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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd May 2008

No.5861-1i/1(B)-93/2005/L.E.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 13th May, 2008 in Industrial Disputes Case No.4/2006 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Aska Co-operative Sugar Industries Ltd., Nuagaon, Aska and its workmen represented through Aska Co-operative Sugar Industries Employees' Union, Aska was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO.4/2006

The 13th May, 2008

Present : Shri Srikanta Nayak, O.S.J.S. (Sr. Branch),

Presiding Officer,

Industrial Tribunal,

Bhubaneswar

Between: The Management of Aska

Co-operative Sugar Industries Ltd.,

Nuagaon, Aska.

.. First-Party—Management

And

Their Workmen,

represented through

Aska Co-operative Sugar

Industries Employees' Union, Aska. .. Second-Party—Workman

Appearances : Shri R.C. Mishra,

Authorised Representative .. For the First-Party—Management

Shri Kailash Chandra Panda, .. For the Second-Party—Workmen

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.1437-li/1(B)-93/2005/L.E., dated the 13th February 2006 : —

- (1) "Whether the seasonal employees of M/s. Aska Co-operative Sugar Industries Ltd., Nuagaon, Aska working against regular vacancy and lower grade employees working for higher grade post since long are entitled to proper assignation and higher wages ? If so, what should be the details ?"
- (2) "Whether the existing Additional Fixed Allowance as paid to the regular and seasonal workers of M/s. Aska Co-operative Sugar Industries Ltd., Aska needs any revision ? If so, what should be the quantum ?"
- (3) "Whether the staffing pattern in respect of regular and seasonal workers of M/s. Aska Co-operative Sugar Industries Ltd., Aska needs revision? If so, what should be the details ?"

2. The case of the second-party (hereinafter referred to as the 'workmen') is that the Aska Co-operative Sugar Industries Ltd. (hereinafter referred to as the 'Management') is a seasonal factory and more man power is required during crushing season but the Management is not filling up the vacant posts which occurred on retirement of the

employees. The employees in the lower grades are engaged in the higher grades without making any payment though as per the Third Wage Board recommendation the employees engaged in higher grades are entitled to the higher grade salary. The Management is paying fixed allowance @ Rs. 300/- per month since 1998 but the U.P. Government under the Gazette Notification dated the 28th April 2005 enhanced the fixed allowance of their workers. The Management was following the decision of the U.P. Government since 1974 but they have not implemented the recent award of the U.P. Government by which it has enhanced the fixed allowance for its workers. The employees who are working now numbering 502 is not sufficient at all. So, the Registrar, Co-operative Societies suggested enhancement of the staff strength to 550 which is pending with the Government and the staffing pattern is not yet followed. So, the Union raised a dispute and on failure of the conciliation the matter was referred to this Tribunal for adjudication.

3. The case of the Management is that the Aska Co-operative Sugar Industries Ltd. is a Government Industry and 80% share is owned by the Government. So, for every financial matter approval of the Government is required. The vacancies cannot be filled up without obtaining permission from the Government. So, the workers in the lower grades are asked to work in higher grades as per the understanding and some enhance amount is paid to them. As per the demand of the Union, fixed allowance was enhanced to Rs.300/- in the year 1998. The Union objected to the staffing pattern suggested by the Registrar, Co-operative Societies for which a proposal was sent to enhance the staff strength to 750 which is pending with the Government. The sugar factory is running in loss and the outstanding loan is more than rupees 23 crores. After approval of the State Government the staffing pattern can be adopted. The reference is not maintainable.

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

ISSUES

- (1) Whether the seasonal employees of M/s. Aska Co-operative Sugar Industries Ltd., Nuagaon, Aska working against regular vacancy and lower grade

employees working for higher grade post since long are entitled to proper assignation and higher wages ? If so, what should be the details ?

(2) Whether the existing Additional Fixed Allowance as paid to the regular and seasonal workers of M/s. Aska Co-operative Sugar Industries Ltd., Aska needs any revision ? If so, what should be the quantum ?

(3) Whether the staffing pattern in respect of regular and seasonal workers of M/s. Aska Co-operative Sugar Industries Ltd., Aska needs revision? If so, what should be the details ?

5. The workman examined two witnesses and the Management examined three witnesses in support of their respective case.

6. *Issue No. 1* — W.W. No.1 deposed that the Management is not filling up the vacant posts and the employees in the lower grades are asked to discharge the work of the employees of the higher grades. W.W. No.2 deposed that the Management is not filling up the posts vacated by seniors and the work is done by engaging the junior employees. The fact that the employees in the lower grades are asked to discharge the responsibilities in higher grade is not disputed. M.W. No.1 admitted that as per the local arrangement in the crushing season the workers in the lower grade used to discharge the function of the higher grades. M.W. No.2 also admitted to that effect and further deposed that the persons who are acting in higher grades are paid Rs. 30/- to Rs. 150/- extra as per their grades for working in the higher grades. M.W.No.3 has not uttered a single word on this point.

