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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st August 2009

No. 7644–Ii/1(B)-4/2004-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th July 2009 in I. D. Case No. 8 of 2004 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the Executive Engineer, Irrigation Division, Jajpur Road, Jajpur and their workmen numbering 89 represented through Jajpur Irrigation N. M. R. Employee's Union, Jajpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 8 OF 2004
Dated the 8th July 2009

Present :

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

Between :

The Management of the Executive Engineer, Irrigation Division, Jajpur Road, Jajpur.	..	First Party—Management
And		
Their workmen numbering 89, represented through Jajpur Irrigation N. M. R. Employees' Union, Jajpur.	..	Second Party—Workmen

Appearances :

For the First Party—Management	..	Shri Somnath Mishra, Advocate.
For the Second Party—Workmen	..	Shri Subrat Ku. Mishra, Advocate.

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of its powers conferred by 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. 3698—Ii-I(B)-4-2004-LE., dated the 30th April 2004 :—

> "Whether the action of the Executive Engineer, Jajpur Irrigation Division, Jajpur by terminating the services of Shri Malay Kumar Senapati and 88 N. M. R. employees (as per list enclosed to the order of reference) with effect from the 21st November 2003 of his Division is legal and/or justified ? If not, what relief they are entitled to ?"

2. The case of the Second Party, Union (hereinafter referred to as the 'Workman') in brief is that its member numbering 89 were all working under the management of Jajpur Irrigation Division, Jajpur (hereinafter referred to as the 'Management') being deployed in different Sections. It is pleaded that all of them were engaged as N. M. R. workers in between 1985 and 1996 and during the course of their employment they had performed various duties such as digging of earth for canal, maintenance, office clerical works, driving of vehicles, operating pumps and motors, carpentry, watch and ward duty, etc. most sincerely and to the utmost satisfaction of their employer and during their continuance neither any charge-sheet was drawn up against any one of them nor they faced any proceeding for any misconduct. It is asserted that while performing their duties as usual in their respective job, all of a sudden the management without any reason and rhyme informed the workmen that their services are no more required with effect from the 21st November 2003 afternoon. It is alleged that although all the workmen were present and attended their respective duties on the 17th November 2003, no termination letter indicating the reasons thereof was served on anyone of them and on and from the 21st November 2003 they were refused employment. According to the workmen, they having rendered continuous service for more than 240 days under the management, they were all entitled to the protection of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short the 'Act') but the management in utter disregard to the said provisions, took the action in a most arbitrary and whimsical manner. The workmen have further alleged that the management has contravened the provisions of Sections 25-G and Section -25-H of the Act, in as much as in absence of a valid gradation list/seniority list of the workers of the Division. The termination of employment of the workmen was effected and consequently after effecting such termination the management allowed some junior employees to continue in employment. It is alleged that prior to the termination of employment of the workmen there was a constant demand on behalf of the workers for non-payment of their salary for last seven months and for payment of wages at revised rates, etc. and in that matter some of the workmen had also approached the Hon'ble Administrative Tribunal for regularisation of their services for which the management became vindictive towards the workmen and on getting a scope to avoid these liabilities terminated the services of the

workmen. The workmen have further stated in their claim statement that when the Divisions running with less number of staffs as pointed out by the Executive Engineer vide his letter No. 3417, dated the 20th May 2002, the retrenchment of the workmen without considering their deployment in required places is unjustified, uncalled for and can be construed as a colourable exercise of powers. It is highlighted in the claim statement that when the Government of Orissa in Water Resources Department vide its Letter No. 8891(W), dated the 30th October 2003 has allowed continuance of N.M.R. and D.L.R. personnel of different categories engaged after the 12th April 1993 in some other Divisions of the State basing on the requirements, the First Party-Management instead of taking similar decision in respect of its Division in deploying the workmen in required places has malafidely retrenched the workmen without proper application of mind. It is pleaded that after being terminated the workmen are still unemployed and without being gainfully employed anywhere they are living in penury having no means to support their families. In the circumstances narrated above, the workmen have prayed for their reinstatement in service with full back wages and other consequential benefits.

