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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th August 2009

No.7914—li/1(B)-47/2009-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. 147 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Capital Construction Division No. 1, Bhubaneswar and their workman Shri Benudhar Swain was referred to for adjudication is hereby published as in the Schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 147 OF 1996

Dated the 8th July 2009

Present :

Shri M. R. Tripathy
Presiding Officer, Labour Court
Bhubaneswar .

Between :

The Management of Capital .. First Party-Management
, Construction Division, No. 1, Bhubaneswar.

And

Their Workman .. Second Party-Workman
Shri Benudhar Swain.

Appearances :

For First Party-management .. Shri H. S. Sarangi,
Assistant Engineer

Second Party-Workman himself .. Shri B. D. Swain

AWARD

The Government of Orissa in exercise of the powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court for adjudication vide Order No.12569-li/1(B)-173/1995-LE., dated the 26th September 1996 of the Labour & Employment, Department Orissa, Bhubaneswar.

2. The terms of reference is as follows :

“ Whether the action of the management of Capital Construction Division, No.I Bhubaneswar in terminating the services of Shri Benudhar Swain, N. M. R. with effect from the 28th February 1983 is legal and /or justified ? If not, what relief Shri Swain is entitled to ?”

3. The case of the workman may be briefly stated as follows:

He joined as a N.M. R, Mate under the control of the management with effect from the 1st February 1980. Subsequently he was transferred to Store Subdivision which was also under the control of the management on the 1st September 1981 and worked there till the 27th February 1983 continuously. On the 28th February 1983 he along with some other co-workers were retrenched. Since Section 25-F of the Industrial Disputes Act, 1947 was not complied at the time of his retrenchment, he raised an industrial dispute and the matter was referred to this Court for adjudication.

4. In the written statement it is submitted by the management that the management a Government Organisation under the administrative control of the Works Department of the State of Orissa, having no motive to make any gain or profit and therefore, the management is not an industry within the meaning of Section 2(j)of the Industrial Disputes Act, 1947. Therefore, the present reference is not maintainable. The management has further submitted that the workman was engaged in Section 1 of the Store Subdivision under the control of the Executive Engineer, Capital Construction Division No. 1, Bhubaneswar with effect from the 1st November 1981 to the 30th November 1981 for one month and in Section No. II from the 1st December 1981 to 30th December 1981 and from 1st January 1982 to the 30th January 1982 with discontinuance of duty on the 31st December 1981 and the 31st January 1982 and thus for a total period of 90 days. He did not turn up to perform his duty after the 30th January 1982. Since he had not worked for more than 240 days during the preceding 12 calendar months from the date of his retrenchment, so he is not entitled to get any relief in this case.

5. The workman has filed a rejoinder wherein he has refuted the facts stated by the management in the written statement.

6. The following issues were settled :—

ISSUES

- (i) Whether the action of the management in terminating the services of the workman with effect from the 28th February 1983 is legal and/or justified ?
- (ii) If not what relief the workman is entitled to ?

7. In order to establish his case, the workman examined himself as W. W. 1. Similarly the management also examined one witness who was working as a Junior Engineer at the time of his examination.

FINDINGS

8. Issue Nos. (i) & (ii)— For the sake of convenience, both the issues are taken up together.

In this case earlier an Award was passed by my predecessor on the 25th January 1999 which was challenged by the workman in the Hon'ble High Court of Orissa, Cuttack by filing O. J. C. No. 10611 of 1999. The case was disposed of by the Hon'ble Court on the 3rd December 2008 and Ext. 7 is the copy of the judgment of the Hon'ble Court.

In the earlier occasion relying on the decision reported in 1978 (1) L. L. J. 349 in the matter of Bangalore Water Supply and Sewerage Board Vrs. A. Rajappa and for the reason that similar type of dispute bearing I. D. Case Nos. 15/1989 and 12/1993 were adjudicated by this Court and the Award was implemented by the same management, my predecessor had come to the conclusion that the management is an industry as provided under Section 2 (j) of the Industrial Disputes Act, 1947. In Para. 3 of the judgment in O. J. C. No. 10611 of 1999, His Lordship has also pointed out this matter and it is quite clear from Ext. 7 that the aforesaid finding of this Court has not been set aside by the Hon'ble Court and therefore, I come to the conclusion that the management is an industry within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947.