The evidence of the W.W. No.1, W.W. No.2, M.W. Nos.1 and 2 taken together clearly shows that the employees in the lower grade are asked to discharge the duties of the employees of the higher grade and the evidence of M.W.No.2 shows that only Rs.30/- to Rs. 150/- extra is being paid to the employees for working in the higher grades and this shows that though the junior employees are discharging the responsibilities of the higher categories but they have not been paid the wages of the higher grades. In the decision reported in 2008 (I)OLR-162 (Dillip Kumar Sahoo & Others Vrs. State of Orissa and Others), their Lordship held that “if an employee is ordered to work in a higher post though

temporarily and in an officiating capacity, he is entitled to the salary attached to the higher post, as the payment of higher salary shall not amount to promotion.” In the present case, since the junior employees are working in the higher grade, they are entitled to the pay and salary of higher grades while they are so functioning.

Hence, Issue No.1 is answered in favour of the Second-Party—Workman.

7. *Issue No. 2*— W.W. No.1 deposed that the Management has not paid fixed allowance to the extent of Rs. 1000/-. W.W. No.2 has not uttered a single word on this point. M.W. No.2 deposed that they are trying to adopt the Third Wage Board recommendation and the vacancies will be filled up after receiving approval from the Government. The evidence of the witnesses examined from the side of the workmen as well as the Management is silent about the exact amount of fixed allowance given by the U.P Government though it is pleaded that the notification published by the U.P Government enhanced the additional fixed allowance. No document is filed to show that the additional allowance was enhanced by the U.P. Government. The pleadings of the Management reveal that as per the demand of the Union the fixed allowance was enhanced to Rs. 300/- in the year 1998 and this fact was not at all questioned and the workmen also admitted this fact in their pleadings. Enhancement and payment of allowance is a matter of policy and it is the look-out of the Government. In the decision reported in 2004 (101) FLR 986 (S.C) (Union of India and another *Vrs.* Manu Dev Arya), their Lordships held that “the question is as to whether certain allowances would be paid to a section of employees or not and that too at what rate is basically a question of policy.” In the decision reported in 2003 (98) FLR-1 (S.C) (A.K. Bindal and another *Vrs.* Union of India and others), their Lordships held that “economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees.”

In the case in hand, M.W. No.3 deposed that the factory is running in loss and the outstanding loan is rupees 23 crores and 34 lacs. This fact is not disputed. It is true that it

is elicited in the cross examination that from the year 2001 the factory is making profit but the evidence clearly shows that still the factory is to pay the loans incurred earlier. So, if at this stage an additional financial burden is imposed then the factory may not be able to survive. In absence of any document to show that the Sugar Industries of any other State enhanced the allowance and for the fact that the first party industry is running in loss, the allowance cannot be enhanced at this stage.

Hence, this issue is answered in the negative as against the workmen.

8. *Issue No. 3*— W.W. No.1 deposed that the Management is not filling up the vacancies and the employees numbering 502 is not enough to cope-up with the work and the first party is not following the staffing pattern. He admitted in cross examination that the Management gave proposal for 706 staffing pattern seeking approval of the Government but the Government turned down the proposal. M.W. Nos.1 and 2 deposed that the Management will follow the staffing pattern and the Third Wage Board recommendation after approval by the Government. It was brought out from M.W. No.1 that the Government accorded permission for the staffing pattern in the year 1998 but the same is not yet implemented. No document is filed to show that the Government approved the staffing pattern. So, the admission of M.W. No.1 is not sufficient to hold that the staffing pattern was approved by the Government. Moreover, W.W. No.1 also admitted that the Government refused the staffing pattern which was suggested by the Management. So, the oral evidence is inconsistent and there is not documentary evidence on this point. However, the Management has not objection to follow the staffing pattern after approval of the same from the Government, as evident from the pleadings and evidence. Hence, the Management is to follow the staffing pattern within three months of approval of the same by the Government.

This issue is answered accordingly.

9. To sum-up, the reference is answered in the following manner :—

The workmen who are working in the higher grades are entitled to the pay and salary of higher grades, the existing additional fixed allowance needs no enhancement at the

present stage and the Management is to adopt the staffing pattern within three months of approval of the same by the Government.

Dictated and Corrected by me

Srikanta Nayak

dt. 13-05-2008

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Srikanta Nayak

dt13-05-2008

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

G. JENA

Deputy Secretary to Government