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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th February 2009

No. 1596—li/1(B)-61/2001 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2008 in Industrial Dispute Case No. 102/2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Executive Engineer, Puri Electrical Division, Puri and its workmen Shri Gadadhar Biswal and 65 others represented through O.S.E.B. Shramik Mahasangha, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 102 OF 2002

Dated the 30th December 2008

Present :

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

Between :

The Management of Executive Engineer, . . First Party—Management
Puri Electrical Division, Puri.

And

Its Workmen Shri Gadadhar Biswal and . . Second Party—Workmen
65 others, represented through O.S.E.B.
Shramika Mahasangha, Bhubaneswar.

Appearances :

Shri B. K. Moharana, A.G.M. (Elect.) . . For First Party—Management
Shri R. C. Satapathy . . For Second Party—Workmen

AWARD

1. The Government of Orissa in exercise of 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 dispute between the parties to this Court for adjudication vide Order No. 10412-LE. dated the 3rd September 2002 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows :

“Whether the action of the management of Puri Electrical Division, Puri in refusing employment to Shri Gadadhar Biswal and 65 others as per list enclosed herewith is legal and/or justified ? If not, to what relief they are entitled to ?”

3. The case of the workmen, namely Shri Gadadhar Biswal and 65 others as per the list with the reference is as follows :

Shri Gadadhar Biswal and 65 other persons (as per the list enclosed with the reference) were working under the management i.e. Executive Engineer, Puri Electrical Division, Puri as N.M.R. workers till the 1st April 1995. Thereafter the management refused employment to them. At the time of refusal of employment, Section 25-F, 25-N of the Industrial Disputes Act, 1947 were not complied by the management. No disciplinary proceeding was initiated against any of the workmen and it is stated by them that they have completed more than 240 days of continuous service under the management before they were refused employment. Moreover, some juniors were allowed to continue in service after the above said workmen were retrenched. Therefore, according to the workmen, the retrenchment is unjustified and illegal and as such they are entitled to be reinstated in service with full back wages.

4. The management in the written statement has submitted that the Puri Electrical Division is one of the Division of erstwhile O.S.E.B., now under the control of CESCO. For the smooth functioning of its business some staff and workers were appointed as per the norms and guidelines of the erstwhile O.S.E.B. Apart from the permanent staff, some casual workers were also engaged for construction and maintenance of line according to the need even-ever required. They were being engaged temporarily for a short period to complete a particular nature of work and after completion of the work they were being disengaged. For this reason no formal appointment letter was issued to any one of them. The said casual labourers/N.M.R. workers were being appointed on daily wage basis and as such no notice was also issued to them at the time of their disengagement. None of the workmen has completed continuous service for 240 days. The management has furnished the detail particulars of some workmen and the period of their engagement in the years 1981, 1982 and 1983. So according to the management compliance of Section 25-F and 25-N of the Industrial Disputes Act, 1947 were not required. Out of the 66 workmen, the management has admitted that seven numbers of workmen were engaged as N.M.R. at different times and places for different works. While the rest 59 workers were never engaged as N.M.R. in the management. Regarding continuance of some N.M.R. workers, namely, Shri Narendra Swain, Shri Mahendra Patra, Shri Shyam Sundar Nayak, Shri Lingaraj Mohapatra and Shri Jogendra Nayak, it is stated by the

management that they had completed 400 days of continuous work as on the 1st September 1981 or the 1st October 1986 and they had also qualified in the Trade Test and therefore in view of the Circular No. 4261 (120), dated 20th February 1982 and Circular No. 11043 (130), the 23rd May 1987, they were allowed to continue in service. The workmen of the present case can not compare themselves with the above named persons as at the time of selection nor at any point of time they had performed continuous service of 240 days under the management. Therefore, the workmen of the present case are not entitled to get any relief in this case.

5. In view of the aforesaid materials the following issues were settled :

ISSUES

- (i) Whether the action of the management of Puri Electrical Division, Puri in refusing employment to Shri Gadadhar Biswal and 65 others as per list is legal and/or justified ?
- (ii) If not, to what relief they are entitled?