9. According to the workman he joined as a N. M. R. Mate in the month of February, 1980 and worked continuously up to the 27th February 1983. This fact is denied by the management and according to the management he had worked for a total period of 90 days during the period the 1st November 1981 to the 30th January 1982. Unless it is proved that the workman had worked for 240 days during the preceding 12 calendar months from the date of his retrenchment, he will not be entitled to claim the relief provided in Section 25-F of the Industrial Disputes Act, 1947. Hence, let us now proceed to examine as to if the workman had worked for more than 240 days during the preceding 12 calendar months from the 28th February 1983 or not.

The workman has filed copies of two certificates issued by Shri S. C. Mishra, Assistant Engineer, Stores Subdivision (R. & B.), Satyanagar, Bhubaneswar on the 26th February 1982 and the 3rd February 1982 marked as Exts. 1 and 2. According to Ext. 1, the workman was working in the Capital Maintenance Subdivision, No. III under Capital Maintenance Division No. 1, Bhubaneswar as a N. M. R. Employee since February, 1980 and he was transferred to Stores Subdivision under Capital Construction Division, No. 1, Satyanagar on the 1st September 1981. According to Ext. 2, the workman was working as a Mate on N.M.R. basis from the 1st September 1981 till the date of issuance of the certificate i. e. the 3rd February 1982. The management in the written statement has disputed the genuineness of the aforesaid two certificates. According to the management, Capital Construction Division, No. 1 has no

Subdivision named as Capital Maintenance Subdivision, No. III. But the Management has nowhere disputed the signatures and seal of Shri S. C. Mishra, Assistant Engineer, Stores Subdivision found in Exts. 1 and 2. The witness examined for the management also has not uttered a word in the above regard in his deposition. Even if for the sake of argument Exts. 1 and 2 are kept out of consideration, still I find other materials to believe that the workman had worked for more than 240 days during the preceding 12 calendar months from the date of his retrenchment. The workman has filed the copies of office cash book maintained by the management marked as Ext. 6. M. W. 1 has also admitted Ext. 6 to be a genuine document. In Ext. 6 the payments made to the Departmental N. M. Rs. on the 1st January 1982, the 2nd February 1982 and the 31st March 1983 are noted. As it appears from the first page of Ext. 6, payment of Rs. 50 was made to the workman on the 1st January 1982. Similarly a sum of Rs. 50 was paid to him on the 2nd February 1982 and a sum of Rs. 112.50 was paid to him on the 31st March 1983. It is stated by the management that the workman was working during the period the 1st November 1981 to 30th January 1982. Let us believe that the payments made on the 1st January 1982 and the 2nd February 1982 as indicated above apertain to his employment for the month of December, 1981 and January, 1982, but the management is not in a position to explain on what account payment was made to the workman on the 31st March 1983. According to the written statement of the management, the whereabouts of the workman was not known after the 30th January 1982. If that is so, then it is not understood as to how the payment was made to him on the 31st March 1983 and on what account? In view of Ext. 6, it can be safely concluded that not only the workman was in employment in the months of December 1981, January and February, 1982 but also in the month of February, 1983. As I have said earlier the workman has also filed two certificates issued by a responsible officer of the management and it is not said by the management that the signatures and seal of the officer namely Shri S. C. Mishra in Exts. 1 and 2 has been forged. In view of Exts. 1, 2 and 6 it can be safely concluded that the workman had worked for more than the required period to entitle him to the benefits of Section 25-F of the Industrial Disputes Act, 1947. Admittedly Section 25-F of the Industrial Disputes Act, 1947 was not complied at the time of his retrenchment and therefore, his retrenchment with effect from the 28th February 1983 can be said as illegal and unjustified.

