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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd July 2009

No. 6724-1i/1(BH)-3/2001 (Pt.)/L.E.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 20th February, 2009 in Industrial Dispute Case No. 7 of 2004 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Orissa State Cashew Development Corporation/ the Managing Director, Orissa State Cashew Development Corporation Limited/ Divisional Manager, Dhenkanal Division, Orissa State Cashew Development Corporation and their Workman Shri Kishore Chandra Behera was referred to for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT : SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 7 OF 2004

The 20th February, 2009

Present:

Smt. Suchismita Misra, LL.M.,
Presiding Officer,
Labour Court,
Sambalpur.

Between:

The Management of,
Orissa State Cashew Development
Corporation Limited, represented by
1. The Managing Director,
Orissa State Cashew Development
Corporation Limited,
Head Office 2nd Floor, F-4 Block,
I.R.C. Village, Bhubaneswar

2. The Divisional Manager,
Dhenkanal Division,
Orissa State Cashew Development
Corporation Limited, At-Shyamachandrapur
Dist.- Dhenkanal .. First-Party—Management

(And)

Its Workman,
Shri Kishore Chandra Behera,
Village- Khuntabati,
P.O.- Analbareni, Via- Kamakhyanagar,
Dist.-Dhenkanal .. Second-Party—Workman

Appearances:

For the First-Party—Management .. Shri R.K. Mohanty, Advocate

For the Second-Party—Workman .. Shri C.R. Panda, Advocate

AWARD

1. The Government of Orissa in the Labour & Employment Department have, in exercise of powers conferred upon them by Sub-Section (5) of Section 12 read with clause (C) of the Sub-Section (1) of Section 10 of the Industrial Dispute Act, 1947 (14 of 1947) and by their Order No. 2753-li/1-(BH)-3/2001, dated the 16th March, 2004 have referred the following dispute for adjudication by this Court.

“Whether the termination of services of Shri Kishore Chandra Behera Watchman with effect from 10th January, 1998 by the Management of M/s. Orissa Cashew Development Corporation Limited, Bhubaneswar/Dhenkanal is legal and/or justified? If not, to what relief Shri Benera is entitled ?”

2. Shorn of unnecessary details, the facts leading to the present disputes between the First-Party—Management, Orissa State Cashew Development Corporation Limited on the one hand and the Workman Shri Kishore Chandra Benera on the other are stated below:—

The case of the First-Party—Workman as would appear from his statement of claim filed by him in the present proceeding runs as below:—

The First-Party—Workman was engaged as a Watcher by the First-Party—Management, Orissa State Cashew Development Corporation Limited, Dhenkanal from 26th June, 1985 and continued as such under the said Management till 9th January, 1998. During the aforesaid period of his engagement he was allotted duty at different Cashew fields such as Kanti, Analabereni, Khatuahata etc. in Dhenkanal district and completed

more than 240 days in continuous employment every year. During the period of his engagement as aforesaid he was paid Rs. 900/- as his wages every month by the First-Party—Management. However, on 10th January, 1998 the First-Party—Management through Divisional Manager, Dhenkanal Division of Orissa State Cashew Development Corporation Limited terminated his services without compliance of the provisions of Section 25-F (a) (b), 25-G and 25-H of the Industrial Disputes Act, 1947. Moreover, the First-Party—Management also failed to observe the principles of natural justice while terminating his employment with effect from 10th January, 1998. The First-Party—Workman also alleged that his services were terminated by the First-Party—Management on his making a complaint against their supervisor namely Shri Satya Narayan Das and one Shir Akhil Kumar Sahu, Lease Holder of Khatuahata Cashew Plantation under Dhenkanal Division for the year 1997, as they were found cutting and selling the Cashew trees from the said plantation in connivance with each other. Under such circumstances, the First-Party—Workman while challenging the order of termination of his services by the First-Party—Management claimed that the said order dated the 10th January, 1998 be held illegal and unjustified and as such he be reinstated in the service from which he was terminated with full back wages and other services benefits.

3. The First-Party—Management in their written statement contested the pleas advanced by the First-Party—Workman on the following grounds:—

- (a) The First-Party—Workman was engaged temporarily by the First-Party Management as a Casual Labourer on daily wage basis from time to time i.e. in other words as and when required considering the work load in different Cashew plantations namely Kateni, Analbareni and Khatuahata under the Dhenkanal Division of the Corporation. Thus the employment of First-Party—Workman under the First-Party—Management being purely temporary and seasonal in nature could have been terminated by the First-Party—Management without any notice and also without assigning any reason for the same by the Corporation. The First-Party—Workman had neither worked continuous under the First-Party Management nor had ever completed 240 days of his employment continuously every year during the period quoted by him. He was rather taken into employment from time to time considering the workload as and when required by the First-Party—Management.
- (b) During the annual tender auction of different Cashew plantations under the Corporation, Khatuahata Cashew Plantation under Dhenkanal Division was handed over to one Akhil Kumar Sahu as he was the highest Bidder in respect of