3. The management enreted contest and filed written statement in the proceeding. In the said written statement the management has pleaded *inter alia* that for the self-same cause the workers having approached the Orissa Administrative Tribunal in O. A. No. 1567 of 2003, this Tribunal has no jurisdiction to adjudicate the dispute. Specifically it is pleaded that keeping in view, the Government decision 89 junior most N. M. Rs./D. L. Rs. have been retrenched with effect from the 21st November 2003, those who were engaged prior to the 12th April 1993 i. e., the date of promulgation of ban order by the Government and such retrenchement was effected after receiving clarification from the D.L.O., J.K. Road (Letter No. 1414, dated the 4th March 2004) and on complying with the provisions embodied in Section 25-F of the Act. It is further pleaded by the management that before effecting retrenchment, the seniority list after due verification was issued to the Union Secretary on demand vide letter No. 4020-WE., dated the 10th July 2003 and as such the allegations made on that score is baseless. It is further stated that all the workmen were served with the retrenchment order dated the 17th November 2003 through the Assistant Engineers under whom they were working. All the workmen having been paid their retrenchment benefits which includes all back wages, retrenchment compensation, pay in lieu of one month notice and gratuity as defined under Section 25-F of the Act, it is pleaded that they are not entitled to any more relief in the present proceeding. Specifically the management has denied that juniors to the workmen are continuing in employment after effecting retrenchment of the present disputant. In connection with the above, it is averred that some essential posts like Pump Driver, Jeep Driver, Electrician, Mechanics, etc. possessing technical experience have been allowed to continue under other management as per the provisions of Act, their services being essential for the interest of the business. In the aforesaid premises, the management has prayed to answer the reference in the negative as against the workmen.

4. On the basis of the pleadings of the parties, the only issue that has been framed is :—

ISSUE

> "Whether the action of the Executive Engineer, Jajpur Irrigation Division, Jajpur by terminating the services of Shri Malay Kumar Senapati and 88 N.M.R. employees (as per the list placed at *Annexure*-C) with effect from the 21st November 2003 of his division is legal and/or justified ? If not, what relief they are entitled to ? ".

5. To substantiate their respective stand, both parties have adduced oral as well as documentary evidence in the case. The workmen apart from examining two witnesses on their behalf have filed and proved documents which have been marked Exts. 1 to 13. The management also examined two witnesses on its behalf and has filed and prove documents which have been marked as Exts. A to N series.

6. It is not in dispute that the workmen were working under the management and that all of them had rendered more than 240 days of continuous service before they were disengaged with effect from the 21st November 2003. The crux of the issue which requires determination in the present dispute is whether the management at the time of terminating the services of the workmen had complied with the provisions of Section 25-F of the Industrial Disputes Act (for short 'Act') and so also the provisions embodied in Sections 25-G and 25-H of the said Act. In this connection it is worthwhile to refer to a decision of the Hon'ble Supreme Court reported in 2003 (97) FLR-110 (Pramod Jha & others *Vrs.* State of Bihar and others) wherein their Lordships have observed as follows :—

> " xx xx A bare reading of Section 25-F of the Act shows that retrenchment within the meaning of the Section 2(oo) of the Act must satisfy the following requirements :—
>
> (i) that the workmen has been given one month's notice : (9a) in writing and (b) indicating the reasons for retrenchment ;
>
> (ii) that the retrenchment must take effect after the expiry of the period of notice i. e., one month or else the workman should be paid in lieu of such notice wages for the period of notice ;
>
> (iii) that at the time of retrenchment the worker has been paid compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months ; and
>
> (iv) that the notice in the prescribed manner is served on the appropriate Government or on the specified authority as notified."

In the said decision their Lordships referring to the aim and object of Section 25-F of the Act have further observed at Para. 8 that—

> "xx xx The underlying object of Section 25-F is two-fold. Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment and so, either he should be given one month's notice or the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous service rendered to the employer but is also a sustannce to the worker for the period which may be spent in searching for another employment. xx xx xx."

7. Before entering into the merit or otherwise of the claim advanced, it is appropriate to bring on record the respective contention of the parties to appreciate the matter in its proper perspective. With regard to the claim, the workmen have laid their submissions as follows :—

(a) that, the management without ascertaining the seniority of the workmen, in other word without a valid gradation/seniority list arbitrarily selected the members of the second party (workmen) who were demanding their unpaid wages for last seven months and payment of wages at revised rates and on obtaining their signatures in blank H. R. forms utilised the same against the workmen as a token of their receipt of retrenchment compensation/benefit and ultimately terminated their services ;

(b) that, the said receipts/ H.R. forms on which blank signatures of the workmen were obtained giving them an impression that they would be paid their back salary and payment at the revised rate were subsequently manipulated and as such, the same cannot be regarded as compliance of the provisions of Section 25-F of the Act ;

