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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th October 2009

No. 9789-li/1(B)-85/2002-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th August 2009 in I. D. Case No. 18 of 2002 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of (1) M/s P. P. Enterprises, a Contract Agency of M/s OSWAL Chemicals and Fertilisers Limited, At/P.O. Paradeep, Dist. Jagatsinghpur, (2) M/s. Indian Farmers Fertiliser Co-operative Limited Office at Commercial Complex, Ground Floor, Acharya Vihar, Bhubaneswar-13 and their Contract Labourers of Bagging Section represented by OSWAL Sarakarakhana Shramik Sangha, At/P. O. Paradeep Garh, Dist. Jagatsinghpur 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. 18 OF 2002

Dated the 5th August 2009

Present :

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

Between :

1. M/s. P. P. Enterprises, .. First Party—Management
a Contract Agency of
M/s.OSWAL Chemicals and
Fertilisers Limited.
2. M/s. Indian Farmers' Fertilisers
Co-operative Limited
Office at Commercial Complex,
Ground Floor, Acharaya Vihar,
Bhubaneswar-13.

And

Their Contract Labourers of Bagging .. Second Party—Workmen
Section represented by OSWAL
Sarakarakhana Shramik Sangha
At/Post. Paradeep Garh
Dist. Jagatsinghpur.

Appearances :

For the First Party—Management No. 1	..	None
For the First Party—Management No. 2	..	Shri B. C. Bastia, Advocate
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For the Second Party—Workmen	..	Shri Susanta Dash, Authorised Representative

AWARD

The Government of Orissa in the Labour & Employment Department, in exercise of powers conferred upon them 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. 10490—li/1(B)-85/2002-LE., dated the 5th September 2002.

1. “Whether the demand of OSWAL Sarakarakhana Shramik Sangha, Paradeep for upward revision of daily wages of workmen deployed by M/s. P.P. Enterprises in Bagging Section of OSWAL Chemicals & Fertilizers Limited. at par with the rate being paid to Bag-Loading Workers at P. P. L. is legal and/or justified ? If so, what should be the details ?”
2. “Whether the demand of OSWAL Sarakarakhana Shramik Sangha, Paradeep for providing full month’s work to the workers (as per list) deployed in the Bagging Section of OSWAL Chemicals and Fertilisers Limited., Paradeep by the management of M/s. P. P. Enterprises (Contract Agency) is legal and/or justified ? If so, what should be the principle in this regard ?”
3. “Whether the workmen (list enclosed) deployed in the Bagging Section of OSWAL Chemicals & Fertilisers Limited. by M/s. P. P. Enterprises are entitled to lay-off compensation for the period of refusal of employment owing to non-availability of work ? If not, what other relief they are entitled to ?”
4. “Whether refusal of employment to the workmen of Bagging Section (as per list) by M/s.P. P. Enterprises (Contract Agency) in OSWAL Chemicals & Fertilisers Limited., Paradeep w. e. f. the 21st June 2002 is legal and/or justified ? If not , to what relief are the workmen entitled ?”

2. It is needless to state in detail the claims advanced by the second party-Union with regard to all the items of reference, as quoted above, because of the fact that the Union has only pin-pointed its dispute relating to disengagement of its members numbering 148 by the

Contractor of M/s. OSWAL (which was subsequently takeover by M/s. IFFCO). The management also contested the claim of the Union with regard to point No.4 of the order of reference. In view of the above, except the dispute in item No. 4 of the reference, adjudication on all other items of dispute i.e., 1, 2 & 3 becomes redundant.

Relating to item No.4 of the reference, the second party-Union asserts in their claim statement that all its members numbering 148 were engaged to work under the Bagging Section of M/s. OSWAL Chemicals & Fertilisers Limited., Paradeep through the Contractor M/s. P. P. Enterprises and while continuing so they were refused employment on the 21st June 2002 by the said Contractor owing to their submitting a charter of demand and subsequently raising a dispute on the said charter of demands before the District Labour Officer, Jagatsinghpur on the 19th June 2002. It is alleged that as the members of the Union raised a dispute claiming their legitimate benefits from their immediate employer as well as from the principal employer, i.e., M/s. OSWAL Chemicals & Fertilizers Limited, they were disengaged from their employment out of grudge. According to the second party-Union, while doing away, their services w. e. f. the 21st June 2002, the management had not complied with the provisions of the Industrial Disputes Act, inasmuch as, it had not obtained prior permission of the Government nor the members of the second party were given three month's notice in writing or payment in lieu of such notice. In the premises as aforesaid, the second party-Union has claimed reinstatement in service of its members with full back wages and other consequential benefits.

