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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th February 2008

No. 1586—li/1(B)-28/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2007 in Industrial Dispute Case No. 34/1989 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s Paradeep Phosphates Ltd., Sahidnagar, Bhubaneswar and their workmen represented through Paradeep Phosphates Employees Union, Paradeep and Paradeep Phosphates Employees Staff Association was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 34 OF 1989

Dated the 31st December 2007

Present :

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

Between :

The Management of .. First Party—Management
M/s Paradeep Phosphates Ltd.,
Sahidnagar, Bhubaneswar.

And

Their Workmen represented through .. Second Party—Workmen
(1) Paradeep Phosphates Employees
Union, Paradeep.
(2) Paradeep Phosphates Staff
Association.

Appearances :

| | |
|------------------------------|-----------------------------------|
| Shri Ganeswar Rath, Advocate | .. For the First Party—Management |
| <hr/> | |
| Shri L. Pongari, Advocate | .. For the Second Party No. 1. |
| None | .. For the Second Party No. 2. |

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon it 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.13484—li/1-154/1987-L.E., dated the 20th November 1989 :—

“Is there any discrimination or impropriety made by the management of Paradeep Phosphates Ltd., Paradeep in the fixation of Scale of Pay for the workmen named below ? If so, to what relief are they entitled ?”

- | | |
|--|--------------|
| 1. Shri R. S. Bhanj, Driver | .. Grade ‘V’ |
| 2. Shri F. C. Nanda | .. Grade ‘V’ |
| 3. Shri B. B. Mallik | .. Grade ‘V’ |
| 4. Shri B. Pradhan | .. Grade ‘V’ |
| 5. Shri P. K. Routray | .. Grade ‘V’ |
| 6. Shri D. Behera | .. Grade ‘V’ |
| 7. Shri U. N. Sahoo, Mobile Equipment Operator | .. Grade ‘Q’ |
| 8. Shri A. C. Panda, Jr. Mobile Equipment Operator | |
| 9. Shri S. N. Mohapatra, Jr. Technician (Mechanical) | |
| 10. Shri D. Mallik, Jr. Assistant | .. Grade ‘T’ |
| 11. Shri G. B. Mohapatra, Jr. Steno.-Typist | |
| 12. Shri S. K. Verma, Jr. Draftsman | |
| 13. Shri A. K. Mohapatra, Assistant Pharmacist | |

2. During pendency of this case on the 19th September 1995 the workmen having Sl. Nos. 10, 11, 12 and 13 arrived at an amicable settlement with the management and their names were deleted accordingly from the reference. The claims of the workmen at Sl. Nos. 1 to 9 were adjudicated earlier and the Award was passed in their favour. The Hon’ble Court in RVWPET No. 7 of 2004 set aside the Award and remanded the matter to this Tribunal to consider their case in the light of the tripartite agreement arrived at between the parties in the year 1989 by providing opportunity to either side to adduce fresh evidence, if they so like. After remand, the parties led further evidence and one agreement was marked as Ext. A.

3. The case of the workmen (hereinafter referred to as ‘the second party’) is that the workmen at Sl. Nos. 1 to 6 are the Drivers and they were given the pay scale of Rs. 290 which was revised subsequently. They belong to skilled category of workmen and they are paid lesser wages and they are entitled to the pay scale of Rs. 570 from the date of their joining.

Shri U. N. Sahoo was appointed as a Mobile Equipment Operator. As per the advertisement the post carried the pay scale of Rs. 480 which was subsequently revised to Rs. 650 but the pay scale of Rs. 450 was meant for the Grade-IV employees. Mr. M. P. Thomas who was also appointed as a Mobile Equipment Operator got the pay scale of Rs. 700 per month. Since the work of both the workmen are the same, Shri Sahoo claimed the pay scale of Rs. 700 from the date of his appointment.

Shri A. C. Panda applied for the interview and was selected for Operator (Mobile Equipment) but he was appointed as a Junior Mobile Equipment Operator in the pay scale of Rs. 320 though the post advertised carried the pay scale of Rs. 480. So, the act of the management is unreasonable and he is entitled to the pay scale of Rs. 480 per month from the date of his joining.

Shri S. N. Mohapatra had joined as a Junior Technician on the 28th August 1984 and got the pay scale of Rs. 530 although his counterparts were getting the scale of pay of Rs. 600 per month and the Arbitration Award recommended the pay scale of Rs. 650 for all Junior Technicians and thereafter only he got the pay scale of Rs. 650. He therefore, claims the pay scale of Rs. 650 from the date of his joining.

Since the service conditions and workload are the same, the workmen have claimed 'equal pay for equal work'. On failure of conciliation, the matter was referred to this Tribunal for adjudication.

