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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd May 2008

No. 5247-1i/1-(B)-86/2001/L.E.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th April, 2008 in I.D. Case No. 14 of 2002 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. OSWAL Chemicals & Fertilisers Ltd., Musadia, Paradeep and its Contractor M/s. Bhagaban Parida and their Workmen represented through OSWAL Sarakarakhana Shramik Sangha, Paradeep was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 14 OF 2002

Dated the 15th April, 2008.

Present:

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

Between:

The Managements of :—

1. M/s. Oswal Chemicals & Fertilisers Ltd.,
Musadia, Paradeep;
2. M/s. Bhagaban Parida, Contractor,
M/s. Oswal Chemicals & Fertilisers Ltd.,
Musadia, Paradeep;
3. M/s. IFFCO, Paradeep Unit,
Paradeep.

... First-Party — Managements

And

Their Workmen, represented through
OSWAL Sarakarakhana
Shramik Sangha,
Paradeep.

... Second-Party — Workmen

Appearances :

Shri B. C. Bastia
Advocate.

...For the First-Party—Managements

Shri Susant Das, Vice-President
of the Union.

...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.5732-li/1(B) 86/2001//LE., dated the 23rd July 2002 :

1. “ Whether the termination of services of Shri Prabhakar Sethi and 181 other workers w.e.f. the 24th February 2001 (list enclosed to the order of reference) engaged in DAP & PAP Departments of M/s. OSWAL Chemicals & Fertilizers

Ltd., Musadia, Paradeep, Dist: Jagatsinghpur by the Contractor M/s. Bhagaban Parida, Balidia, Paradeep is legal and/or justified ? If not, what relief are these workmen entitled to ?”

2. “Whether the workmen engaged through M/s. Bhagaban Parida, Contractor are entitled to absorption under the new contractors entrusted with the execution of the same work by M/s. OSWAL Chemicals & Fertilizer Ltd., Paradeep ?”

2. The case of the second party (hereinafter referred to as the “workmen”) is that they all were employed under the OSWAL Chemicals & Fertilizers Ltd. through the Contractor Bhagaban Parida, who had no licence to engage labourers. The workers formed a Union known as “OSWAL Sarakarakhana Shramik Sangha” and raised various demands and tried to improve the relationship between the Management and the workers. The Management terminated the services of 18 workmen but when the Union resorted to strike they were reinstated. A tripartite settlement was arrived at in which it was agreed that the dismissed workmen would be re-deployed but the Labour Officer did not take any interest and ultimately all the workmen numbering 182 were terminated from service without giving any notice or paying compensation on the 24th February 2001. So, the Union raised a dispute and as the conciliation failed, the matter was referred to this Tribunal for adjudication.

3. The case of the first parties (hereinafter referred to as the “Managements”) is that the workmen were employed by Shri Bhagaban Parida, Contractor who had a valid licence to supply labourers. Work order was given to Bhagaban Parida for 89 days which was extended from time to time and accordingly he employed all these workmen. Due to shut-down of the plant the contractor was directed to reduce the strength of labourers in each shift and the contractor reduced the man-power. Protesting the said act, the labourers went on strike. In spite of the request of the contractor, they refused to join duty. After notice only seven workmen had joined. Neither the contractor nor the factory retrenched the workers but they voluntarily left the work. So, they 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 Shri Prabhakar Sethi and 181 other workmen w.e.f. the 24th February 2001 (list enclosed) engaged in DAP and PAP Departments of M/s. OSWAL Chemicals and Fertilisers Ltd., Musadia, Paradeep, Dist:- Jagatsinghpur by the Contractor M/s. Bhagaban Parida, Balidia, Paradeep is legal and/or justified ? If not, what relief are these workmen entitled to ?
2. Whether the workmen engaged through M/s. Bhagaban Parida, Contractor are entitled to absorption under the new contractors entrusted with the execution of the same work by M/s. OSWAL Chemicals & Fertilizers Ltd., Paradeep ?
3. Whether the reference is maintainable ?
5. In support of their respective case, the workmen examined two witnesses and the Management examined one witness.

Issue No. 1

6. it is not disputed that the workers were employed by the contractor Bhagaban Parida. Both the Management and the workmen have admitted this fact. The Management asserted that the workers left the service voluntarily and there was no retrenchment. So, the burden lies on the Management to prove that the workmen left the job voluntarily. In the decision reported in 2004 (103) FLR (S.C.) Page-102(M/s. Nicks (India) Tools Vrs. Ram Surat), their Lordships held that “ the burden of proving that he voluntarily left the services then falls on the Appellant-Management.”