10. In the earlier occasion my predecessor had recorded a finding that since the workman raised the dispute after lapse of more than 11 years, he was not entitled to the remedy available to him in law. The said finding of my predecessor was set aside by the Hon'ble Court vide Ext. 7. In Para. 7 of Ext. 7 the Hon'ble Court was pleased to observe as follows:

“Considering the above position of law, it is trite to state that the Presiding Officer, Labour Court has erred in law in refusing to adjudicate the dispute referred to it solely on the ground of delay in raising the dispute by the petitioner. In view of the above, the impugned award under Annexure-6 passed by the Presiding Officer, Labour Court in I. D. Case No. 147 of 1996 is quashed and the matter is remitted back to the Labour Court, Bhubaneswar to answer the reference referred to it in accordance with law and it shall not reject the same on the sole ground of delay. XX XX XX XX XX. In the

event lower court below finds that the petitioner also stands on the same footing as the workman in I. D. Case Nos.15/1989 and 12/1993, he shall pass similar award in favour of the petitioner as has been passed in favour of the workman in the aforesaid two I. D. Cases”.

11. The workman in his statement of claim has stated that he was refused employment with effect from 28th February 1983 along with 12 others namely, Birabar Beja, Sashi Bhusan Tripathy, Fakir Ch. Jena, Laxmidhar Pujapanda, Mahendra Parida, etc. He was a member of the N. M. R. Employees Association (R. & B.), Bhubaneswar. After their retrenchment, the General Secretary of the above said Association raised an industrial dispute before the Assistant Labour Officer, Khurda. Subsequently the Government of Orissa referred the dispute of Mahendra Parida and Laxmidhar Pujapanda vide I. D. Case Nos.15/1989 and 12/1993 which were disposed of on 13th November 1990 and 19th July 1994 respectively. His dispute was not referred to this Court by the Government at that time. This fact is not admitted by the management in the written statement. It is stated by the management that the name of the present workman was not included in the list of retrenched persons furnished by the General Secretary of the N. M. R. Employees Association.

In Ext. 7 as stated above His Lordship has specifically directed not to reject the reference on the sole ground of delay. In view of the aforesaid observation of His Lordship it becomes immaterial as to whether the dispute was raised by the workman along with others in the year, 1983 or for the first time in the year 1994. Therefore, I find no merit in the contention raised by the management that at the initial stage the name of the workman was not included in the list of retrenched persons furnished by the General Secretary of the N. M. R. Employees Association.

12. Ext. 3 is the Award delivered by my predecessor in I. D. Case No.15/1989 and Ext. 4 is the Award in I. D. Case No. 12/1993. The workmen of both the aforesaid two cases namely, Shri Mahendra Parida and Shri Laxmidhar Pujapanda working as N. M. R. employees under the control of the Executive Engineer, Capital Construction Division, No. I, Bhubaneswar. Shri Parida joined service on the 1st September 1981 and the management had taken the plea that after February, 1983 he did not turn up work. Shri Pujapanda joined as N. M. R. Typist in the office of the Executive Engineer, Capital Construction Division, No. I on the 17th January 1979 on daily wage basis and he worked up to the 30th November 1982 whereafter he voluntarily remained absent. In the present case it is stated by the workman that he joined in February, 1980 and worked up to 27th February 1983. So, in my opinion he stands almost on the same footing as the workmen in I. D. Case No. 15/1989 and 12/93 i.e. Shri Mahendra Parida and Shri Laxmidhar Pujapanda, respectively. Admittedly in the aforesaid two I, D. Cases, Awards were passed in favour of Shri Parida and Shri Pujapanda and they were directed to be reinstated in service with 50% back wages. The Hon'ble Court have been pleased to direct to pass similar Award in favour of the workman of the present case as has been passed in favour of the workmen of the aforesaid two I. D. Cases, in the event I come to the conclusion that he stands on the same footing. Since I have already come to the conclusion that he also stands on the same footing, so he is bound to succeed in the present reference and entitled to get the same relief. Accordingly both the issues are answered.

13. Hence it is ordered

The action of the management of Capital Construction Division, No. I, Bhubaneswar in terminating the services of Shri Benudhar Swain, N.M.R. with effect from 28-2-1983 is illegal and unjustified. The workman Shri Swain is entitled to be reinstated in service with 50% back wages.

Accordingly the reference is answered.

Dictated and corrected by me.

M. R. TRIPATHY
8-7-2009
Presiding Officer
Labour Court, Bhubaneswar

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8-7-2009
Presiding Officer
Labour Court, Bhubaneswar

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