3. The Contractor, M/s. P. P. Enterprises filed a written statement in the dispute challenging the maintainability of the reference and further pleading therein that the engagement of the claimants-workmen was intermittent depending upon availability of work and none of them have worked continuously for 240 days. It is stated that their services were co-terminus with the termination of contract or on closure of work. It is the specific stand of the Contractor that it had taken the contract work in April, 2001 and refusal / disengagement of contract workers due to non-availability of work / closure / termination of contract does not amount to retrenchment u/s 2(oo) of the Industrial Disputes Act and hence, compliance of the required provisions of the Industrial Disputes Act was not required. The contractor has, therefore, prayed to answer the reference in the negative as against the second party-members.

4. On behalf of the principal Employer, M/s. Indian Farmers' Fertilizer Co-operative Limited (IFFCO) has filed a written statement stating therein that it has purchased the offered assets of M/s. OSWAL Chemicals & Fertilisers Limited on as-is-where-is basis under certain terms and conditions and the Agreement made to that effect nowhere suggests that for the employment or non-employment of the contract labourers prior to the 1st October 2005, it would be held liable to accept the liabilities of the contract labourers. It is stated that under the terms of the Sales Agreement IFFCO is independent to decide about operation of the plant and machineries in the manner to be decided by the management and there is no obligation on the part of the transferee organisation to engage the same Contractor and the Contract Labourers who were working with the erstwhile management i.e., M/s. OSWAL Chemicals & Fertilisers Limited. The management of IFFCO has, therefore, pleaded that the members of the second party-Union are not entitled to get any benefit from M/s. IFFCO.

5. In their rejoinder, the second party-members have asserted that after taking over of the factory by M/s. IFFCO, it is statutorily bound to bear the liability of the second party-

members in the event benefit is granted in favour of the claimants. Referring to Clause 11.7 of the Agreement , it is pleaded in the rejoinder that the purchaser shall indemnify the vendor against any claim, liability arising from any act or omission of the purchaser in relation to employee relating to their employment , wrongful termination, discharge, retrenchment or wrongful dismissal or compensation at the undertaking after 1st October 2005. It is stated that despite the aforesaid condition in the Agreement, the IFFCO is trying to absolve its liability.

6. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

1. Whether the demand of OSWAL Sarakarakhana Shramik Sangha, Paradeep for upward revision of daily wages of workmen deployed by M/s.P .P. Enterprise in Bagging Section of OSWAL Chemicals & Fertilizer Limited at par with the rate being paid to Bag-loading Workers at P. P. L. is legal and/or justified ? If so, what should be the details ?
2. Whether the demand of OSWAL Sarakarakhana Shramik Sangha, Paradeep for providing full month's work to the workers (as per list) deployed in the Bagging Section of OSWAL Chemicals and Fertilisers Limited., Paradeep by the management of M/s. P. P. Enterprises (Contract Agency) is legal and/or justified ? If so, what should be the principle in this regard ?
3. Whether the workmen (list enclosed) deployed in the Bagging Section of OSWAL Chemicals & Fertilisers Limited. by M/s. P . P. Enterprises are entitled to lay-off compensation for the period of refusal of employment owing to non-availability of work ? If not, what other relief are they entitled to ?
4. Whether refusal of employment to the workmen of Bagging Section (as per list) by M/s. P. P. Enterprises (Contract Agency) in OSWAL Chemicals & Fertilisers Limited, Paradeep w. e. f. 21st June 2002 is legal and/or justified ? If not, to what relief are the workmen entitled ?
5. Whether the refernce is maintainable ?

7. In order to substantiate their stand, the second party-Union has examined two witnesses on its behalf and has brought on record documents which have been marked as Exts.1 to 10. Neither the Contractor M/s. P. P. Enterprise nor the Management of OSWAL have adduced any oral or documentary evidence in the case. The management of M/s. IFFCO,however, tendered a witness on its behalf and has got marked Exts. A and B in support of its stand.

8. It is not in dispute that the members of the second party-Union were working as labourers being engaged under the contractor, namely, M/s. P. P. Enterprises who had a valid licence as per Ext. A. Clause-2 of Ext. A indicates that the said Contractor was permitted to employ in its establishment 150 number of labourers in the maximum. Ext. A further discloses that period of the said contract was valid till 25th July 2003. It also reveals from the first Schedule of Ext. B that the duration of the contract entrusted upon M/s. P. P. Enterprises was

for a period of two years from the date of award of the work, i.e. the 1st April 2001. In the circumstance, it is to be seen whether the members of the second party are able to establish their claim of rendering continuous service under the Contractor for more than 240 days preceding the date of their disengagement so as to get the protection of the provisions of the Industrial Disputes Act.