Khatuahata plantation for the purpose of collection of raw cashew nuts and thalamus during the year 1997 and for that a deed of agreement was executed between the First-Party—Management and the auction holder Akhil Kumar Sahu on 14th January, 1997. As per the said agreement the First-Party—Workman, being the casual labourer engaged for upkeep and watch and ward of the Khatuahata plantation during the year 1997 was required to render his services to the Lease Holder of the said plantation namely Akhil Kumar Sahu after possession of the plantation was handed over to him (the lease holder) on 14th January, 1997. But the Second-Party did not report for his duty in the aforesaid cashew plantation from 15th January, 1997 for which the lease holder of the said plantation reported the authorities in Dhenkanal Division of the Corporation about his unauthorized absence.

- (c) Further, the First-Party—Workman also did not report for his duty at Khatuahata plantation from 3rd June, 1997 when the auction holder Akhil Kumar Sahu handed over possession of the said plantation to the corporation after collection of raw cashewnuts and thalamus as per the agreement between him and the First-Party—Management. Therefore, the allegation advanced by the First-Party—Workman that his services were terminated by the First-Party—Management is absolutely vague and baseless. The First-Party—Workman had rather abandoned his job under the First-Party—Management.
- (d) The First-Party—Workman had never worked under the First-Party—Management after 14th January, 1997 and was reportedly involved himself in some other business during the aforesaid period of his absence. Therefore, his claim for reinstatement in his employment under the First-Party—Management with full back wages and all other service benefits should not be allowed. Further, the claim made by the Workman that his allegation against the lease holder of Khatuahata plantation and the then plantation supervisor under the corporation as the sole cause of his termination is absolutely false because there was no such allegation before the Management stated to have been made by the Workman against the then plant supervisor and lease holder of Khatuahata Plantation. On the otherhand the First-Party—Workman himself had abandoned his job at the aforesaid cashew plantation after 14th January, 1997 by absenting himself from his duties even after he was intimated by the concerned plantation supervisors time and again to report for his duty.

- (e) The First-Party—Workman during his employment under the First-Party—Management had always proved himself to be a defaulter so far as his duties at Khatuahata Plantation are concerned. However, he was given another opportunity by the First-Party—Management to resume his duties at Analbereni-II Cashew Plantation of the corporation at Boinda area during the year 1997. The First-Party—Workman after reaching there on 12th November, 1997 did not perform his duty and ultimately left that plantation of his own will. Thus, when he did not report for duty till 21st November, 1997 the concerned plantation supervisor intimated about his absence to the First-Party—Management vide his Memo No.27, dated the 26th November, 1997.
- (f) As the First-Party—Workman remained irregular in his duties most of the time during his employment at Khatuahata and Analbereni Cashew Plantation despite being cautioned by the plantation supervisors concerned not to absent himself further from his duties and ultimately left the job on his own, the First-Party—Management is under no obligation to take him back into the job which he had once abandoned causing loss to the corporation during the relevant period. The First-Party—Workman according to the First-Party—Management is not entitled for his reinstatement in the service with full back wages as in his case the First-Party—Management was never under any obligation to comply the provisions under Section 25-F of the Industrial Disputes Act, 1947.

4. The First-Party—Workman filed a rejoinder to the written statement of the First-Party—Management denying the pleas advanced by the First-Party—Management.

On the above pleadings only two issues were framed in this proceeding and those are:

- (i) “Whether the termination of services of Shri Kishore Chandra Behera, Watchman with effect from 10th January, 1998 by the Management of M/s. Orissa Cashew Development Corporation Limited, Bhubaneswar/ Dhenkanal is legal and/or justified ?
- (ii) If not, to what relief Shri Behera is entitled ?”

5. In this proceeding the Workman who examined himself as W.W.1 had submitted his evidence on affidavit on 1st September, 2006 which was received as his examination-in-chief and he was cross-examined on behalf of the First-Party—Management on 2nd August 2007. One more witness namely Bijaya Kumar Behera was also examined on behalf of the Workman as W.W.2. Similarly on behalf of the Management, the Incharge Plantation Supervisor, Cashew Development Corporation namely Bidyadhar Jena and

Plantation Supervisor of Orissa State Cashew Development Corporation Limited, namely Bidyadhar Sahu were examined as M.W.1 and M.W.2 respectively and both of them were cross-examined on behalf of the Workman. No document was filed and proved on behalf of the Workman in this proceeding whereas on behalf of the Management nine documents were file and exhibited as Ext. M-1 to Ext. M-9 series.