(c) that persons junior to the second party members have been allowed to continue violating the provisions of Sections 25-G & H of the Act ;

(d) that, the decision of the Government in Water Resources Department cannot be said to be a policy decision, in as much as, the said circular basing on which the management contends that it had no other option than to effect retrenchment of the members of the second party is only meant for the first party concern and therefore, it should not be treated as a policy decision of the Government. Since there was availability of work in the Division, the action of the management in retrenching the workmen can only be said to be an attempt to get rid of the members of the Union (workmen) ;

(e) that, the management has not served on any of the workmen the so called order of termination when they were all available at their respective work places and only after manipulating the H.R. forms, gave out that the individual retrenchment orders has since been despatched through post. Even the management has not filed a copy of such retrenchment order said to have been sent to the workmen.

The learned counsel appearing for the management, on the other hand, contended that as per the policy decision of the Government in Finance Department (U.O.R. No. 445, dated the 27th October 2003), the Administrative Department i. e., the Water Resources Department in their letter No. 37137, dated the 29th October 2003 had directed to retrench all the N. M. Rs./D. L. Rs. who joined after the 12th April 1993 and accordingly the management having found the disputant workmen to have joind after the 12th April 1993, effected their retrenchment after complying with the provisions of Section 25-F of the Act. It was further contended that neither any junior to the members of the second party is retained in employment nor any fresh hand is recruited in place of the members of the second party, as alleged and consequently it has not at all violated the provisions of Section 25-G or Section 25-H of the Act. It was contended in the premises that the retrenchment of the workmen being in consonance with the requirements of the Act, the same needs no intereference.

So, keeping in view the law laid down by the Hon'ble Apex Court and the submissions advanced by the parties, it is to be analysed on the basis of oral as well as documentary evidence available on record as to whether the claim advanced by the Union is well substantiated or the same is not sustainable as contended by the adversary.

8. Both the witnesses examined on behalf of the workmen deposed that the services of all the workmen were terminated on the 21st November 2003 without due compliance of law. W. W. No. 1 stated that although all of them were very much present at their respective work sites on the 17th November 2003 but no such termination letters were served personally on them nor they were paid the retrenchment benefit. It seems that the statement of W. W. No. 1 as above, has not been assailed by the management in any manner. Regarding compliance of Section 25-F of the Act though the management adduced evidence through M. W. No. 1, but his evidence to the effect seems to be not in confirmity with the stand taken by the management, in as much as, while the said witness at Para. 17 during cross-examination deposed that termination letters along with the retrenchment benefit of the workmen were sent by the concerned Junior Engineer through post for the reason that the workmen did not receive the same by hand, again he stated that the retrenchment benefit vide Ext. N series have been paid to the workmen by hand when the workmen were on duty. With reference to Exts. 8 and 12, he deposed that the same were issued to the concerned workmen on the 22nd November 2003 i. e., after effecting the retrenchment.

Ext. E (also marked as Ext. K), Ext. H and Ext. J reveal that pursuant to the ban imposed by the Government in the Finance Department vide their letter dated the 15th May 1997 (Ext. H), the Water Resources Department vide their letter No. 19955, dated the 30th May 2002 (Exts. E & K) had issued instructions to the Departmental Head to dis-engage the N. M. Rs./D. L. Rs. engaged after the 12th April 1993 and in turn the Departmental Head vide his letter dated the 6th March 2003 (Ext. J) issued direction to all Superintending Engineers/ Executive Engineers including the present management to dis-engage the N. M. Rs./D. L. Rs. who joined after the 12th April 1993. Ext. F reveals that the Government sanctioned retrenchment benefit in respect of the workmen. This aspect seems to be not disputed by the workmen. The consistent/categorical stand of the workmen is that without serving upon them any letter of retrechment and paying them the benefit thereof as required under the provisions of the Act, the management in a most arbitrary manner did away with their job. Ext. L a sample copy of the retrenchment order said to have been sent to Malaya Kumar Senapati, a concerned workman does not disclose that the same was served on him. Though it is stipulated therein that compliance of serving the notice on the workman should be reported, but no such compliance report is filed so as to infer that the order of retrenchment was served on the workman Malay Kumar Senapati. Similarily no evidence worth the name is on record which would establish the factum of service of notice on the workmen. In this connection, the decision reported in 69 (1990) C.L.T. 357 (Shyam Sundar Rout *Vrs*. O.S.R.T.C.) may be seen wherein their Lordships of the Hon'ble High Court have observed that payment should be simultaneous along with the order of retrenchment in order to constitute a single transaction.

