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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 31st January 2008

No. 1039—li/1(BH)-82/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th April 2007 in I. D. Case No. 122 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Dhenkanal Municipality and its workmen represented through Dhenkanal Mehentar Sangha was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 122 OF 1995

Dated the 11th April 2007

Present :

Shri S. K. Mohapatra, o.s.J.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of Dhenkanal Municipality. .. First Party—Management

And

Its Workman, represented through Dhenkanal Mehentar Sangha. .. Second Party—Workmen

Appearances :

Shri S. B. Panda, Advocate .. For First Party—Management

Shri J. N. Tripathy .. For Second Party—Workmen

AWARD

The Government of Orissa in the Labour & Employment Department referred the present dispute between the management of Dhenkanal Municipality and its workmen represented through Dhenkanal Mehentar Sangha under Notification No. 14679-L.E., dated the 21st October 1991, vide Memo. No. 7328(6)-L.E., dated the 21st June 1995 for adjudication by this Court.

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

“1. Whether the N.M.R. Sweepers and Sweepresses borne in the Nominal Muster Roll on daily wages of Dhenkanal Municipality are entitled to equal wages with their regular counterparts ? If so, what should be details ?”

“2. Whether the sweepers and Sweepresses of Dhenkanal Municipality borne in the Nominal Muster Roll on daily wages are entitled to regularisation in the permanent posts of Sweepers and Sweepresses lying vacant ? If so, what should be details ?”

3. Shorn of all unnecessary details, the case of the workmen is as follows :—

The workmen are working as N.M.R. Sweepers and Sweepresses under the management of Dhenkanal Municipality (hereinafter referred to as the management) like other Sweepers and Sweepresses of the management working in regular posts. The workmen of the present case are also engaged by the management for sweeping roads, cleaning drains, lifting away the garbage, removing night soil from the septic tank etc. along with other functions. The management being an Urban Body is responsible for sanitation of the entire town of Dhenkanal on and therefore, the work performed by the Sweepers and Sweepresses has to be done regular basis. With the growth of the Dhenkanal Municipality, the Government of Orissa accorded sanctions of 30 posts of Sweepers and 35 posts of Sweepresses in the year 1960/61. However, the area of the Dhenkanal Municipality extended 10 times requiring much more work on the part of the Sweepers and Sweepresses to keep the Municipality area clean. This has necessitated employment of more Scavengers for sanitation of Municipality area. However, instead of seeking sanction of more number of permanent posts from the Government, the management is managing the work with the help of the present workmen who are being paid a sum of Rs. 650 only, whereas their counterparts in regular jobs are being paid a monthly salary of Rs. 1,800. The management has ignored the basic principle of natural justice by ignoring the demand of the workmen to get equal wages with their regular counterparts for the simple reason that they are doing similar nature of work. On these grounds the workmen have claimed not only equal wages with their regular counterparts but also regularisation of their services by making them permanent in their posts.

4. The management in its written statement has contended that the workmen who are N.M.R. Sweepers and Sweepresses are not entitled to get equal pay like their counterparts in the regular cadre as because the amount of responsibility, loyalty, sincerity and integrity

and also working capability of the N.M.Rs. are not equal to that of regular employees. Further more the financial position of the Management is very precarious for which it is managing its regular staff with much difficulties and for that reason many regular posts are also lying vacant. The management has prepared a gradation list of Sweepers and Sweepresses engaged by it and after final discussion with all workmen concerned, regular posts of Sweepers and Sweepresses would be filled up from out of the workmen listed in the gradation list keeping in view the financial position and other factors of the Municipality. Thus more or less basically on these two grounds i.e. the responsibility etc. of the regular employees is more and that the management is not in a sound financial position to give equal pay for equal work to all the workmen and to absorb them in regular service, the management has prayed for rejection of the prayer of the workmen.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination :—

ISSUES

- (i) Whether the N.M.R. Sweepers and Sweepresses borne in the Nominal Muster Roll on daily wages of firstparty management are entitled to equal wages with their regular counterparts ?
- (ii) Whether Sweepers and Sweepresses of the firstparty management borne in the Nominal Muster Roll on daily wages are entitled to regularisation in the permanent posts of Sweepers and Sweepresses lying vacant ?
- (iii) If so, what should be the details ?

6. Since both the issues are interlinked to each other, both the said issues have been taken up for discussion together to arrive at a finding.

