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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 31st July 2009

No. 7002-1i/1(B)-61/1994(Pt)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 9th March, 2009 in I.D. Case No. 83 of 1995 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Konark Jute Ltd., Dhanmandal and their Workman Shri Jagabandhu Swain represented through Dhanmandal Shramik Sangha, Dhanmandal, Dist: Jajpur was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 83 OF 1995

Dated the 9th March, 2009.

Present:

Shri P. C. Mishra, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The Management of
M/s. Konark Jute Limited,
Dhanmandal.

... First-Party — Management.

(And)

Their Workman Shri Jagabandhu Swain,
 Represented through Dhanmandal
 Shramik Sangha, Dhanmandal,
 Dist.-Jajpur. ... Second-Party — Workman.

Appearances :

Shri P.K. Lenka, Advocate	... For the First-Party — Management.
Shri S.B.Mishra, Advocate	... For the Second-Party — Workman.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon it vide 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 dispute for adjudication vide their Order No.12888-li/1-(B)-61/94/LE., dated the 19th September, 1995 :—

“Whether the services of Shri Jagabandhu Swain, Badli Security Guard need to be regularized against the vacant post of regular Security Guard by the Management of M/s. Konark Jute Ltd., Dhanmandal ? If so, what direction in this regard is necessary and if not, whether the Workman is entitled to equal wages for equal nature of work performed by his counterparts working in the post of regular security guards and with what details ?”.

2. The case of the Workman in short is that pursuant to an interview held on 21st November, 1986 he was selected for the post of Security Guard but the Management without giving him regular appointment in the post of Security Guard, appointed him on casual basis with effect from 1st November, 1987 on a wage of Rs. 10/- per day. It is pleaded that on his joining he worked like other Security Guards and while working as such he made a representation on 6th March, 1989 as a result of which his daily wage was enhanced from Rs. 10/- to Rs. 13/-. It is averred that the Management did not consider his representations in which he had claimed for regularization of his service with benefits of regular Security Guards even if there were vacancies in the post of regular Security Guards. Specifically it is pleaded that although the Workman was doing the same work as that of the regular Security Guards yet he is not being allowed casual leave, earn leave, washing allowance, leave encashment, parade allowance, house rent allowance etc.. He

was not even allowed uniform, shoes etc. up to the year 1994. The Workman, in the premises, has claimed for his regularization in service from the date of his joining as Security Guard and the benefits applicable to the regular Security Guards.

3. The Management filed its written statement stating therein *inter alia*, that since the Workman was not selected in the post of Security Guard, he was appointed as a Badli Security Guard on daily wage basis @ 13.65 paise per day with effect from 1st November, 1987. It is stated that a Badli Security Guard is not provided with regular uniform and he is engaged in place of regular Security Guards whenever any one of them goes on leave. It is stated that in view of his terms of appointment, the Workman cannot claim salary, emoluments and other benefits which a regular Security Guard gets on his appointment. As regards the strength of regular Security Guards under the Management and the vacancy position as mentioned in the claim statement, the Management has asserted that there is no specified strength of Security Guards in the establishment of the Management and the same varies from time to time depending upon the workload. According to the Management, the present strength of Security Guard is in excess of the requirement and further the Workman being a Badli Security Guard cannot equate himself with that of the regular Security Guard in the matters of responsibility and reliability. The Management has stoutly disputed the claim of the Workman that he was employed to discharge identical duties as that of the regular Security Guards. It is lastly pleaded that since the representations submitted by the Workman is pending consideration, his claim for equal wages for equal nature of work does not arise for consideration.

4. On the basis of the pleadings of the parties, the following issue was framed :—

ISSUES

(1) Whether the services of Shri Jagabandhu Swain, Badli Security Guard need to be regularized against the vacant post of regular Security Guard by the Management of M/s. Konark Jute Ltd., Dhanmandal ? If so, what direction in this regard is necessary and if not, whether the Workman is entitled to equal wages for equal nature of work performed by his counterparts working in the post of regular Security Guards and with what details ?

