company (Forest) (hereinafter referred to as the previous Management) which was a partnership firm. On account of certain unavoidable difficulties, the previous management after adequate notice to all concerned closed the said Cinema Hall with effect from the 21st November 1990 after settlement of all dues of the workmen working in the Cinema Hall prior to the 21st November 1990. Since the previous management could not manage the Cinema Hall which remained closed for about eight years it was sold to the present management i.e. Shri Ramesh Chandra Jena and 16 others. After sale of the said M/s Kanchan Talkies, the previous management has ceased to have any right, title and interest over the Cinema Hall or its operation. The workmen of this case started an industrial dispute before the Assistant Labour Officer, Angul long after closure of the Cinema Hall. The conciliation proceeding started by the Assistant Labour Officer was unlawful. Since the Cinema Hall had been closed by the previous management on genuine and *bona fide* reasons, the workmen never protested for such closure. It is further contended by the previous management that since the year 1965 till its closure on the 21st November 1990 different workman worked at different time intermittantly only and not continuously. The ground put forth by the previous management is that the present reference under the I. D. Act is not maintainable and that the workmen had engaged themselves in gainful employment elsewhere after the closure of the Cinema

Hall. On these grounds, the previous management had contended that the workmen are not entitled to any relief whatsoever.

5. In the instant case the previous management by a petition dated the 17th May 2003 made a prayer to this Court to implead the New Management namely Shri Ramesh Chandra Jena and 16 others on the ground that the Cinema Hall has been sold to the said management and made further prayer to delete the previous management from the case.

The then Presiding Officer, Labour Court, Bhubaneswar by his order dated the 5th January 2004 deleted the previous management from the record and added the new management i.e. Shri Ramesh Chandra Jena and 16 others as the first-party management in this case. The then Presiding Officer, Labour Court, Bhubaneswar further directed to the office in the said order to delete the name of the previous management and to substitute the name of new management i.e. Shri Ramesh Chandra Jena and 16 others to represent M/s Kanchan Talkies, Angul in place of the previous management. It appears that the workmen had not challenged the order dated the 5th January 2004 of this Court in any higher forum.

6. The New Management i.e. Shri Ramesh Chandra Jena and 16 others (hereinafter referred to as the New Management) in its written statement contended that the present reference made by the Government is mechanical and casual as the second-party are not workmen within the meaning of Section 2 (S) of the I. D. Act and they had not completed 240 days of continuous and uninterrupted service under the management at any time and therefore, the reference is not maintainable in the eye of law. The new management purchased M/s Kanchan Talkies, Angul from its previous management vide agreement dated the 15th April 1998 and started functioning from the year 1999. Since the alleged termination of service of the workmen is the 21st November 1990, there was never any employee -employer relationship between the workmen and the new management. The workmen of this case had never worked under the new management at any time. It is further contended that since none of the workmen worked under the present management continuously for more than 240 days, they are not entitled to get any benefit of Section 25-F of the I. D. Act. Further contention of the new management is that the workmen admitted the closure of the Cinema Hall with effect from the 21st November 1990 and therefore, the present reference to this Court does not deserve any answer and that closure being admitted no adjudicating authority had any jurisdiction to question the same and the workmen can not claim any relief of reinstatement and back wages. On these averments, the new management has sought for rejection of the prayer of the workmen regarding their reinstatement in service and consequent benefits of back wages.

7. On the aforesaid pleadings of the parties, the following issues have been framed:—

Issue No. (i) Whether the termination of services of Shri Kishore Kumar Dalbehera and 10 others workers by the management of M/s Kanchan Talkies, Angul with effect from the 21st November 1990 is legal and/or justified ?

Issue No.(ii) If not what relief are they entitled ?

8. At the outset it is very much pertinent to mention that as because by order dated the 5th January 2004 the then Presiding Officer, Labour Court, Bhubaneswar had deleted the previous management from record and substituted the new management in its place, and the order having not been challenged in any higher forum by the workmen. The present Presiding Officer, Labour Court, Bhubaneswar did not have any scope to further implead the previous management as a necessary party or to take evidence from his side as because it would having implication of revising its own order by a Court which is not permissible under the law. With this constraint at hand, the present Presiding Officer, Labour Court, Bhubaneswar proceeded to decide the present case in the absence of the previous management.