In the instant case, it is admitted that the workmen are all working under the Dhenkanal Municipality i.e. the management as N.M.R. Sweepers and Sweepresses. The evidence of W.Ws. 1 to 3 is very clear and categorical that the nature of work performed by the workmen and their regular counterparts is same and similar. Nothing particular has been brought out in the cross-examination of these witnesses to discard their evidence on that score. In her evidence, W.W. 4 has deposed that 25 numbers of permanent posts are lying vacant under the management and although the management assured her and others to absorb them as against the permanent vacancies, the same was not done by the management. W.W. 4 has proved the Memorandum of Settlement as Ext. 3. Clause 14 of Ext. 3 reads as follows :—

“14. 25 posts of Sweepers and Sweepresses are lying vacant due to retirement on superannuation (21) and inservice death (4). It was agreed upon to fill up the existing 21 vacancies arising due to retirement on superannuation from among the N.M.R. Sweepers/Sweepresses engaged in cleaning on seniority and suitability. Before filling up the posts a gradation list of the N.M.Rs. would be prepared, duly published, inviting objections and approved. Vacancy due to inservice death would be filled up under Rehabilitation Assistance Scheme as per procedure. This will be without prejudice to I. D. Case No. 122/95.”

Clause 14 of Ext. 3 shows that the management had agreed to fill up 21 vacancies arising due to retirement on superannuation from among the N. M. Rs. after preparation of gradation list by observing all formalities. Ext. 5 shows that the gradation list of 26 numbers of N. M. Rs. had been published on the 28th October 1996 and objection had been invited.

7. In his evidence M.W. 1 has stated that the regular workers undergo a particular process of recruitment which is not necessary for engaging irregular employees (N.M.Rs.). Further evidence of M.W. 1 is that 23 regular Sweepers and 12 regular Sweepresses are working under the management besides 48 numbers of N.M.Rs. who have been engaged by the management for such work. In his cross-examination M.W. 1 could not say the distribution of duties among the employees and also could not say any specific provision of allotment of duties. The Executive Officer of the management has examined as M.W. 2. In his evidence, M.W. 2 has proved Ext. A which is the xerox copy of the sanction order, dated the 29th June 1961 under which posts of two Zamadars, thirty-five female Sweepers, two night soil leaders and one L.D. Clerk had been created. Again under Ext. B which is, dated the 28th November 1962, twenty one numbers of permanent Sweepers posts had been created for Dhenkanal Municipality. Ext. C proved by M.W. 2 shows that posts of five numbers of Sweepers and two numbers of Sweepresses had been created, with effect from the 7th December 1973. The cross-examination of M.W. 2 shows that previously the sanctioned strength for Sweepers was 33 and of Sweepresses was 32 and that under Ext. 3 the management had admitted that there was 25 numbers of vacancies as against regular posts. Further evidence of M.W. 2 is that during pendency of this case, services of 7 numbers of workmen of this case had been regularised as noted in Ext. AA as against regular vacancies. The cross-examination of M.W. 2 is also very clear that there is no qualification prescribed for the post of Sweepers or Sweepresses either as N.M.R. or on regular basis. Further evidence of M.W. 2 is that all those works are also done by N. M.R./D.L.R. Sweepers indicating that the nature of work of the present workmen and that of their regular counterparts are quite same. In his cross-examination M.W. 2 has also admitted that nature of work of regular and N.M.R. Sweepers and Sweepresses being equal no higher responsibility is assigned to the regular workers but only difference is that when the regular worker violates the norms of work, the management can take disciplinary action against him as per rule and in case of N.M.R./D.L.R. worker, the management can terminate his service. According to M.W. 2 the Government is not in favour of creation of new posts at base level and that the management cannot keep any more regular workers as that would violate the Government policy decision. Further evidence of M.W. 2 is that due to financial constraints, the management is not in a position to employ Sweepers/Sweepresses as per yardstick. In his evidence, M.W. 2 has further stated that if funds are available and policy decision of the Government permits, the management can regularise the N.M.R./D.L.R. Workers.

8. At this point it is also important to repeat the unchallenged evidence of W.W. 4 that whereas the regular workers are getting a monthly salary of Rs. 4,000, the N.M.R. workers who are doing the very same work are getting wages at the rate of Rs. 50 per day. Further unchallenged evidence of W.W. 4 is that the permanent workers are getting clothes, soaps,

umbrella, shoes and other benefits such as, casual leave and earned leave, but the N.M.R. workers are deprived of such benefits.

Now on an analysis of evidence on record and especially from the categorical evidence of M.W. 2 elicited during cross-examination, it is crystal clear that there is absolutely no difference between the nature of work of permanent Sweepers/Sweepresses of the management and the N.M.R. Sweepers/Sweepresses of the said establishment who are workmen of this case. It is also an admitted fact that there is wide discrepancy between salary/wages of permanent employees and their counterparts who are N.M.Rs. of this case.

