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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th August 2007

No.10141-1i/1-(B)-74/1999/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 5th May, 2007 in I.D. Case No. 37 of 2000 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between State Biochemist, Orissa, Bhubaneswar and its workman Shri Siba Mallik was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT : BHUBANESWAR.

INDUSTRIAL DISPUTE CASE No. 37 OF 2000

Dated the 5th May, 2007

Present:

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

Between:

The Management of M/s. State
Biochemist, Orissa
Bhubaneswar. ... First-Party — Management.

And

Its Workman
Shri Siba Mallik. ... Second-Party — Workman

Appearances :

Shri N. K. Rath, A.S.P. ... For First-Party — Management.

Shri B.C. Bastia, Advocate. ... For Second-Party — Workman.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. State Biochemist, Bhubaneswar and its workman Shri Siba Mallik under Notification No. 5323, dated the 18th May, 1998 vide Memo No. 2898(6)/LE., dated the 26th February, 2000 for adjudication by this Court.

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

> " Whether the termination of service of Shri Siba Mallik, casual labour, with effect from 9th September, 1998 by the State Biochemist, Sahidnagar, Bhubaneswar is legal and/or justified ? If not, to what relief Shri Siba Mallik is entitled ?"

3. Shorn of all unnecessary details, the brief facts of this case which led the Government of Orissa to make the present reference to this Court under Section 12(1) of the Industrial disputes Act, 1947 (hereinafter referred to as the I. D. Act) are as follows :

The workman had been employed by the Management i.e. the State Biochemist, Bhubaneswar as Compost Mistry with effect from 17th October, 1989 in their Azolla Farm at Bhubaneswar. The workman worked in such capacity under the Management continuously till 8th September, 1998, when the Management suddenly terminated the service of the workman with effect from 9th September, 1998 without any notice and without complying the mandatory provisions of law. When the workman approached the Management for reinstatement in service, his prayer fell in deaf ear. The Azolla Farm of the State Government of Orissa is used for growing Azolla and application the same in agricultural field for development of agriculture so as to cater to the needs of the vast majority of people by ensuring increase production of agricultural produces. Therefore, the activities of the Management in running the farm comes within the definition under Section 2(j) of the I. D. Act, and the workman by virtue of the nature of his duty and wages that was being paid to him was a workman within the meaning of Section 2(s) of the I. D. Act. During tenure of his service the workman had discharged his duties diligently and efficiently and there was no stigma of any kind against him. Till the termination of his service, the workman had performed more than 240 days of work in each calendar year of

his service except in the year 1998. When the Management reduced the working days of the workman by engaging fresh hands and by giving artificial breaks in service to him with *malafide* intention of avoiding the liability of the Management as prescribed under provisions of the I.D. Act. The Management illegally retrenched the service of the workman with effect from 9th September, 1998 without following the mandatory provisions enumerated under Section 25-F of the I. D. Act. On these averments, the workman has prayed for his reinstatement in service with back wages.

4. The Management in its written statement has challenged the maintainability of the reference and has contended that the Management concern is not an industry within the meaning of Section 2(j) of the I. D. Act. The Management is an integrated branch of the Government establishment with a view to carry out research work in the field of fertility of agricultural land and with a view to educate farmers in general so as to enable them to get optimum product out of their agricultural land by adopting various scientific methods. The Azolla nursery in which the workman had been engaged on need basis is a research project of the State Biochemist. After growth of Azolla in the nursery the same is distributed to the farmers for further multiplication and finally application of the same in their fields to enhance the fertility of their lands for better growth of their agricultural crops. In the Azolls nursery the work is purely seasonal and the labourers are engaged on need basis for temporary span particularly on need basis in Khariff and Rabi season. Work in Azolla nursery of the Management is also subject to indents of District Agriculture Officers and consequently when no indent is received growing of Azolla in nursery is stopped. Since the workman had been engaged temporarily on need basis his dis-engagement can not be termed as retrenchment.

The workman had never been engaged as Compost Mistry with effect from 17th October, 1989 and he had never worked under the Management continuously within the meaning of Section 25-B of the I. D. Act. Since the work of the Management in the Azolla nursery is purely research oriented such work can not come within the meaning of term under Section 2(j) of the I. D. Act. The workman was a casual labourer engaged on contract basis as and when required for growing Azolla in any particular season and therefore there was never any question of continuous engagement of the workman for 240 days in any year. On these averments the Management has contended that the workman is not entitled to any relief whatsoever under any provisions of the I. D. Act.

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

ISSUES

(i) Whether the termination of service of Shri Siba Mallik, casual labourer with effect from 9th September, 1998 by the State Biochemist, Sahidnagar, Bhubaneswar is legal and/or justified ?

(ii) If not, to what relief Shri Siba Mallik is entitled ?

