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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th April 2008

No. 4892-1i/1-(J)-4/2007/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 4th March, 2008 in I.D. Case No. 10 of 2007 of the Presiding Officer, Labour Court Jeypore to whom the Industrial Dispute between the Management of M/s. Jeypore Sugar Company Ltd., Rayagada and their workman Shri K. Subba Raju, Ex-Siding Mate was referred for adjudication is hereby published in the schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE No. 10 OF 2007
Dated the 4th March 2008.

Present:

Shri G. K. Mishra, O.S.J.S. (Jr.Branch),
Presiding Officer,
Labour Court, Jeypore
Koraput.

Between:

The Deputy Plant Manager,
M/s. Jeypore Sugar Company Ltd.,
Rayagada
At/P.O./Dist.-Rayagada.

... First-Party — Management

Versus

Shri K. Subba Raju
 Qrs. No. – C 15/2
 At- J. S. Company Colony
 P.O.- Rayagada
 Dist:- Rayagada

... Second-Party – Workman

Under Section : 10 & 12 of the Industrial Disputes Act, 1947.

Appearances :

For the Management	...	...	... Shri K. N. Samantray, Advocate, Jeypore.
For the Workman	...	...	...Shri B. Padhy, Advocate, Jeypore.
Date of Argument	...	...	... 28-02-2008
Date of Award	...	...	... 04-03-2008

1. The Government of Orissa, in the Labour & Employment Department in exercise of the power conferred upon them under 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 disputes vide their Order No. 7089/LE., dated the 30th May 2007 for adjudication of the following disputes :—

SCHEDULE

“ Whether the action of the Management of M/s. Jeypore Sugar Company Ltd., Rayagada Unit, Orissa by dismissing Shri K. Subba Raju, Ex-Siding Mate from services with effect from 16th June 2006 is legal and/or justified ? If not, what, relief Shri K. Subba Raju is entitled ?”

2. This case emerges out of the reference submitted by the Government for determination of an issue regarding the validity of the act of termination entertained by the Management in respect of the workman coupled with other ancillary reliefs to be granted in consequence thereof.

3. The facts presented by the workman, shorn in un-necessary details, may be succinctly described that, the Management having dismissed the workman basing upon a formal disciplinary proceeding without affording any scope to the workman of being heard on the matter of adducing evidence and production of material documents, the workman unfurled challenge the order of termination to be purely illegal and unjustified.

4. The Management, on the contrary, abnegated the entire accretions put forth by the workman and contended *inter alia* that, on the cause of misconduct alleged to have been committed by the workman in resorting to unauthorized allotment of quarters kept under his charge as a siding supervisor, on receipt of bribe, infavour of the out siders; a disciplinary proceeding was initiated against him and the workman have, during the course of proceeding, not been actively participated in the process by tendering evidence; oral or documentary; even though having his presence through out the process, the enquiry was culminated in submission of a report before the disciplinary authority who after giving sufficient opportunity terminated the service of the workman. The principles of natural justice being followed properly and fairly, no prejudice is said to have been suffered by the workman besides, it is sumptuously canvassed by the Management that, the workman being posted as a "Supervisor" to do watch and ward of the vacant houses lying within the premises and he having been received a salary exceeding Rs. 1600/-, he can't be considered to have been engaged with supervisory capacity so as to exclude him from the definition of workman prescribed U/s-2 (s) (iv) of the I.D. Act, 1947 and for that, the workman can not be permitted to invoke the power and jurisdiction of the Labour Court for seeking relief's as sought for.