Further, it is the case of the management that all of them have been paid with one month's notice pay in lieu of notice and as such their retrenchment from service can not be said to be either illegal or unjust. In this connection, a scrutiny of Exts. A, C and Ext. N series, which are the vouchers showing receipt of some payment by the workmen, reveal that each one of the workmen was paid certain amount but the detail calculation thereof is not reflected in the said vouchers. When the workmen have categorically denied to have received either the notice pay or retrenchment compensation and the payment they had received was with regard to their arrear/differential revised salary which they had claimed as per Ext. 13, the management ought to have led cogent documentary evidence showing fraction of such amount and stating clearly the amount representing one month's notice pay, retrenchment compensation, arrear salary and gratuity, if any, of each individual workman. Payment of a lump sum amount without clarifying/substantiating the details of such payment made to the workmen can not be said to be sufficient compliance of the requirements of the Act. Both the management's witnesses examined in the case also failed to enlighten this Tribunal regarding this aspect in their evidence. The conduct of the management rather discloses that for the workmen's demanding regularisation of their services and equal pay for equal work as per Exts. 13 and Ext. M

series and in that matter preferred an O. A. in the Orissa Administrative Tribunal vide O. A. No. 1570 (C)/2003 (Ext. D), it effected termination of their services in a hot-haste without due compliance of the provisions of the Act. When the management despite directive of the Government could manage to keep the N. M.Rs./D. L. Rs. for a considerable period in its employment, it is not understood as to why they were not afforded with sufficient opportunity and paid the retrenchment benefit indicating details of such calculation. On the face of these aforesaid short-comings, it cannot be concluded that there has been proper compliance of the provisions of Section 25-F of the Act, which were mandatory.

9. Another aspect of the case on which much emphasis was laid on behalf of the Union is that without there being a valid gradation/seniority list, the management adopted a pick and choose method and retrenched the workers, most of whom were working much prior to the cut-off date i. e., the 12th April 1993. In this connection, although the management filed Ext. B, the particulars of D. L. R., N. M. R. and H. R. staff in position as on the 1st January 2002, but on the face of Ext. 10, the xerox copies of the imprest cash account (the documents on being produced by the management have been marked as exhibits on behalf of the workmen) which discloses that some of the workmen were in the engagement of the management prior to the 12th April 1993 and in absence of any clarification given by the management on the letter of the Union marked Ext. 6 wherein the Union had sent a list of 51 N. M. Rs., who had joind their employment prior to the 12th April 1993, it cannot be held that the management basing on a valid/proper gradation list selected the members of the Union to be the junior most and accordingly effected termination of their services. Hence, there also seems no proper compliance of the provisions of Section 25-G of the Act.

10. As regards contravention of the provisions of Section 25-H of the Act by the management, the Union has failed to bring any such material against the management to substantiate such a plea.

11. It was further contended by the management that since there is absolutely no requirement of any additional staff i. e., N. M. R./D. L. R. any direction that will be passed for their absorption would create an unnecessary burden on the management. In connection with the above, the management referred to Ext. G, a copy of statement showing detailed position of wages staff as on the 28th July 2003. It reveals there from that out of the 143 sanctioned posts in different categories, 51 posts were abolished and as against the 92 balance sanctioned posts 88 persons are continuing and only four posts are vacant. As against this, the Union referred to a copy of the letter of the management dated the 20th May 2002, Ext. 1 addressed to the Superintending Engineer wherein there appears a clear mention about further requirement of 38 numbers of staff besides the staffs in position in the Division. The Union further referred to Ext. 2, a list of 23 number of N. M. Rs. of the Prachi Division, Bhubaneswar who even after joining the 12th April 1993 are still continuing by orders of the Government.

12. Considering the pros and cons of the matter and the fact that this Tribunal has already held that the retrenchment of the second party-members is not as per the requirement of law, it would be proper to direct the management to absorb the second party-members under its Division in a phased manner according to their seniority, which will be prepared again basing on all documents with scope to the Union to have their say in the matter by placing proper documents. It is made clear that the exercise of absorbing the second party-members in the management concern be completed within a period of three months hence.

The reference is disposed of accordingly.

Dictated and corrected by me.

P. C. MISHRA
8-7-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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8-7-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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

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