6. Now coming to the point raised by the First-Party—Management that as the First-Party—Workman was employed/engaged by the Management temporarily as a casual labourer on daily wage basis from time to time and further as and when required taking the workload in different Cashew Plantations namely Kateni, Analbereni and Khatuahata under Dhenkanal division of the corporation into consideration, his services could have been terminated by the First-Party—Management at any time without notice and assigning any reason, I would say that since in this proceeding the First-Party—Management have come forward with their consistent pleas that the job of the First-Party—Workman under them was purely temporary and seasonal one and he was employed by them as a Casual Labourer on daily wage basis and further the First-Party—Workman had neither worked under them continuously nor rendered his services completing more than 240 days in any of the calendar years during his employment under them, it becomes incumbent upon the Workman to prove with clear and cogent evidence that he was employed/engaged by the First-Party—Management for a continuous period which was never less than 240 days during the preceeding calendar years and further his retrenchment was illegal as the same was done by the Management in contravention of the provisions of Section 25-F of the Industrial Disputes Act.

In the present proceeding the First-Party—Workman, however, simply denied the aforesaid assertions of the First-Party—Management with regard to the nature of his employment by merely describing that their such assertions are devoid of merit because the First-Party—Management had admitted about his employment under them up to the period 14th January, 1997. The First-Party—Workman has not filed a single scrap of paper to indicate much less to prove that he had been working as a watcher under the First-Party—Management at Dhenkanal Divison of Orissa State Cashew Development Corporation from 26th June, 1985 to 9th January, 1997 continuing without any interruption in his service/engagement. The fact that the First-Party—Workman was working as a watcher under the First-Party—Management but his services under them were never continuous during the aforesaid period and further he was engaged by them as a daily labourer on daily wage basis have also been amply proved by them in this proceeding. The Management besides adducing oral evidence on this aspect also proved documents

vide Ext. M-9 series which are muster rolls relating to the Workman to establish that he was a daily rated Workman while being employed by them during the aforesaid period. Not only that the Management also proved documents vide Exts. M-1 to M-6 to indicate the lapses and irregularities on the part of First-Party—Workman in attending his duties at his work places after 15th January, 1997.

7. On verification of the muster rolls (72 sheets) as described above it could be gathered that the First-Party—Workman had never worked under the First-Party—Management for a period of 240 days a year during the aforesaid period of his engagement. From the muster rolls filed by the First-Party—Management in 72 sheets vide Ext. M-9 series it could be found that the First-Party—Workman had worked for about 135 days in the year 1990; 154 days in the year 1991; 149 days in the year 1992; 186 days in the year 1993; 155 days in the year 1994; 212 days in the year 1995; 224 days in the year 1996 and only for 12 days in the year 1997. Thus it is noticed from the aforesaid computation that the First-Party—Workman had never worked for 240 days in one calendar year under the First-Party—Management which is the condition precedent for attracting provisions of Section 25-F of the Industrial Disputes Act, 1947 in his favour. The First-Party—Workman has not made any effort to call upon the employer to produce before the Court the missing muster rolls, if any, according to him or the wage Register or Attendance Register which according to his evidence before the Court are very much available with the First-Party—Management to substantiate his claim and falsify the above stand taken by the Management. All these circumstances go to show that the First-Party—Management is not certainly under any obligation to comply the provisions contained in Section 25-F of the Industrial Disputes Act in the event of termination of services of the First-Party—Workman.

However, in the present proceeding the Management took in plea that they had never terminated the services of the Second-Party as he alleges and he (the First-Party—Workman) rather left his job under the First-Party—Management by absenting himself at his work place after 15th January, 1997. The First-Party—Workman in his claim statement took the plea that his services were terminated by the First-Party—Management as he protested the illegal cutting of cashew trees from Khatuahata plantation by the then Auction Holder of the said plantation as well as plantation supervisor. However, he failed to prove his such allegation in a clear and cogent manner. He also pleaded in his claim statement that during pendency of the dispute with the Management before the Assistant Labour Officer-*cum*-Consiliation Officer, Dhenkanal the Management had verbally ordered him to resume his duty in a plantation at Boinda in Angul district and further he had reported for his duty there but due to opposition of the local villagers he was forced to

leave that place. This fact also he could not substantiate properly in this proceeding by adducing some corroborative evidence.

All these aspects relating to this proceeding as discussed in the foregoing paragraphs make it clear that the Workman being a casual labourer on daily wage basis under the First-Party—Management is not within the mischief of Sub-Section 2 (oo) read with Section 25-F of the Act and a dispute relating to him cannot give rise to an Industrial Dispute and therefore, the present reference has to be regarded as incompetent. In the facts and circumstances described herein-above the First-Party—Workman Shri Behera is not entitled to any relief in the present case.

The reference is answered accordingly.

Dictated & corrected by me.

Smt. Suchismita Misra, LL.M.,
20-02-2009
Presiding Officer,
Labour Court,
Sambalpur

Smt. Suchismita Misra, LL.M.,
20-02-2009
Presiding Officer,
Labour Court,
Sambalpur

By order of the Governor

K.C. BASKE
Under-Secretary to Government