9. W.W. I namely, Shri Bijaya Kumar Biswal in his deposition has contended that he was deposing on behalf of himself and other workmen of this case and stated that he was working

under the management with effect from 1970 and other workmen were also working since 1970 onwards. It is further deposed in the evidence of W. W. 1 that the Cinema Hall in question was closed since the 21st November 1990 and that all the workmen of this case were working in the said Cinema Hall till the 21st November 1990. According to W.W. 1 when the workmen reported for duty on the 21st November 1990 at the Cinema Hall they found that the Cinema Hall was closed and the previous management did not answer them anything regarding closure of the Cinema Hall. According to W. W. 1 when the Cinema Hall reopened on the 24th September 1999 all the workmen approached the new management to consider their case of reinstatement in service but the new management expressed its unwillingness to reinstate the workmen and therefore, they approached the Assistant Labour Officer, Angul which in due course started a conciliation proceeding which ended in failure and the present reference was made. According to W.W. 1 there was no notice regarding any closure and while closing the Cinema Hall the previous management had not given any closure compensation to any workman. The xerox copy of the wage register has been proved for the period from the 1st April 1989 to the 20th November 1990 vide Ext. 1. According to W. W. 1 the previous management was deducting E.P.F. subscription from the salary of the workmen and the same was deposited in the office of the Provident Fund Commissioner. Ext. 2 is the xerox copy of the order dated the 31st October 2002 of the Assistant Provident Fund Commissioner, Bhubaneswar and Ext. 3 is the xerox copy of money receipt towards security deposit of one of the workmen. In his cross-examination W. W. 1 has admitted that the previous management namely Damji Narshidas Anderjee was the owner of M/s Kanchan Talkies and the present management was not its owner on the 20th November 1990 i.e. when the workmen last worked in the said Cinema Hall. According to W. W. 1 they had not approached the present management as it was not within their knowledge. According to W.W. 1 the workmen had approached the present management on the 15th September 2003 only for reinstatement. There is nothing more substantial in the cross-examination of W.W. 1 On perusal of the wage sheet Ext. 1 it is apparent that all the workmen of this case were working under the previous management. The wage sheet relates to the period 1989 and 1990 and it clearly shows that the workmen were getting their monthly salary from the previous management. Therefore, it can safely be concluded that the workmen of this case had worked for a period of 240 days within 12 months prior to their alleged termination by way of refusal to give employment with effect from the 21st November 1990 and therefore, the provisions under Section 25 -F of the I. D. Act definitely applies in the instant case.

10. Admittedly as because of the constraint arising out of the order dated the 5th January 2004 passed by the previous Presiding Officer, Labour Court, Bhubaneswar to delete the name of the previous management, the previous management was not called upon to adduce evidence in this case. Admittedly the workmen had never worked under the new (present) management. Accordingly to W. Ws. 1 and 2 they had not been given any benefit at the time of retrenchment of their service by the previous management and that they had never been noticed about the closure of the Cinema Hall, M/s Kanchan Talkies, Angul by the previous management with effect from the 21st November 1990. Thus non-compliance of the provisions under Section 25-F of the I. D. Act is very much manifest on the face of the record.

11, The new management has examined one of the owners of M/s Kanchan Talkies, Shri Ramesh Chandra Jena as M. W. 1. According to M. W. 1 he along with 16 others purchased M/s Kanchan Talkies in the year 2003 by a sale deed and prior to that they had entered into an agreement for sale with the previous owner's wife. The xerox copy of the registered Sale deed has been proved as Ext. C by M.W. 2. Ext. C does not contain any stipulation regarding any previous liability being transferred to the new management under Ext. C. In any event, the workmen of this case had never worked under the new management and the new management had never come into picture when the services of the workmen was terminated by the previous management on the 21st November 1990 by way of refusal of employment. Therefore the new management is not under any liability to compensate the workmen of this case in any manner.

12. In view of the discussion made above, it is held that the retrenchment of the workmen from their service by way of refusal of employment with effect from the 21st November 1990 by the

previous management without following the procedure laid down under Section 25-F of the I. D. Act is illegal and unjustified. Now the question arises as to whether the workmen of this case are entitled to the benefit of reinstatement and back wages. Since the year 1999 the ownership of the Cinema Hall has changed from the previous management to the new management. A regular Sale Deed under Ext. C is a conclusive evidence regarding transfer of such ownership. Since the Cinema Hall is in the hands of new management, under whom the workmen had never worked and who have no liability whatsoever, the new management can never be directed to reinstate the present workmen in service. There being no evidence whatsoever from the side of the workmen that they had not been engaged gainfully after the period of their retrenchment. The question of giving any back wages to them does not arise at all. In the facts and circumstances of this case and as because violation of the provisions under Section 25-F of the I. D. Act by the previous management is very much manifest from the evidence on record, the previous management obviously is liable to pay compensation of Rs. 10,000/- (Rupees Ten thousand) only to each of the workman or his legal heirs but in the peculiar facts and circumstances of the case and because of the constraint put on the present Presiding Officer, Labour Court, Bhubaneswar because of the order dated the 5th January 2004 passed by the previous Presiding Officer Labour Court, Bhubaneswar and because of the said order dated the 5th January 2004 has reached its finality and as because the previous management had not been afforded a chance to cross-examine the workmen or to adduce evidence on his behalf, this Court at this stage obviously can not give any direction for realisation of such amount from the previous management either.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
26-2-2007
Presiding Officer
Labour Court, Bhubaneswar

S. K. MOHAPATRA
26-2-2007
Presiding Officer
Labour Court, Bhubaneswar

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