5. The term "Supervisory" was not initially incorporated in the definition "Workman" as defined U/s 2 (s) of the I. D. Act, 1947. A change appears to have been noticed in the amending Act of 1956. The object of introducing such new term "Supervisory" was to equalize bargaining power and also to give the power of bargaining and invoking the Industrial Disputes Act to supervisory workman. There appears some limitation regarding the *locus standi* of the workman to get relief. The employee employed as a Supervisor, can be ceased to be a "workman" if, he draws wages in excess of Rs. 1600/- per month or if, he performs managerial functions by reason of a power vested in him, or by the nature of the duties attached to his office. On proof of circumstances excluding him from the category, he goes out of the category of the "Workman". There is a clear distinction between the "Work" and the "Capacity" to "Work" as enshrined in clause-iv of the section 2

(s) of the I.D. Act, 1947. The definition does not include any person employed to do supervisory work. The real fact is the person employed in a supervisory capacity and draws a salary of exceeding of Rs. 1600/- is excluded from the purview of the definition. The work "Supervisor" thus construed, if there are persons working under him, over whose work, he has to keep a watch. He is that person who examines and keeps a watch over the work of his subordinate and, if they are in any way, corrects them. It is his duty to see that, the work in an Industrial Unit is done in accordance with a manual or in accordance with the usual procedure. It is not his function to bring about any innovation or to take any managerial decision, but it is his duty to see that, a person over whom he is suppose to surprise duty work assigned to them according to the rules and procedure. If a person is doing any work which does not require him to look after or inspect or examine the work of the persons who are subordinate to him or working under him, that person can not be said to be a "Supervisor". The Hon'ble Supreme Court in All India Reserve Bank Employees Association Vrs. R. B. I. AIR 1966 S.C. 305. While dealing with the definition in Section 2 (s) observed that, the work "Supervisor" and it's derivatives are not of precise import and most oftenly construed in the light of the context for unless controlled. They cover an easily simple oversight and direction of manual work coupled with the power of inspection and superintendence of the manual work of others. In other words, the supervision is necessarily by reference to the persons working under a supervisor. Supervision may be in relation to the work or relation to the persons. The word "Supervisor" is not used in relation to the supervision of any automatic plant or machinery. The person who attends on such a machine may do either technical or manual works, but he does not do supervisory work merely because he looks after the machine. Supervision contemplates direction and control. A supervisor really means that a person exercising supervisory works is required to control the men and not the machine. Reliance has been placed in a decision rendered in Titagarh paper Mills Co. Ltd. Vrs. Industrial Tribunal, West Bengal 1982 LIC 307. It can be only construed that, the supervision work must be work in relation to the Industry in which the person is employed. His duty is to see how the employees will be engaged in different works of production and maintenance. Ordinary supervision work is not of the supervisory nature for the purpose of the definition. In order to determine the terms "Supervisor" no importance shall be attached to the designation of the employee. It is always a matter of determining what the primary duty of an employee is. In other words in determining the status of an employee, his designation is not decisive, what determines is the consideration of the nature of the duties and the function assigned to him. Reliance

has been placed in a decision *Burma Shell Oil Storage and Distribution Co. India Ltd. Vrs. Burma Shell Management Staff Association* AIR 1971 S.C. 922. The supervisor can occupy a position of command or decision and can be authorized to work in certain matters within the limits of his authority, without the sanction of the Management. In order to determine the person employed in the supervisory capacity, the main and principal duties carried out by him, are those of supervisory character may be taken into consideration. Reliance has been placed in a decision *Anand Bazar Patrika (P) Ltd. Vrs. It's workman*, 1969 IInd LLJ 670 (S.C.). Any additional work which is incidental to the main work, done as a small fraction can not be said to have performed supervisory work by converting from his initial entrustment of work. Reliance has been placed in a decision *Govind Raj Rao Vrs. Ciba Grigy of India Ltd.* AIR 1985 S.C. 985. The additional duties can not change the character and status of the workman.

