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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 31st January 2008

No. 1034—li/1(BH)-3/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th January 2008 in I. D. Case No. 10 of 2003 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Baripada Electrical Division, Baripada and its workmen represented through O.S.E.B. Workers' Union was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 10 OF 2003

Dated the 7th January 2008

Present :

Shri Srikanta Nayak, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Executive Engineer, .. First Party—Management
Baripada Electrical Division,
Baripada.

And

Their Workmen, represented through .. Second Party—Workmen
O.S.E.B. Workers' Union,
Thermal Colony, At/P.O./Dist. Balasore.

Appearances :

Shri A. K. Mohapatra, Law Asst.	. . . For First Party—Management
Shri G. K. Mohapatra, Authorised representative	. . . For Second Party—Workmen

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, have referred the following dispute for adjudication vide their Order No. 8961—li/1 (BH)-3/2003-L.E., dated the 9th September 2003 :—

“Whether the termination of services of the N.M.R. workers as raised by the O.S.E.B. Workers’ Union, by the Executive Engineer, Baripada Electrical Division, Baripada is legal and/or justified ? If not, to what sort of relief they are entitled ?”

2. The case of the second party (hereinafter referred to as the ‘workmen’) are that they were working with the management since 1985 as N. M. Rs. and each of them were receiving Rs. 650 per month as their wages. They all were working under the supervision of the Lineman till 1995 but thereafter the management refused to employ them and terminated their services though the management regularised the services of other persons who were junior to them. So, they raised the present 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 second party-members are not the ‘workmen’ and that they have never worked as N. M. Rs. but were engaged as labourers. The N. M. Rs. who were working with the management were regularised in the year 1995 and after 1995 the work was being carried on by engaging contractors. The workmen might have worked under the contractor B. K. Choudhury, who has received all his dues. The reference is not maintainable and the dispute have been raised by the workmen only to harass the management.

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

ISSUE

(i) “Whether the termination of services of the N.M.R. workers as raised by the O.S.E.B. Workers’ Union, by the Executive Engineer, Baripada Electrical Division, Baripada is legal and/or justified ? If not, to what sort of relief they are entitled ?”

5. The workmen have examined six witnesses in support of their cases and the management examined only one witness in support of its case.

6. *Issue No. (i)*—Since the workmen have claimed that they were working with the management for more than 240 days, the burden lies on them to prove the same. In the decision reported in 2005 (105) FLR (S.C.) page 383 (*Bank of Baroda Vrs. Ghemarbai Harjibhai Rabari*) Their Lordships held that “while there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so required would vary from case to case.” In another decision reported in 2006 (108) FLR (S.C.) page 213 (*R. M. Yellatti 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 case 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, W.W. No. 1 deposed that from the 1st October 1985 he worked as an N.M.R. till the 30th June 1995 and he was engaged in digging earth, for erection of poles, etc. and he was receiving Rs. 650 per month and he worked continuously along with other claimants. W.W. Nos. 4, 5 and 6 deposed that they also joined as N. M. Rs. in the year 1985 and the Junior Engineer Khitish Dash employed them and they were receiving their salary per month. Ext. 2 is the certificate granted to W. W. No. 4 Shri Bipra Bindhani. W.W. No.2 deposed that he joined as an N.M.R. in the year 1979 and he was regularised in the post of Helper in the year 1982. The other workers were also working as N.M. Rs. W.W. No. 3 deposed that he served as a Lineman in the Betanoti Division and he worked as an N. M. R. for seven years, then as a Helper for three years and in the year 1976 he was appointed as a Lineman Helper. All the claimants were working as N. M. Rs. and they were getting their salary monthly. Ext. 1 is the experience certificate granted in favour of Shri Bhaktahari Mahanta (W.W. No. 1) and Ext. 2 is the certificate granted in favour of Bipra Bindhani. Exts. 1 and 2 reveal that they were working as N.M.Rs. since 1985. Ext. 3 is a letter written to the Chief Executive Officer, NESCO, Balasore which shows that the local workers created trouble when the management tried to do the work by employing contractors.

