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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th May 2008

No.6234-1i/1(BH-I)-9/2008/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 25th March, 2008 in Industrial Disputes Case No.44/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada, District- Mayurbhanj and its workman Shri Narendra Mohan Padhi, Ex-NMR was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO.44/2006

The 25th March, 2008

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

Between: The Management of the
Executive Engineer,
Mayurbhanj Irrigation Division,
At/P.O.-Baripada,
District- Mayurbhanj.

.. First-Party—Management

And

Its workman

Shri Narendra Mohan Padhi,

At-Sagadi,

Post-Kolialam,

Via-Nudadiha,

District- Mayurbhanj.

.. Second-Party—Workman

Appearances : Shri Shaktipada Brahma, Jr. Clerk

.. For the First-Party—Management

Shri Narendra Mohan Padhy, himself .. For the Second-Party—Workman

AWARD

The Government of Orissa in exercise of its power under sub-section (5) of Section 12 readwith Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (herein after referred to as a I.D. Act) has referred the present Industrial Dispute to this Court vide Government of Orissa, Labour & Employment Department Notification No. 8007/LE., dated the 18th July, 1985 readwith Notification No.1057/LE., dated the 31st January, 2003 for adjudication.

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

“Whether the retrenchment of Shri Narendra Mohan Padhi, Ex-NMR by the Executive Engineer, Mayurbhanja, Irrigation Division, Baripada, with effect from 30th June, 1988 is legal is legal and/or justified ? If not, to what relief Shri Padhi is entitled ?”

3. The brief facts leading to the present reference are as follows :—

The workman was working as N.M.R. from the 1975 to 30th June, 1988 at Kalo Dam Sub-Division. The Kalo Irrigation Division merged with Mayurbhanj Irrigation Division, Baripada. Although the workman was working sincerely and had completed more than 240 days of continuous employment under the Management, his service was terminated by the Management with effect from 30th June, 1988 without compliance of Section 25-F, 25-F and 25-H of Industrial Dispute Act. Since the retrenchment of the service of the workman by the Management was illegal, he made a number of representations to the Management for his re-instatement in service but the Management did not take any step in that regard.

Finally the workman raised an Industrial Dispute before the authorities of the Labour Department who tried for a conciliation which failed, and hence the present reference.

4. In his written statement the Management namely the Executive Engineer, Mayurbhanj Irrigation Division has contended as follows :—

The workman had never worked under the Mayurbhanj Irrigation Division, Baripada at any time and therefore there was never any employer-employee relationship between the Management and the workman. The Department of Irrigation of Government of Orissa vide its Order dated the 25th June, 1991, communicated to the Management vide its letter No.26362, dated the 12th July, 1991, directed the present Management to take over the maintenance work of Kalo Irrigation Project and Sunei Irrigation Project. In pursuance to the said Order of the Government of Orissa Irrigation Department, both the said Irrigation Projects came under the present Management with effect from 1st August, 1992. In the instant case the present workman had been retrenched from his service with effect from 30th June, 1988 by its previous employer and therefore as on 1st August, 1992 the workman was no more in service and consequently the workman was never an employee of the present Management. The present Management had never retrenched the workman from his service and therefore the question of compliance of the provisions of the Industrial Dispute Act by the present Management does not arise at all. On these averments the Management has contended that the workman is not entitled to any relief whatsoever.

5. On the aforesaid pleadings of the parties, the following issues have been framed or determined.

ISSUES

- (I) Whether the retrenchment of Shri Narendra Mohan Padhi, Ex-N.M.R. by the Executive Engineer, Mayurbhanj Irrigation Division, Baripada with effect from 30th June, 1988 is legal and justified ?
- (II) If not, to what relief Shri Padhi is entitled ?

6. Issue No. (1) :— The workman W.W. No.1 in his evidence has stated that he started working as N.M.R. at Kalo Minor Irrigation Project on 1st January, 1975 and continued as such till 20th June, 1988. According to W.W. No.1 he had completed more than 240 days of continuous employment during the period of twelve calendar months prior to his retrenchment from service by the First Party—Management with effect from 30th June, 1988. In his evidence W.W. No.1 has proved Ext.1 which is the Xerox copy of the experience certificate issued to him on 30th June, 1988 by the then Junior Engineer, Kalo Dam Sub-Division. Ext.2 series are the Xerox copies of the representation of the workman and Ext.3 is the Xerox copy of postal cover regarding sending of representation to the Management. None of these document indicate that the workman W.W.No.1 was an employee under the Management of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada. In his cross examination W.W.No.1 has admitted that Kalo Irrigation Sub-Division was under the administrative control of Kalo Irrigation Division, Udala. In his cross examination W.W. No.1 has admitted that he had never received any order of appointment to show that he was working under the Management. Further admission of the W.W. No1 is that he had never received any written order from the Executive Engineer, Irrigation Division, Baripada regarding his retrenchment from service. Although W.Ws. 2 and 3 in their evidence have stated that the workman was working under the Management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada, they have not proved any document in that regard.

7. On the other hand M.W. No.1 in his evidence has categorically stated that the Government vide its order Ext. A dated the 25th June, 1991 directed the Executive Engineer, Mayurbhanj Irrigation Division to take over maintenance work of Kalo Irrigation Project and Sunei Irrigation Project. According to M.W. No.1 the Executive Engineer, Mayurbhanj Investigation Division, Udala handed over the maintenance work of Kalo Irrigation Project and Sunei Irrigation Project to the present Management with effect from 1st August, 1992. In his evidence M.W. No.1, has categorically stated that the workman had never worked under the present Management at any time and had never received any

salary from the present Management at any time. Since Ext. A conclusively proves that the Government of Orissa only on 25th June, 1991 directed the present Management to take over maintenance work of Kalo Irrigation Project and Sunei Irrigation Project, it is clear that prior to 25th June, 1991 the present Management had no control over the said two projects or its employees in any manner. In the instant case the present workman was terminated from his service with effect from 30th June, 1988 by his previous employer and not by the present Management. Since there was never any Employer-Employee relationship between the present Management and the workman as on 30th June, 1988, the question of termination of service of the workman by the present Management does not arise at all and therefore there was never any obligation on the part of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada to comply any of the provisions of the Industrial Dispute Act with reference to the present workman. Hence, Issue No.1 is answered accordingly.

8. Issue No. (2) :— In view of my answer to Issue No.1 the workman is not entitled to any relief whatsoever and therefore the reference is answered accordingly.

Dictated and Corrected by me

S.K. Mohapatra

dt. 25-03-2008

Presiding Officer,

Labour Court,

Bhubaneswar.

S.K. Mohapatra

dt. 25-03-2008

Presiding Officer,

Labour Court,

Bhubaneswar.

By order of the Governor

G. JENA

Deputy Secretary to Government