6. In the instant case the workman was posted as a siding supervisor and continued as such till he was terminated. He was initially posted as a siding mate in the year 1987 and confirmed in that post after one year of the probation. In 1999 the workman was promoted to the rank of "Siding Supervisor" and transferred to Ferro Manganies Plant, Rayagada vide Ext-A. He was entrusted to look after the duty arrangement of the security and watch and ward vide Ext-5 by the Management. In addition to that, he was kept in charge of plantation watch and ward with a direction not to intervene the department's requirements. The entrustment given to the workman was to operate only in a limited sphere. Though he has power to resort to distribution of work amongst the security personal employed under his control., he was not authorized to perform either managerial or supervisory functions. He was not entrusted with the power of control and regulation over the conduct and performance of the subordinate employees. The power of granting leave, recommendation for best performance of the subordinate workman and for initiating disciplinary action has not been endowed with his duties as a "Supervisor". The necessary command over the staff required for effective and efficient Management of the supervision seems to have been curtailed by the Management. The Management appears to have kept direct control and supervision over the subordinate employees without giving scope of such authority to be entertained by the workman. The power of the workman is only to have supervisory work as contradistinguished from supervisory capacity which is the chief component of definition "Workman" as defined U/s 2(s) (iv) of the I.D. Act, 1947. The workman having not endowed with the power of control and regulation to be performed as the representative of the Management, he can't be excluded from the purview of the

definition of "Workman". In that context he can not be said to have performed neither managerial nor supervisory power, so as to grant necessary relief in favour of the workman as a "Supervisor". He only works as a "Supervisor", but not supervisor in capacity. Reliance has been placed in a decision rendered in *Dev Prakash Gupta Vrs. M/s. Delton Cable India (P) Ltd.*, AIR 1984 S.C. 914. Taking about circumstances in view the conclusion is irresistible that, the workman though having posted as a supervisor he can be considered as a "Workman" having not the power of supervisory capacity.

7. The most disquieting feature cropped up in this case that, the workman was initially performing work a siding mate, without securing any power of supervision. Subsequently, the post in which he was placed was elevated to the post of siding supervisor with a power to over see the work of the subordinate employees kept under his control. By virtue of the promotion his status as a workman was then and there ceased. The principle has been enunciated in a case *Ford Motors Company of India Vrs. Workman*, 4 FJR 65 (LAT), that, where a workman is promoted to a post of a supervisory nature he ceases to be a workman and must forfeit any benefit granted to workman as such. Reliance has been placed in a decision of the Hon'ble Bombay High Court for *German Remedies Ltd. Vrs. Michael Gabriel Lopes* 1999 LAB I.C. 1208, who has taken the same view and expressed that workman having promoted to the post of supervisor can not be considered to be a workman. Taking the above principle in view, he was no more in a cadre of a workman by virtue of his promotion since 1999, Moreover, the workman used to receive salary at a higher scale of Rs. 5,824. 25Ps per month which exceeds the amounts stipulated in the definition under Section 2(S) of the I. D. Act, 1947, so as to exclude him from the ambit of a "Workman". Reliance has been placed in a decision in *Yadeshwar Kumar Vrs. M/s. Bennett Colemar and Co. Ltd.* 2007, LAB I.C. 4235. The workman though posted as a siding supervisor and he having received salary exceeding Rs. 1600/-, he can not be considered as a workman and accordingly no benefits shall be accrued by the workman as sought for in the claim statement. The workman being the outside class of workman, the Act imposes no liability on the employer Management.

8. There being in-adequacy of status as a workman, the claim entertained by the workman can not be considered as an Industrial Dispute so as to invoke the power of the Labour Court for necessary adjudication. The Court can not usurp the power of the Management terminating the service of the workman by un-necessarily plunging into the arena of adjudication. Accordingly, the claim of the workman is excluded from the purview

of the adjudication being considered him to be not a workman as per Section 2 (S) of the I. D. Act, 1947.

The reference is answered accordingly, being considered as mis-conceived.

ORDER

9. The award is passed on contest against the workman.

Dictated and corrected by me.

G. K. Mishra
04-03-2008
Presiding Officer,
Labour Court,
Jeypore,
Koraput.

G. K. Mishra
04-03-2008
Presiding Officer,
Labour Court,
Jeypore,
Koraput.

By order of the Governor

G. N. JENA
Deputy Secretary to Government