5. Earlier this Tribunal upon hearing the parties had passed an Award in the proceeding on 9th June, 2006 holding that the Workman in the dispute is not entitled to the reliefs claimed. Against the Award W.P.(C) No. 12251 of 2006 was preferred before the

Hon'ble High Court and ultimately the Hon'ble Court while remitting the matter for fresh disposal held as follows :—

XX XX Considering the submissions of the learned counsel for parties and applying the principles of law as laid down by the Hon'ble Supreme Court in the aforesaid decision reported in JT 2006(7) SC 151, the impugned award cannot be sustained. Learned Tribunal has not taken into consideration the fact that the Workman has been in employment under the Management on casual basis since 1st November, 1987, as a 'Badli' Security Guard and his continuing as such till date. Moreover, the poor financial condition of the Management cannot be a ground to deny the legitimate claims of the Workman.

Without expressing any opinion with regard to the merits of the case, the impugned award dated the 9th June, 2006 is quashed and the matter is remitted back to the learned Tribunal for re-consideration. It is open for the parties to lead further evidence in support of their respective case. The learned Tribunal shall consider the matter afresh, on its own merit and in accordance with law.

xx xx xx xx xx

Pursuant to the orders of the Hon'ble Court, both parties entered appearance. The Workman while adduced further oral as well as documentary evidence, the Management remained content with the evidence already adduced on behalf of it. The record reveals that the Workman examined two witnesses on his behalf including himself and brought on record documents which have been marked as Exts.1 to 10. The Management, on the other hand, examined one witness on its behalf and proved documents which have been marked as Exts. A, B and C.

6. Keeping in view the observation of the Hon'ble Court and the respective contention advanced by the parties, the questions that emerge for consideration in order to dispose of the issue in hand are :—

- (a) Whether the claim of the Workman for his regularization in service as a Security Guard under the Management is justified ?
- (b) and if not, whether the principle of 'equal pay for equal work' can be applicable in favor of the Workman for his doing the same and similar work as that of his counterparts ?

7. As regards the first question i.e., the claim of the Workman for regularization of his service as a Security Guard, it is evident from Ext.1 that pursuant to his application for the

post of Security Guard, he was called for an interview on 21st November, 1986 at 11.00 A.M. and after being selected in the said interview he joined on 1st November, 1987. The Workman deposed that only when he was paid the monthly salary, he could come to know that he was appointed as a 'Badli' Security Guard. It is stated that on his ventilating grievance before the Personnel Manager he was assured that he would be made permanent after six months. He deposed further that when his oral complaints were turned-down, he submitted written representations at different times vide Exts. 5 to 5/8 claiming his regularization as a regular Security Guard and the benefits attached there. His evidence further reveals that he was doing the same work as that of the regular Security Guards and his name also finds place in the attendance register maintained for the regular Security Guards. He stated that he was being provided work like the regular security guards. Although the Workman was cross-examined at length but nothing substantial was brought in his evidence to discredit his version. Pursuant to his further examination on 13th February, 2009 the Workman was cross-examined where in he has admitted that there are 5 numbers of Badli Security Guard now working under the Management and likewise about 200 workers are now working as Badli Workers. He further admitted in his cross-examination that 5 persons were selected in the interview conducted on 21st November, 1986 and out of them four have already left the service and one who is continuing is Shri Indramani Das, who had joined prior to the date of joining of the Workman. He further admitted that the Management is now running on loss. So, from his own admission it is crystal clear that even though he was called for an interview on 21st November, 1986 for the post of Security Guard, he was not selected to hold the said post on regular basis but he was inducted as a 'Badli' Security Guard.