6. In support of their case the workmen examined seven witnesses. Out of them W.Ws. 1, 2, 3, 4 are all the workmen of the present case. W. W. 5 is a retired Assistant Manager of CESCO. W.W. 6 and 7 are two retired Linemen. The management also examined three witnesses. Out of them M. W. 1 is a retired Assistant Engineer, M. W. 2 is a retired Deputy Manager of CESCO and M. W. 3 is a retired Junior Engineer.

FINDINGS

7. *Issue Nos. (i) and (ii)* : Both the issues are taken up together for the sake of convenience.

During course of argument the representative of the workmen submitted that in view of the materials filed by the workmen and the evidence given by them it can be safely said that the workmen have been able to prove that they had performed duty continuously for a period of more than 240 days within the meaning of Section 25-B of the Industrial Disputes Act, 1947 and as such, they all are entitled to be reinstated in service with full back wages. He further submitted that in a similar case this Court had earlier passed an Award in favour of the workmen which was subsequently upheld by the Hon'ble Court in O.J.C. No. 5276 of 2002. He also filed the xerox copy of the judgment of the Hon'ble Court in the aforesaid case. In reply, the representative of the management submitted that the management in the written statement has denied the fact the workmen had worked for more than 240 days preceding 12 months from the date of alleged refusal of employment. Therefore according to the settled position of law the burden of proof remained on the workmen to prove that they had worked for 240 days during 12 calendar months preceding to the date of alleged termination in order to get relief provided in Section 25-F of the Industrial Disputes Act, 1947. He further argued that the list of the workmen has not been signed by the Conciliation Officer but it is signed by the Secretary of the union as such can not be accepted.

8. Perused the judgment of the Hon'ble Court in O.J.C. No. 5276 of 2002, the said case was filed by the management of B.E.D. (GIRDICO) against the General Secretary, O.S.E.B.

Shramika Mahasangha and the Presiding Officer of this Court challenging the Award passed by this Court in I. D. Case No. 61 of 1998 on the 10th December 2001. A perusal of the judgment makes it clear that in the said case the management had not denied the fact that the workmen of the said case were working under it. Also as it appears from the judgment there were also materials in the said case that the workmen of the said case had worked for more than 400 days and a proposal was given by the Executive Engineer for regularisation of some N. M. Rs. who had worked for more than 400 days. But that is not the situation in the present case. In the present case the management has categorically denied that none of the workmen had completed 240 days of service within the meaning of Section 25-B of the Industrial Disputes Act, 1947 by the time of alleged refusal of employment. The management has only admitted the employment of Shri Gadadhar Biswal, Shri Lingaraj Baral, Shri Bansidhar Behera, Shri Sundar Swain, Shri B. Rama Rao and Shri Rama Chandra Das, etc. but at the same time the management has taken the plea that none of the above persons had completed 240 days of work by the date of alleged refusal of employment. In the case of Range Forest Officer, Appellant Vrs. S. T. Hadimani, respondent with State of Karnataka and another, Appellant Vrs. S. T. Hadimani, respondent reported in A.I.R. 2002 S. C. 1174, the Apex Court was pleased to held as follows :

“xxxx. In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the Appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that can not be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary of wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the Award is liable to be *set aside*.”

9. In view of the aforesaid position of law let us now proceed to find out as to if the workmen of the present case have been able to discharge the burden or not.

W. W. 1 in his deposition has stated that he started to work as N. M. R. in Sakhigopal Electrical Section under the management in the year, 1974 on daily wage basis. He worked as such till the 31st March 1995 whereafter his service was terminated. According to him he had worked continuously for more than 240 days during 12 months preceding the date of termination. The other workmen were also working along with him as N.M.R. and they were also terminated on the 1st April 1995 without compliance of Section 25-F of the Industrial Disputes Act, 1947. He has voluntarily said that no appointment order was issued in his favour at the time of joining, so also no written order was passed at the time of termination of service. He has filed some certificates through W. W. 4 marked as Exts. 2, 2/a, 2/b, 2/c to prove that he had worked for the required period. In Ext. 2 which is a xerox copy of the certificate issued by the Subdivisional Officer (Electrical), Pipili on the 28th July 1979 it is stated that W. W. 1 was working regularly as N. M. R. worker from the 21st April 1974 to the 31st June 1979. In Ext. 2/a the Executive Engineer has given direction to E. S. O., Satasankha to keep