6. In answering the issue No. (i) three very important findings has to be given. Firstly Whether the Management organization is an industry within the meaning of Section 2(j) of the I.D. Act. Secondly whether the workman namely Siba Mallik was a workman within the meaning of Section 2(s) of the I. D. Act and thirdly whether the workman was in continuous service as defined under Section 25-B of the I. D. Act. Answer to all these three questions are of paramount importance to decide the question of legality or otherwise of the termination of the services of the workman.

7. On the question as to whether the Management organization is an industry or not the very evidence of M.W.1 is that the Azolla nursery in question had been established by the Government as a Welfare Scheme for growing bio-fertilizers like Azolla and Blue sreen Algae for distribution to the farmers for restoring and increasing to fertility of their farm land. According to M.W.1 while Azolla is distributed to the farmers free of cost for use as bio-fertiliser, Blue Green Kg. Algae is supplied to the farmers at the cost of Rs.2/- per Kg. Only although the cost of production of Blue Green Kg. Algae is Rs. 14/- per Kg. According to M.W.1 these bio-fertilizers are supplied to the farmers to increase the production of their land and there is no profit motive of the Management organization. Such evidence of M.W.1 has not been disputed during his cross-examination.

8. The Hon'ble Apex Court in the land mark judgment BANGALORE WATER SUPPLY & SEWERAGE BOARD etc. etc. *Vrs.* A. RAJAPPA and others etc. etc. reported in SCLJ (1950-83) Vol-6 page 177 have gone into the question very deputy. It has been held by the Hon'ble Seven Judges Bench of the Hon'ble Apex Court in the Said subject *(supra)* to the effect that :

" Industrial Disputes Act, 1947, Section 2(j)- "Industry"-Meaning of –Principles laid down by Supreme Court.

Held . " So we proceed to formulate the principles, deducible from our discussion, which are decisive, positively and negatively of the identity of 'industry' under the Act. We speak, not exhaustively, but to the extent authoritatively, until over-ruled by a larger bench or superseded by the legislative branch."

'Industry', as defined in Section 2(j) and explained in D. N. Banerji *V.* P. R. Kukherji, has a wide import.

(a) Where (i) systematic activity, (ii) organized by co-operation between employer and employee the direct and substantial element is commercial, (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss i.e. making, on a large scale, or Prasad or (food), prima facie, there is an 'industry' in that enterprise,

(b) Absence of profit motive or gainful objective is irrelevant, be the venture in the publish, joint private or other sector.

(c) The true focus in functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations.

(d) If the organization is a trade or business it does not cease to be one because of philanthropy animating the undertaking.

II. Although Section 2 (j) uses words of the widest amplitude in its two limbs, their meaning cannot be magnified to overreach itself.

(a) 'Undertaking' must suffer a contextual and associational shrinkage as explained in Banerji and in this judgment, so also, service, calling and the like. This yields the inference that all organized activity possessing the triple elements in I *(supra)* although, not trade or business, may still be 'industry' provided the nature of activity, *Viz.* the employer-employee basis, bears resemblance to what we find in trade or business. This takes into the fold of 'industry' undertakings, calling or services, adventures analogous to the carrying on the trade or business. All featers, other than the methodology of carrying

on the activity *Viz.* in organizing the co-operation between employer and employee may be dissimilar. It does not matter, if an the employment terms there is analogy.

III. application of these guidelines should not stop short of their logical reach by invocation of creeds, cultsor inner sense of incongruity or outer sense of motivation for or resultant of the economic operations. The ideology of the Act being industrial peace, regulation and resolution of industrial disputes between employer and workman, of the statutory ideology must inform the reach or of the statutory definition. Nothing less, nothing more.

(a) The consequences are (i) professions (ii) clubs (iii) educational institutions (iv) co-operatives (v) research institutes (vi) charitable project and (vii) other kindred adventures, if they fulfil the triple tests listed in I *(supra)*, cannot be exempted from the scope of Section 2 (j).

(b) A restricted category of professions, clubs, co-operatives and even Gurukulas and little research labs, may qualify for exemption if in simple ventures substantially and going by the dominant nature criterion substantively no employees are entertained but in minimal matters, marginal employees are hired without destroying the non-employee character of the unit.

(c) If in a pious or altrustee mission many employe themselves free or for small honorarium, or live (sic) mainly drawn by sharing in the purpose of cause, such as lawyers volunteering to run a free legal services clinic or doctors serving in their spare hours medical centre or ashramites working at the bidding of the holiness, divinity or like central personality and the services are supplied free or at nominal cost and those who serve are not engaged for remuneration or on the basis of master and servant relationship, then, the institution is not an industry if stray servants, manual and technical, are hired. Such exemplary or like undertakings alone are exempt not other generosity, compassion, developmental passion or project."