In this connection, it was urged on behalf of the Management that the post of 'Badli' Security Guard is a leave reserved post and being utilized whenever any regular Security Guard remains absent on leave or for any other reason. On the other hand it was contended by the Workman that although the Workman was not posted as a regular Security Guard but he was doing all sorts of works that were being discharged by the regular Security Guards and it is completely false to assert that he was being utilized as a leave reserve. In this connection, Ext. 9 is a document which shows that the Workman had rendered work for 240 days or more in all the years from 1988 to 2007 under the management. Ext. 10 is yet another document which discloses that persons appointed as 'Badli' have been made regular subsequent to the date of joining of the Workman under the Management in different posts. On the face of these documents, therefore, it is hard to

believe that the services of the Workman was utilized as a leave reserve when the Workman was doing regular nature of works of a Security Guard and that too for a long period. His claim for regularization therefore cannot be brushed aside merely for the reason that he was designated as a 'Badli' Security Guard.

Learned Counsel appearing for the Management drew my attention to the decision of the Hon'ble Apex Court in the case between Secretary, State of Karnataka and others *Vrs.* Umadevi & others, reported in AIR 2006 Supreme Court Page-1806 and argued that the status of the Workman being a 'Badli' Security Guard, no direction for his regularization can be imparted. The verdict of the Hon'ble Apex Court in Umadevi's case (*supra*) is not all applicable in the facts and circumstances of the present case, in as much as in the case in hand the Workman after appearing a selection/test held for the post of Security Guard got appointed under the Management but his such appointment was shown as 'Badli'. No cogent reason is assigned as to why the Management despite calling the Workman for an interview for the post of Security Guard offered him the designation of 'Badli' Security Guard and there deprived him of getting benefits of regular Security Guards. In the context, it is appropriate to refer to a recent decision of the Hon'ble Supreme Court, reported in 2008 (116) FLR (S.C.) Page-1172 (*U.P. State Electricity Board Vrs. Pooran Chandra Pandey & others*), wherein their Lordships have held thus :—

“ In the present case many of the writ petitioners have been working from 1985 i.e. they have put in about 22 years service and it will surely not be reasonable if their claim for regularization is denied even after such a long period of service. Hence, apart from discrimination, Article 14 of the Constitution will also be violated on the ground of arbitrariness and unreasonableness if employees who have put in such a long service are denied the benefit of regularization and are made to face the same selection which fresh recruits have to face.”

In the instant dispute the services of the Workman are being utilized as a 'Badli' Security Guard since more than twenty years and there by he is not being paid the wages and other allowances like the regular Security Guards. Considering the facts and circumstances of the case, and keeping in view the judgment of the Apex Court rendered in *Pooran Chandra Pandey's* case (*supra*), it is held to be a fit case where the Management should be directed to regularize the services of the Workman in the post of Security Guard and extend him all the benefits attached to the post.

8. Learned counsel appearing for the Management submitted with reference to Exts.A & B and the evidence adduced on behalf of the Management through M.W. No.1

that presently the company is sick and is in the process of winding-up and thus any financial burden can lead to further deteriorate the condition of the company. The submission, as laid, has no leg to stand because of the reason that reduction in work and poor financial performance due to incompetent and poor Management cannot be allowed to play with the future of the employees and their families. In this connection the decision reported in JT 2006(7) SC 151 (Mineral Exploration Corporation Employees Union Vrs. Mineral Exploration Corporation Limited & Another) may be seen.

9. In view of the discussion made in the foregoing paragraphs, the Management is directed to regularize the services of the Workman in the vacant post of regular Security Guard with effect from 1st January, 2009 and make him available all sorts of benefits attached to the said post retrospectively with effect from 1st January, 2009.

10. Since the claim of the Workman for regularization is answered in the affirmative, the other question regarding applicability of 'equal pay for equal work' in favour of the Workman becomes redundant and needs no specific adjudication.

The reference is answered accordingly.

Dictated & corrected by me

P. C. Mishra, O.S.J.S. (Sr. Branch),
09-03-2009
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

P. C. Mishra, O.S.J.S. (Sr. Branch),
09-03-2009
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

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