9. Now the question arises as to whether the workmen of this case who are doing similar work with their regular counterparts are entitled to the benefits of equal pay for equal work and absorption in permanent posts. In this context the decision in the case *State of Orissa and others Vrs. Balaram Sahu and others* reported in AIR 2003 Supreme Court 33 relied on by the workmen themselves. It has been held by the Hon'ble Apex Court at Para. 13 and 14 to the effect that the temporary and casual workers like N.M.R. could not be treated at par with the regularly employed permanent staff and cannot claim equal pay and that they will be entitled to be paid only at the rate of minimum wages prescribed or notified. Similarly in the decision *Subedar Singh and others Vrs. District Judge, Mirzapur and others* reported in AIR 2001 Supreme Court 201, it has been held by the Hon'ble Apex Court to the effect that irregular appointees even if continued for a long period are not entitled to be regularised. The ratio of decisions in the cases *Santosh Kumar Verma and others Vrs. State of Bihar* reported in AIR 1997 Supreme Court 975 and *A. K. Sharama and others Vrs. Union of India* and another reported in AIR 1999 Supreme Court 897 decided by the Hon'ble Apex Court are not applicable to the facts of the present case at hand. In the case *Ramakrishna Kamat and others Vrs. State of Karnatak* and another reported in AIR 2003 Supreme Court 1530, the Hon'ble Supreme Court have held that temporary employees cannot claim regularisation in service on the ground of completion of few years of service but in cases where such employees have worked continuously, services rendered by them shall be considered at the time of regularisation employment. This decision of the Hon'ble Supreme Court also point out the fact that temporary employees cannot claim regular employment as a matter of right. Similar is the view of the Hon'ble Apex Court in the case *Secretary, State of Karnatak Vrs. Uma Devi and others* reported in AIR 2006 Supreme Court 1806. Thus it is trite law that *ad hoc* or irregular appointees like N.M.R. or D.L.R. cannot claim regularisation of service as a matter of right.

10. Now the question arises as regards equal pay for equal work. In this context the evidence of both the parties on record make it clear that the regular Sweepers/Sweepresses do not possess any higher qualification and the work of both regular Sweepers/Sweepresses and D.L.R./N.M.R. Sweepers/Sweepresses are equal. Now the question arises as to whether the present workmen in this case can claim equal pay for equal work. In this context the workmen have relied on the Judgment in the case *U. P. State Sugar Corporation Ltd. & Anr. Vrs. Sant Raj Singh & Ors.* reported in AIR 2006 Supreme Court 2296. In the said Judgment at Para. 17 the Hon'ble Apex Court have held as follows :—

“17. The doctrine of equal pay for equal work, as adumbrated under Article 39(d) of the Constitution of India read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. Possession of a higher qualification has all along been treated by this Court to be a valid basis for classification of two categories of employees.”

Undoubtedly the workmen of this case are doing similar work as their counterparts and no specific qualification is required for being appointed as a Sweepers/Sweepresses although in itself it is a valid ground to move the management to consider the case of D.L.R./N.M.R. Sweepers/Sweepresses for equal pay with their regular counterparts but the more important question is as to whether a blanket direction can be given to the management by the Court to give such equal pay to all categories of employees. In this context Hon'ble Supreme Court in the case Indian Drugs & Pharmaceutical Ltd. *Versus* workmen, Indian Drugs & Pharmaceuticals Ltd. reported in 2007(1) Supreme Court cases 408 at Paras 13, 23, 24, 26, 27, 31, 34 and 53 have made it clear that a casual employee or a daily-rated employee is only a temporary employee and it is well settled that a temporary employees has no right to the post, or to be continued in service, to get absorption, far less of being regularised and getting regular pay. In the same Judgement the Hon'ble Apex Court have also held to the effect that orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc, are all executive or legislative functions., and it is highly improper for Judges to steps into this sphere, except in a rare and exceptional case. The Courts must exercise judicial restraint in this connection, and not encroach into the executive or legislative domain. The tendency in some Court/Tribunals to legislate or perform executive functions cannot be appreciated. M. Judicial activism in some extreme and exceptional situations can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary.

11. Thus having regard to the facts and law as discussed above, it is held that the workmen of this case do not have any right as such to be regularised in service or to claim equal pay with their regular counterparts and therefore, the reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
11-4-2007
Presiding Officer
Labour Court
Bhubaneswar

S. K. MOHAPATRA
11-4-2007
Presiding Officer
Labour Court
Bhubaneswar

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