9. Both the witnesses examined on behalf of the workmen have stated in their evidence that they had continuously worked under the Contractor for more than 240 days preceding the date of their refusal from employment. The contractor though filed its written statement and challenged the aforesaid stand, yet it neither participated in the hearing nor produced any documentary proof i.e., wage register, attendance, etc. showing intermittent engagement of the second party-members. Even its stand that after resorting to a strike, the workmen voluntarily abstained from work and did not report to duty, remained unsubstantiated due to want of documentary proof to the effect that workmen in spite of notice did not resume their work. Law being well settled that the claimant has to establish the factum of his rendering continuous service under his employer, the workmen besides adducing oral evidence as above, have led documentary evidence as per Exts .1, 2, 2/1, 5, 6, 7, 8, 9 and 10 and a close scrutiny of Exts. 1, 2 & 2/1 reveals that being engaged under the Contractor, Shri Sarat Khatua, one of the second party-members was issued with an Identity Card (Ext .1) and Entry Passes (Exts .2 and 2/1), Exts .5, 6 and 7 are the correspondences of the labour machinery made with the Contractor and the principal Employer regarding disengagement of the workers of the Contractor M/s .P. P. Enterprises. Ext .8 is another document showing that there was a high level meeting in connection with the matter in dispute. Ext . 9 is a letter of the Dy. Labour Commissioner (Central Division) addressed to the principal Employer impressing upon it to re-engage maximum number of contract labourers of M/s .P .P .Enterprises. Ext.10 is a letter addressed by the principal Employer to the D. L. O., Jagatsinghpur. The oral evidence of W. W. Nos.1 and 2 coupled with the documentary evidence, as above , clearly establish that all the members of the second party had rendered continuous employment under their immediate employer i. e., M/s . P. P. Enterprises for more than 240 days preceding the date of their refusal of employment. Under the Industrial Disputes Act, termination of employment of a workman for any reason whatsoever would spell retrenchment and for that the employer is duty-bound to comply with the provisions of Section 25-F or 25-N of the Industrial Disputes Act, as the case may be. Admittedly, the Contractor had employed more than 100 workmen in its establishment and as such, it was obligatory on the part of the Contractor to comply with the provisions of Section 25-N of the Industrial Disputes Act . Nothing is on record either to presume or to arrive at a conclusion that the said provision of the Industrial Disputes Act were complied with by the employer i. e., the Contractor M/s. P. P. Enterprises while effecting retrenchment of the second party-members of the Union. In the result , therefore, it is held that the retrenchment of the second party-members with effect from the 21st June 2002 by the Contractor M/s .P. P. Enterprises is not only illegal but also unjustified.

10. Now coming to the question of relief to which these workmen are entitled, it is seen that the establishment of the contractor M/s .P. P. Enterprises is no more functioning under the principal Employer and more so the initial principal Employer i.e, M/s. OSWAL Chemicals & Fertilizers Limited is no more in picture since 2005 as all its assets and liabilities have been taken over by M/s. IFFCO, which has been impleaded in the present dispute as First Party

No. 2; being the successor in interest of M/s.OSWAL Chemicals & Fertilizers Limited. The erstwhile management of M/s. OSWAL has neither any written statement nor contested the case. Similarly, the IFFCO management has examined one witness from its side, who deposed that as per agreement made with M/s.OSWAL, the IFFCO is not liable to shoulder any responsibility that accrued after execution of the Agreement with M/s. OSWAL. In this connection, it is surprising to indicate here that no such Agreement is brought on record to examine the terms and conditions thereof in detail so as to concede to the stand of M/s. IFFCO that actually it has nothing to do with the employment or non-employment of the second party-members, who have been fighting out the litigation since 2002. Clause 21 (4) of the Contract Labour(Regulation and Abolition) Act clearly speaks that the principal employer is liable in case the Contractor fails to discharge the burden in the matter of payment of wages to the contract labourers. M. W. No.1 stated in his cross-examination that presently Bagging Section work is available with IFFCO and the same is incidental to the production work. Since M/s. OSWAL Chemicals and Fertilisers Limited is no more in existence at Paradeep and the IFFCO management has purchased all the assets and liabilities of the former management, the IFFCO is directed to impress upon the contractors, through whom its Bagging Section work is managed to employ the second party-members in their establishment in a phased manner within a period of six months. Hence, in absence of any evidence that during the period of unemployment, the second party-members were not gainfully employed elsewhere, they are not entitled to any back wages.

11. On the issue of maintainability of the reference, no evidence is adduced by either party. Hence, the reference is held to be maintainable.

Dictated and corrected by me.

P. C. MISHRA
5-8-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
5-8-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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