4. The case of the management (hereinafter referred to as the 'first party') is that the alleged Union is not a recognised one, so the dispute is not maintainable. The nature of job and the skill required for the job are different. So, as regard the Drivers, their job is quite different from the other Operators who are operating the electrical machines. The Drivers are recruited in the pay scale of Rs. 490 having VIII standard pass with 3 years experience. The other Drivers who are recruited in the pay scale of Rs. 570 have their required qualification as Matriculation + I. T. I. + three years in company training and Graduate with knowledge of typing + three years experience. So, there was difference in qualification for the post of Drivers in the scale of Rs. 490 and those of other skilled workmen and Stenographers in the scale of Rs. 570. The nature of job of the Drivers with that of the skilled workmen is not the same.

Shri U. N. Sahoo had no requisite qualification to drive the heavy vehicle. The qualification for driving heavy vehicle is three years experience in that line. M. P. Thomas was recruited in the scale of pay of Rs. 700 and he had possessed the required qualification of minimum VIII Std. pass and experience of driving heavy vehicles for five years. So, the job requirement of both the persons are different. So, U. N. Sahoo cannot be compared with M. P. Thomas.

Shri A. C. Panda was working as a Casual Labourer in the first party on daily wages and he was made permanent on the 1st June 1983 as Jr. Mobile Equipment Operator in the pay scale of Rs. 490 and no advertisement was issued for any such post. Shri Panda had only experience of operating Road Rollers and he had no knowledge of operating Cranes, Pay Loaders, Bull Dozers, which was required for the job having the pay scale of Rs. 570.

So far as the case of S. N. Mohapatra is concerned, in the year 1984 the post of Assistant Technician was notified to the Employment Exchange and the qualification required for the post was H.S.C. with I. T. I. (Mechanic) with three years experience in an Industrial Undertaking.

Shri Mohapatra had only two years 7 months experience. So, he was not found suitable for the post in the pay scale of Rs. 650 and he was found suitable for the post of Junior Technician which was carrying the pay scale of Rs. 530, which was subsequently upgraded to Rs. 570. The claims of the workmen are not genuine and they are not entitled to any relief.

5. On the aforesaid pleadings of the parties, the following issues were framed :—

ISSUES

(i) "If there is any discrimination or impropriety made by the management of Paradeep Phosphates Ltd., Paradeep in fixing of scale of pay for the workmen named below :

- | | |
|--|--------------|
| 1. Shri R. S. Bhanj, Driver | .. Grade 'V' |
| 2. Shri F. C. Nanda | .. Grade 'V' |
| 3. Shri B. B. Mallik | .. Grade 'V' |
| 4. Shri B. Pradhan | .. Grade 'V' |
| 5. Shri P. K. Routray | .. Grade 'V' |
| 6. Shri D. Behera | .. Grade 'V' |
| 7. Shri U. N. Sahoo, Mobile Equipment Operator | .. Grade 'Q' |
| 8. Shri A. C. Panda, Jr. Mobile Equipment Operator | |
| 9. Shri S. N. Mohapatra, Jr. Technician (Mechanical) | |
| 10. Shri D. Mallik, Jr. Assistant | .. Grade 'T' |
| 11. Shri G. N. Mohapatra, Jr. Steno.-Typist | |
| 12. Shri S. K. Verma, Jr. Draftsman | |
| 13. Shri A. K. Mohapatra, Assistant Pharmacist | |

(ii) If so, to what relief are they entitled ?"

6. The management examined one witness in support of its case and the workmen examined three witnesses in support of their claims.

7. Before going to the merit of the evidence, it is proper to go through the law laid down by Their Lordships relating to 'equal pay for equal work'. In the decision reported in 2002 (95) FLR-954 (S. C.) (State of Orissa and others *Vrs.* Balaram Sahu and others), Their Lordships held that "equal pay would depend upon not only the nature or volume of work, but also on the qualitative difference as regards reliability and responsibility as well and though the functions may be the same, but the responsibilities do make a real and substantial difference" and in the decision reported in 2007 (8) Supreme 58 (Union of India and another *Vrs.* Mahajabeen Akhtar), Their Lordships held that "the question came to be considered in a large number of decisions of this court wherein it unhesitantly came to the conclusion that a large number of factors, namely, educational qualification, nature of duty, nature of responsibility, nature of method of recruitment, etc, will be relevant for determining equivalence in the matter of fixation of scale of pay". In another decision reported in 2007 (115) FLR (S. C.) page 1003 (State of Punjab and another *Vrs.* Surinder Singh and another), Their Lordships held that "identity between two persons has to be complete and total. In case of a regular appointee, he has undergone a selection process and his services are regular. Even if a daily wage employee is discharging the same functions as a regular employee the authorities are not bound to grant equal pay to such a person who is appointed on daily wage basis".