W. W. 1 as a N. M. R. worker. Ext. 2/b is another certificate wherein E. S. O., Sakhigopal has certified that he was working from the 21st April 1974 to the 31st June 1979 (the letter '4' has been overwritten). Ext. 2/c is a certificate issued by the Executive Engineer on the 28th April 1997 authorising W. W. 1 to distribute energy bills and take meter readings in the Puri Electrical Division. Those certificates were filed by W. W. 4 on the date of his examination, i.e. on the 14th November 2008. These were not filed by W. W. 1. W. W. 4 has admitted that the office letter issue number with date is not found on any of the certificates. Ext. 2/d is a xerox copy of certificate issued in favour of one Prasant Kumar Panda filed by W. W. 4 but there is no person in the name of Prasant Kumar Panda in the list of the workmen. In Ext. 2/e it is stated that one Purna Chandra Khuntia was working till July 1989 from the 31st April 1995 which itself makes it ambiguous. In Ext. 2/f the Junior Engineer Electrical, Satasankha has certified that Shri Niranjana Moharana was working as contract labourer from 1986 to 1989. Like other certificates the office issue number with date are not found on it. Ext. 2/g is a certificate issued by the Junior Engineer, Sakhigopal Section wherein he has certified that Shri Kalandi Nayak was working as a casual labourer for the period from October, 1993 to October, 1994. It is alleged in the present case that all the workmen were retrenched with effect from the 1st April 1995. Thus it is clear that during the preceding 12 months from the date of retrenchment he had worked only for six months that means not for a period of 240 days. Ext. 2/h is a certificate issued by the Sectional Officer, Electrical Construction Section, Delanga wherein he has certified that Shri Sankarsan Samantray had worked from the 21st January 1980 to the 31st August 1980, i.e. for a period of seven months and 10 days. Moreover the date below the signature has been overwritten. Ext. 2/j and 2/k are two certificates issued by the Sectional Officer, Chandanpur and E. S. O. (Electrical), Construction Section No. V, Puri respectively in favour of one Kartika Das wherein it is certified that he was working as a N. M. R. for the period from 1981 to 1985 and again from 1986 to 1988 that means he was not retrenched on the 1st April 1995.

10. W. W. 2 in his deposition has stated that he joined as a N. M. R. worker in the year, 1972 and his services were terminated on the 1st April 1995. He has claimed that he had worked for more than 240 days during the preceding 12 months from the date of termination of his service. But he has not filed a scrap of paper to prove that he had worked for more than 240 days during the preceding 12 calendar months. He has admitted that no appointment letter was issued in his favour nor letter of termination was issued at the time of termination. W. W. 3 has stated that he began his work as N. M. R. in the year 1978 and continued to do the same till the 31st March 1995. He has also not filed a scrap of paper to prove that he had worked for more than 240 days during the preceding 12 months. W. W. 4, i. e. Sankarsan Samantaray has stated that he joined as N. M. R. worker in the management in the year, 1980 and he was working as such up to 1995. He has fairly admitted that no appointment letter was issued in his favour to join in duty. Ext. 2/h is the certificate filed by him in respect of his employment which reveals that he was working from the 21st January 1980 to the 31st August 1980 that means for total period of 7 months 10 days. Moreover the office issue number with date is not found on it. W. W. 5 has stated that he knows the workmen of the present case who approached the Executive Engineer through the Subdivisional Officer several times to reinstate them after they were retrenched. He has denied the fact that none of them had

completed 240 days of continuous work. Like him, W. Ws. 6 and 7 have stated that all the 66 workmen who are party to this case are known to them and they were working continuously. It is true that W. Ws. 5, 6, 7 are three retired employees out of whom one of them i. e. W. W. 5 is a retired Assistant Manager of CESCO and other two retired persons are Linemen. But their oral statements that all the 66 workmen of the present case were continuously working that too for more than the required period is not supported by any documentary proof. The documents filed by some of the workmen regarding their employment are found to be defective as discussed earlier.