In the said judgment it has been specifically held that research institutes even if they run without profit-motive are industry. In the instant case M. W.1 has categorically stated in his evidence that the Management organization used to give free technical knowledge to the farmers for using bio-fertilizer in their field and that while Azolla is distributed free of cost, Blue Green Algae is sold to the farmers at Rs. 2/- per Kg. because the Government of Orissa gives a subsidy of Rs. 12/- for each Kg. of Blue Green Algae. In

his evidence M. W.1 has further stated that there is no profit motive on the part of the Management organization. In its pleading the Management has taken a stand that the Management organization is engaged in research work. Thus by applying the principle laid down in the case Bangalore Water Supply & Sewerage Board *Vrs.* A. Rajappa *(supra)* it can safely be concluded that the Management organization is an 'industry' within the meaning of Section 2(j) of the I. D. Act.

9. Now the question arises as to whether the employee of the Management organization was a workman within the meaning of Section 2 (s) of the I.D. Act. The relevant portion of the provision under Section 2(s) of the I. D. Act reads as follows :

" Section 2(s) – "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operation, clerical or supervisory work for hire or re-ward, whether the terms of employment by exress, implied and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led that dispute, xxxx."

The workman has examined himself as W.W.1 . In his evidence W.W.1 has stated that he had been working as a casual labourer under the Management as a Compost Ministry where Azolla was being cultivated. M.W.1 has also in his evidence has stated that the workman was in the habit of searching daily wages in the Management Organisation and that when the workman did not search for engagement, other workers used to work as and when required by the Organisation. Thus it is quite evident that W.W.1 was a workman within the meaning of Section 2(s) of the I. D. Act.

10. Now the important question which arises is as to whether the workman had worked continuously under the Management organization within the meaning of Section 25-B of the I. D. Act so as to enable him to get the benefits enumerated under Section 25-F of the I. D. Act. In the instant case the workman has claimed that he was working continuously under the Management till the date of termination of his work by way of refusal of employment. In Para 5 of his statement of claim the workman has specifically claimed that he had worked continuously from the date of his engagement till his illegal termination from service and that he had performed more than 240 days of work in each calendar year of his service. Onus lies heavily on the workman to substantiate such a

claim with clear and cogent evidence because more claim itself or mere oral deposition that the workman had worked for such period would not be sufficient to come to a conclusion that the workman had worked continuously within the meaning of Section 25-B of the I. D. Act. In the case of Range Forest Officer *Vrs*. S. T. Hadimani reported in 2002-I-L.L.E. 1053 it has been observed by the Hon'ble Apex Court to the effect that :

> " Held. Tribunal not right in placing onus on appellant Management without first determining that respondent workman had worked for 240 days in preceding year Claimant has lead evidence to show that he had worked for 240 days in preceding year by producing receipt of salary or wages or letter of appointment- Here filing of affidavit by claimant not sufficient evidence as it is his own statement."

In the instant case the workman has not proved any document to show that he had worked for 240 days within 12 months preceding the date of his termination from service. Mere oral statement of the workman that he had worked continuously from 1st January, 1990 to 9th September, 1998 and that he was getting Rs. 780/- per month is not sufficient. The workman W. W. 1 has proved Ext.1 which only states that on verification of muster roll that the workman who was a casual labourer had not worked from 1st January, 1990 but he had been working as a casual labourer from 1st July, 1992 onwards. The term casual labourer in itself is indicative of the fact that the employment was not regular but the workman was only a casual labourer from 1st July, 1992 onwards and therefore it does not emanate from Ext.1 that W. W.1 had worked continuously for the requisite 240 days so as to bring him within the ambit of Section 25-B of the I. D. Act. The workman as already indicated has not proved any pay slip or any letter of appointment and that only document proved by the workman is Ext.1 which does not indicate that the workman had worked for a period of 240 days within 12 calendar months preceding the date of his termination from service. Therefore, it is clear that the workman has signally failed to prove that he had worked continuously under the Management within the meaning of Section 25-B of the I. D. Act and consequently the workman was never entitled to the benefits of Section 25-F of the I.D. Act.

11. From the discussion made so far it is clear that the workman was a casual labourer and he had never worked continuously under the Management within the meaning of Section 25-B of the I.D. Act and therefore, he is not entitled to the benefits of Section 25-F of the I.D. Act. This being so, the termination of service of the workman who was only a casual labourer with effect from 9th September, 1998 by the Management can

not be termed as illegal or unjustified. Thus in the net result the reference is answered that the termination of service of the workman Shri Siba Mallik, casual labourer with effect from 9th September, 1998 by the State Biochemist, Sahidnagar, Bhubaneswar is legal and justified, and that he is not entitled to any relief whatsoever under any provision of law.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. Mohapatra
Dt. 5-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S. K. Mohapatra
Dt. 5-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government

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