M.W. No. 1 admitted in cross-examination that the Junior Engineer might have issued the experience certificate. This admission shows that the management has not disputed the genuineness of Exts. 1 and 2. Likewise the execution of works by engaging the N.M.Rs. prior to 1995 is also not in dispute. M.W. No. 1 also admitted that till 1995 the N.M.Rs. were working and they were regularised in the year 1995. Ext. A is the list of N.M.Rs. It is true that the names of the present claimants do not appear in Ext. A but Ext. A by itself reveals that the management used to engage the N.M.Rs. till 1995. M.W. No. 1 also admitted that no appointment letter was issued to the N.M.Rs. and the records showing the appointment of N.M.Rs. are available in the Division. According to him, the Lineman used to supervise the work of the N.M.Rs. The workmen examined W.W. No. 3, who worked as a Lineman during the relevant period and he also supported the claims of the workman. The evidence of

W.W. Nos. 1 to 6 coupled with the admission of M.W. No. 1 and the documents, Exts. 1 and 2 clearly establish that the claimants were working with the management from the year 1985 till 1995 continuously. It is true that no appointment letter or termination letter was produced by the workman but M.W. No. 1 clearly admitted that no appointment letter was issued to the workmen and the documents showing the Muster Roll, etc. were with the management but the management has not filed any document to show that the present workmen were not working as N.M.Rs.. In the decision reported in 2005 (106) FLR page 654 (Rajasthan) (Manager, M/s Mittal Steel Manufacturing Co. Vrs. Chotha Ram and another), Their Lordships held that "since no document was lying with the respondent-workman, he could not produce the same before the Labour Court. Then in such a situation, onus automatically shifts on the employer to produce sufficient/adequate documents in support of his denial." In the case in hand, the oral evidence of W.W. Nos. 1 to 6 are consistent and there is no reason to disbelieve their evidence which also receive support from Exts. 1 and 2. The evidence on record clearly shows that the workmen had worked under the management continuously for 240 days.

7. Nowhere in the claim statement it is stated that the workmen were not gainfully employed. So, they are not entitled to back wages. In the decision reported in 2006 (108) FLR (S. C.) page 201 (U.P. State Brassware Corporation Ltd. and another 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 none of the workmen witnesses deposed that they were not gainfully employed nor such a plea was raised in their claim statement. So, they are not entitled to any back wages.

8. In view of my finding that the workmen had worked under the management continuously for more than 240 days, their termination is undoubtedly illegal one due to non-compliance of Section 25-F of the I. D. Act. It is the specific evidence of M. W. No. 1 that after 1995 all the works are being done by the contractor and the Scheme was abolished and this fact is also not disputed by the workmen. Under such circumstances, it will not be proper to direct for their reinstatement. In the decision reported in 2006 (109) FLR (S.C.) page 156 (State of M.P. & others Vrs. Arjunlal Rajak), Their Lordships held that "it is also well settled that a project or a Scheme or an office itself is abolished, relief by way of reinstatement is not granted." In the decision reported in 2005 (104) FLR (S.C.) page 999 (Manager, R.B.I. Vrs. S. Mani), Their Lordships held that "in law, 240 days of continuous service by itself does not give rise to claim of permanence. Section 25-F provides for grant of compensation if a workman is sought to be retrenched in violation of the conditions referred to therein." In this case, the Scheme of employing the N.M.Rs. has already been abolished. So, instead of directing for re-employment of the workmen, it will be proper to award compensation @Rs. 30,000 (Rupees thirty thousand only) to each of the workmen.

9. Hence, the reference is answered in the following manner :—

The termination of services of the second party-workmen by the first party-management is illegal and unjustified. Instead of re-employment, each of them is held entitled to compensation of Rs. 30,000 (Rupees thirty thousand only), but without any back wages.

Dictated and corrected by me.

SRIKANTA NAYAK

7-1-2008

Presiding Officer
Industrial Tribunal
Bhubaneswar

SRIKANTA NAYAK

7-1-2008

Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
K. TRIPATHY
Under-Secretary to Government