11. The management has examined three witnesses who have stated in detail the procedure followed by the management for appointment of N. M. R. workers and their retrenchment. According to them i.e. M. Ws. 1 to 3 they were selecting suitable persons to work as N. M. R. through their Lineman but no appointment letter was issued to anyone of the N. M. R. workers. The Division Office was maintaining the seniority list. They have no specific knowledge as to if the workmen of the present case were working continuously.

12. In the written argument the representative of the workmen has submitted that the workmen had called for certain documents from the management on the 8th December 2006 which was also allowed by the Court. The documents are as follows :

- A. List of N. M. R. workers since 1974 to the 31st March 1995 of P.E.D., Puri
- B. Wage register and wage slip of N. M. R. workers from 1974 to the 31st March 1995
- C. Appointment orders of the N. M. R. workers and E.P.F. slip of each N. M. R. workers of P.E.D., Puri.

But the above documents were not filed by the management. Admittedly no appointment order was being issued in respect of N. M. R. workers so the management was not expected to file the same. It is stated by W. W. 1 that no wage slip is usually issued at the time of payment to the N. M. R. workers. So the management was also not expected to file the same. However the other documents called for by the representative of the workmen such as list of N. M. R. workers, wage register, E.P.F. slips, etc. could have been filed by the management. But can an adverse view be taken for non-filing of those documents by the management.

13. As because all the 66 workmen have claimed that they were continuously working in the management, there must be some document regarding their employment and payment of wages to them in the office of the management. Since the management neglected to file the documents, the workmen could have obtained the required information by taking help of provisions of the Right to Information Act, 2005 from the office of the management. But they did not do so.

14. According to law, the burden of proof was on the workmen to prove the employment for the required period. In fact some of the workmen have filed some documents like Ext. 2 series to prove their employment. But those are found to be defective. There are in all 66 workmen in the present case out of whom four have given oral evidence and four others, namely, Shri Purna Chandra Khuntia, Niranjana Moharana, Kalandi Nayak and Kartik Das have only adduced documentary evidence such as Exts. 2/e, 2/f, 2/g and 2/j. The other 58 workmen have not adduced any type of evidence i.e. either oral or documentary to prove their employment under the management for the required period.

The workmen in their statement of claim have stated the names of four persons who are still continuing in service and junior to them. The management refuted the said allegation. No evidence was adduced by the workmen to prove that not only those persons are junior to them but also they have been retained illegally.

15. The workmen have filed some other documents. Let us examine the same. Ext. 3 is a document in respect of regularisation of N. M. R. workers who had completed 400 days of work as on the 1st October 1991. But in the present case I am concerned with the workmen who have been retrenched with effect from the 1st April 1995. Ext. 4 is a copy of the letter in which the Under-Secretary-VII, GRIDCO, Bhubaneswar had requested various authorities to furnish the manpower position of O.S.E.B. and engagement of N.M.R. workers on the 31st March 1996. That is not helpful to decide the present case. Ext. 5 is an advertisement published by the CESCO in the daily Oriya newspaper 'The Samaj', dated 11th April 2003 which shows that CESCO was in requirement of some semi-skilled and skilled helpers and so applications were invited from the general public having required qualification to appear in the test. Ext. 6 is an appointment order in respect of one Ajaya Kumar Mallick and Ext. 7 is another similar appointment letter. Those were issued according to the award passed by this Court in I. D. Case No. 61/1998 and the order passed by the Hon'ble Court in W. P. (C) No. 4804 of 2003. Exts. 8 and 9 are two circulars in respect of N. M. R. workers who had abandoned employment voluntarily and Ext. 10 is a circular regarding clarification of procedure and conditions for retrenchment. In my view all these documents are not sufficient to prove the employment of all the workmen of the present case for the required period of 240 days within the meaning of Section 25-B of the Industrial Disputes Act, 1947. Unless it is proved that the workmen had worked for more than the required period within the meaning of Section 25-B of the Industrial Disputes Act, 1947, they are not entitled to get the benefit provided in Section 25-F of the Industrial Disputes Act, 1947.

16. For the aforesaid reasons I would say that the workmen have failed to discharge the burden. Thus the workmen of the present case are not entitled to get any relief in this case. Accordingly both the issues are answered.

The reference is thus answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
30-12-2008
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
30-12-2008
Presiding Officer
Labour Court, Bhubaneswar

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