8. W. W. No. 1 deposed that he joined the Paradeep Phosphates Ltd., on the 13th July 1987 as a Mobile Equipment Operator, which is equal to the post of a highly skilled Driver and he was driving Cranes and the post carried the pay scale of Rs. 480 per month, which was revised to Rs. 650 per month. Mr. M. P. Thomas joined as a Mobile Equipment Operator on the 17th January 1984 and he was given the pay scale of Rs. 700 per month but he admitted in cross-examination that in the advertisement the experience required for his post was three years whereas the experience required for the post which Mr. Thomas held was five years. This admission shows that there was difference in experience. So, he cannot claim equal pay with that of M. P. Thomas.

W. W. No. 2 deposed that he was working as a Driver and the post requires 5 years experience and he had six years of experience and was driving Ambulance, Truck and Pay Loaders, etc. He joined in the basic pay of Rs. 450 but at that time the post of Heavy Vehicle Driver carried the pay scale of Rs. 570. It is only the unskilled labourers who were getting the pay scale of Rs. 420 per month. The other Drivers were also driving heavy vehicles. In cross-examination he was not able to say who were the other heavy vehicle Drivers who were drawing the pay scale of Rs. 570 nor any document was placed to show that any other heavy vehicle Driver was receiving the pay scale of Rs. 570. He also admitted that he had not possessed the certificate of driving Cranes, Pay Loaders and Bull Dozers. This admission shows that the workman had no requisite qualification. So, he was not entitled to the pay scale of Rs. 570 at that time.

W. W. No. 3 deposed that being sponsored by the Employment Exchange, he appeared at the interview and as per the advertisement the post was supposed to carry the pay scale of Rs. 480 which was subsequently revised to Rs. 650 but he was appointed in the pay scale of Rs. 320 which was subsequently revised to Rs. 490. At the time of appointment there was no Crane and Bull Dozers and for sometime he drove the Road Rollers only. He also admitted that he had not filed the certificate showing that he was driving Cranes and that he never worked in factory or plant before joining the P. P. L. which shows that he had no sufficient experience. He also admitted that the I. T. I. trained personnels were drawing more pay after completion of training than those who had joined the same post with previous experience of five years. The evidence of W. Ws. 1 to 3 all shows that the qualification, requirement and responsibilities of the jobs are different from each other. As such, the second party-workmen are not entitled to claim 'equal pay for equal work'. Moreover, in the decision reported in AIR 2002 (S. C.) page 2589 (State of Haryana Vrs. H.C.S. Personal Staff Association), Their Lordships held that "fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge."

9. Coming to the contention that the Union was not a recognised union, reliance is placed on a decision reported in (2003) 11 S. C. C. 607 (Chairman, State Bank of India and another Vrs. All Orissa State Bank Officers Association and another). It is true that M. W. No. 1 deposed that the Union is not a recognised union, whereas Exts. 25 to 28, the settlements entered by the management at different times shows that the management was discussing and entering into agreements with this Union and Ext. A also executed between the management and the said Union and all these documents show that either expressly or impliedly the management recognised the Union. So, the contention has no merit at all.

10. Ext. A is the tripartite settlement entered into between the parties and W. W. No. 3 admitted in cross-examination that Ext. A is the tripartite settlement, dated the 9th December 1988 and as per the tripartite settlement the pay scales of the employees were revised and he also further admitted that the tripartite settlement relates to the dismissal/suspension of employees and to settle all the cases including this one on mutual agreement. This admission of W. W. No. 3 shows that they arrived at a settlement after the dispute was referred to this Tribunal (the dispute was referred to this Tribunal on the 20th November 1989) to settle the dispute arose on the 24th October 1987. The admission of W. W. No. 3 that the pay scale was revised as per Ext. A also clearly shows that the workers accepted the same and the settlement was acted upon. So, such settlement was binding on all the workers. In the decision reported in 2006 (110) FLR (S. C.) page 15 (Transmission Corporation, A. P. Ltd. and others Vrs. P. Ramachandra Rao and another), Their Lordships held that "if the settlement had been arrived at by a vast majority of concerned workers with their eyes open and was also accepted by them in its totality, it must be presumed to be just and fair and not liable to be ignored while deciding the reference made under the Act merely because a small number of workers were not parties to it or refused to accept it."

In the case in hand, since the Union entered into settlement and the settlement was acted upon and accepted by the workmen, they are bound by it and the same cannot be ignored. Hence, the second party-workmen are not entitled to any relief.

11. In the result, the reference is answered in the following manner :

That, there appears no discrimination or impropriety made by the management in the fixation of scales of pay for the workmen named at Sl. Nos. 1 to 9 and consequently they are not entitled to any relief in the present dispute.

Dictated and corrected by me.

SRIKANTA NAYAK
31-12-2007
Presiding Officer
Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK
31-12-2007
Presiding Officer
Industrial Tribunal, Bhubaneswar

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