M.W. No.1, the contractor deposed that all the workers were working under him and Ext. A is the work order and Ext. B is the labour licence. He used to supply the labourers as per the need. The labourers left the job voluntarily when the Management took step to reduce the work and they went on strike without giving any notice. There was a conciliation proceeding before the Labour Commissioner but by the time he was not doing any work. The Management agreed to employ the workmen and after conciliation he called the workmen to join their duty and issued notice accordingly. Ext.C is the notice. When the

workmen failed to join, he intimidated the D.L.O. under Ext. E and he again also issued a notice and Ext. F is the notice but the workmen did not join. M.W.No.1 was subject to cross-examination but nothing was elicited from him to shake his veracity. Ext. B, the licence reveals that he was permitted to employ 183 labourers. Even if for the sake of argument it is held that he has no licence, then as per the Contract Labour (Regulation & Abolition) Act, the contractor and the principal employer can be prosecuted but the status of the workmen remains unaffected. Exts. C and F are the notices issued by the contractor requiring the workmen to join their duties and Exts. E and F reveal that only seven workers joined in the work. So, the evidence of M.W. No.1 receives support from the documentary evidence which shows that the workers voluntarily left the service and failed to resume their work inspite of notices. This version of M.W.No. 1 also receives support from the admission made by W.W. No.1, who admitted in his Cross-examination that from the 14th February 2001 they went on strike and till now they have not joined whereas in chief he deposed that on the 24th February 2001 they were retrenched from service. If admittedly from the 14th February 2001 the workers were on strike and they had not joined, the question of retrenchment on 24th February 2001 does not arise and this admission clearly shows that the workmen left the job voluntarily.

W.W. No.1 deposed that they were engaged in the OSWAL through contractor Bhagaban Parida and Nirmal Swain and they were performing their work and getting Rs. 50/- per day. There was a strike on the 14th February 2001 following dismissal of 18 workmen but on the 17th February 2001 the strike was called off and again on the 24th February 2001 the services of all the workmen were terminated without any notice. W.W.No.2 deposed that he was working under the contractor in the OSWAL factory. There was a high-level meeting between the Minister, Commissioner and Collector and it was decided to re-employ the workers. As already discussed, W.W. No.1 contradicted his own version by admitting that on the 14th February 2001 they were on strike. The version of W.W. No.2 that there was a settlement and the Management agreed to re-employ the workers as per Ext.7 does not receive support from Ext.7 itself. Under Ext. 7 the D.L.O. was directed to prepare a list and to submit it to the authority for re-deployment. Nowhere under Ext.7 the Management agreed to re-employ the workers. As the workmen voluntarily left the service and refused to join, they are not entitled to any relief.

Issue No. 2

7. It is true that in case of valid retrenchment, direction can be made to absorb the illegally retrenched workmen in the establishment of other contractor as laid down by their Lordships in the decision reported in 1995 LLR 552 (Thermal Power Station, Ukai Gujarat *Vrs. Hind Mazdoor Sabha and others*). In this case there was no retrenchment. So, no direction can be passed to re-employ the workmen in the establishment of other contractors.

Issue No. 3

8. The Management submitted that the reference is not maintainable and the same is barred under section 10 of the Contract Labour (Regulation and Abolition) Act and in this connection reliance was placed in the decision reported in 2001 (II) LLJ (Orissa) Page-545 (Hira Cement Workers Union *Vrs. State of Orissa and others*), whereas in the decision reported in 1995 LLR Page-552 (Thermal Power Station, Ukai, Gujarat *Vrs. Hind Mazdoor Sabha & others*), their Lordships held that “ it is not correct to say that the Act is a complete code by itself and, therefore, the industrial tribunal has no jurisdiction to give a direction to the principal employer to absorb the workmen in question. The Act is silent on the question of the status of the workmen of the erstwhile contractor once the contract is abolished by the appropriate Government. Hence, as far as the question of determination of the status of the workmen is concerned, it remains open for decision by the industrial adjudicator. There is nothing in the Act which can be construed to have deprived the industrial adjudicator of the jurisdiction to determine the same.” In view of the principle laid down by the Hon’ble Supreme Court, the reference is held to be maintainable, but as already found, as the workmen left the services voluntarily, they are not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me.

Srikanta Nayak,
15-4-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Srikanta Nayak,
15-4-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

G. JENA
Deputy Secretary to Government