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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd May 2008

No. 5242-1i/1-(BH)-36/2001/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 4th April, 2008 in I.D. Case No. 9 of 2002 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Executive Engineer, Baripada Electrical Division, Baripada and their workers represented by their Union was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL : BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 9 OF 2002
Dated the 4th April, 2008.

Present:

Shri Srikanta Nayak, O.S.J.S. (Sr.Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The Management of Executive Engineer,
Baripada Electrical Division,
Baripada.

... First-Party — Management

(And)

Their workmen, represented through
 OSEB Workers Union,
 Thermal Colony,
 Balasore.

... Second-Party — Workman

Appearances :

Shri Ajay Kumar Mohapatra,
 Law Assistant.

...For the First-Party—Management.

Shri R. C. Satpathy, Authorised
 representative.

...For the Second-Party-Workmen.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of the power 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 disputes for adjudication vide their Order No. 11598/LE., dated the 8th April 2002 :—

“ Whether the termination of services of the NMR Workers by the Executive Engineer, Baripada Electrical Division, Baripada in different dates as per list (Annexure-B) is legal and/or justified ? If not, to what relief the workers are entitled ?”

2. The case of the second-party (hereinafter referred to as the ‘workmen’) is that they worked with the Management as N.M.Rs. for near about 5 to 6 years and they were receiving their wages monthly. Their services were terminated in the year 1995 without any notice nor they were paid any compensation. So, they raised an Industrial Dispute and as the conciliation failed the matter was referred to this Tribunal for adjudication.

3. The case of the first-party (hereinafter referred to as the ‘Management’) is that the present workmen never worked as N.M.Rs. and they were working under one B. K. Choudhury, Sub-contractor of Hirakud Construction Works. They had not completed 240

days and they were engaged on daily wages. The reference is not maintainable and the workmen are not entitled to any relief.

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

ISSUES

1. Whether the termination of services of the NMR workers by the Executive Engineer, Baripada Electrical Division, Baripada in different dates as per list (Annexure-B) is legal and/or justified ?

2. If not, to what relief the workers are entitled ?

5. The workmen examined four witnesses in support of their case and the Management examined none in support of its case.

Issue Nos. 1 & 2 :—

6. W. W. No. 1 deposed that he worked as an N.M.R. under the Baripada Electrical Division in the year 1980 and the Lineman was supervising his work. He was receiving his wages from the Junior Engineer and he was getting Rs. 650/- per month at the time of termination of his service. His service was terminated without serving any notice though his juniors were regularized.

W.W. No.2 deposed that he was working alongwith other N.M.Rs. from the year 1985 to 1995 and their services were terminated without any notice. Exts.1 and 2 are the experience certificates issued in his favour by the Junior Engineers. Ext.3 is another experience certificate issued in favour of Sambhu Singh by the Junior Engineer.

W.W. No. 3 deposed that he worked as an N.M.R. in the year 1985 and his services were terminated without any notice and the Lineman used to supervise his work.

W.W. No.4 deposed that he was working as a Lineman 'C' in the year 1982 and he used to supervise the work of these N.M.Rs., the second-party-workmen when they were not regularized they complained before the Junior Engineer but their services were terminated. Exts.1 to 4 are the experience certificates granted to different workmen.

7. It is well settled that the burden lies on the workmen to prove that they worked for 240 days continuously in a calendar year. In the decision reported in 2006 (108)FLR (SC) Page-213 (R.M. Yellati *Vrs.* Assistant Executive Engineer), their Lordships held that “the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment.”

In the case in hand the evidence of W.W. Nos. 1, 2 and 3 clearly shows that they alongwith other workers worked as N.M.Rs. continuously and the evidence of W.W. No.4 reveals that he used to supervise their works Exts. 1 & 2 are certificates granted in favour of Bladson Mohanta which reveal that he was engaged for construction of L.T., M.T. 33 X.V. & Sub- station lines work. Ext.3 is a certificate granted in favour of Sambhu Singh and Ext.4 is a certificate granted in favour of Tikaram Mohanta. These Exts.1 to 4 clearly show that the workmen had worked as N.M.Rs. continuously for more than 240 days. Though the Management took the plea that the workmen has worked under a contractor but no evidence is adduced to that effect nor any suggestion was given to that effect. So, there is no material to hold that the workmen were working under the contractor. On the other hand, the oral and documentary evidence adduced by the workmen show that they worked with the Management for more than 240 days in a calendar year. Admittedly, no notice was served on the workmen nor they were paid any retrenchment compensation. So, their termination is illegal one.

8. None of the workmen witnesses deposed that they were not gainfully employed elsewhere during the period they suffered retrenchment. In the decision reported in 2006 (108)FLR (S.C.) Page-201 (U.P. State Brassware Corporation Ltd. *Vrs.* Udai Narain Pandey), their Lordships held that “ it is not in dispute that the respondent did not raise any plea in his written statement that he was not gainfully employed during the said period. It is now well-settled by various decisions of this Court that although earlier this Court insisted that it was for the employer to raise the aforementioned plea but having regard to the provisions of Section 106 of the Indian Evidence Act or the provisions analogous thereto, such a plea should be raised by the workman.”

In this case the workmen have not claimed that they were not gainfully employed. So, they are not entitled to back wages. Since the termination of services of the workmen is illegal and not as per the provisions of the Industrial Disputes Act, they are entitled for re-employment whenever vacancies arose in the concerned department.

The reference is answered accordingly.

Dictated and corrected by me.

Srikanta Nayak
Dt. 4-4-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Srikanta Nayak,
Dt. 4-4-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

G. JENA
Deputy Secretary to Government