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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th March 2009

No. 3140—li/1(B)-185/1991 (Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th February 2009 in I. D. Case No. 66 of 1993 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Managing Director, M/s Utkal Galvanisers (P) Ltd., New Industrial Estate, Jagatpur, Cuttack and their workmen the General Secretary, Jagatpur Industrial Workers Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 66 OF 1993

Dated the 18th February 2009

Present :

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

Between :

The Managing Director, .. First Party—Management
M/s Utkal Galvanisers (P) Ltd.,
New Industrial Estate,
At/Post Jagatpur, Cuttack.

And

The General Secretary, .. Second Party—Workmen
Jagatpur Industrial Workers Union,
IDCO Chhaka, At/Post Jagatpur,
Dist. Cuttack.

Appearances :

Shri S.T. Ullaha, Authorised Representative.	.. For First Party— Management.
Shri S. B. Mishra, Authorised Representative.	.. For Second Party— Workmen.

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. 17272—li/1(B)-185/1991-L.E., dated the 29th December 1993.

“ Whether the demand of the General Secretary Jagatpur Industrial Workers Union for enhancement of wages of the workers of M/s Utkal Galvanisers (P) Ltd. is legal and/or justified ? If not, what should be the details ? ”

2. The case of the second party (hereinafter referred to as the ‘ workmen’) in brief is that the first party-industry (hereinafter referred to as the ‘management’) is an Engineering Industry and it takes up fabrication and galvanising works and so also the erection work of the towers of the electricity, T.V. and telecommunication. It is alleged that the management used to pay very low rate of wages to its workers and utilises the services of skilled and highly skilled workers in doing unskilled jobs like loading, unloading and carriage of materials. It is pleaded that in spite of revision of minimum wages by the Government in 1990, the management was paying Rs. 11 per day to some daily rated casual workers and the rate of wages prevalent by that time under the establishment of the management was between Rs. 13.50 paise at the minimum and Rs. 27 at the maximum per day. It is stated that although a demand was submitted on the 9th November 1990 for enhancement of wages, but the management without taking any action on it wrote to the Labour Authorities that the Minimum Wages Act was not applicable to the Industry ; it being a small Engineering Unit employing more than 50 persons. Since the State Government prescribed the minimum wages for semi-skilled, skilled and highly skilled workers at Rs. 30, Rs. 35 and Rs. 40 respectively per day, another demand was made to the management claiming the per day wages of an unskilled worker @ Rs. 30, @ Rs. 35 for a semi-skilled, Rs. 40 for skilled and Rs. 45 for highly skilled workmen. It is pleaded that the management being financially sound enough, it should pay Rs. 5 for each category of workmen more than what is prescribed as the minimum wage. It is pleaded that the management without conceding to the genuine demands of the workmen are trying to harass them by different ways due to their active participation in the Union activities. Specifically it is pleaded that by virtue of a tripartite settlement entered into between the management and the workmen there has been an enhancement of the existing wages by Re.1 only per day with effect from the 1st September 1991 without prejudice to the demand of the Union regarding revision of wages and since then there has been no revision in the rates of wages. The workmen through their Union has therefore, prayed to pass an Award for revision of wages of the workmen as per their categorisation keeping in view the demand of the Union.

3. The management filed its written statement stating therein *inter alia* that the reference of the dispute is not maintainable and the Union has no *locus standi* to raise the dispute. It is stated in the written statement that the first party's concern is not a profitable industry and the Minimum Wages Act is not applicable to the establishment of the first party-management. The specific stand of the management is that the minimum wages prescribed by the Government being not applicable to its establishment, the management is not liable to pay any enhanced wages to the workmen, as claimed.

4. Earlier this Tribunal on conclusion of the proceeding had passed an Award on the 29th May 1999 allowing the claim of the second party-workmen. Thereafter the Management carried the matter to the Hon'ble High Court in O.J.C. No. 8740 of 1999, which came to be disposed of by the Hon'ble Court on the 6th August 2008. The relevant portion of the orders passed by the Hon'ble Court in the aforesaid O.J.C. is quoted below :

“ xx xx A perusal of the impugned award go to show that the learned Tribunal relying on the notification of the State Government in the Labour & Employment Department, dated the 30th June 1990 and 27th December 1990, prescribing the minimum wages for different categories of workmen/employees, has proceeded to the impugned award directing the petitioner to pass its workmen/employees as per such minimum wages.

Without going into the merits of the case one way or the other, the impugned award passed by the Industrial Tribunal, Bhubaneswar, is quashed and the matter is remitted back to the learned Tribunal for reconsideration afresh, after providing reasonable opportunity of hearing to the parties. xx xx xx ”

On receipt of the orders passed in the O.J.C., both parties were noticed to appear for hearing and pursuant to that the workmen while declined to adduce any further evidence, the management intended to examine one more witness and accordingly the case was posted for recording further evidence from its side. But, despite opportunity when the Management neither appeared nor took any step on the date fixed for hearing, the case was posted for argument and upon hearing arguments from both sides the case was closed on the 9th February 2009.

5. It may be noted here that after a Corrigendum was received from the Government to delete certain words from the schedule of reference, the issues framed earlier have not been recasted. Pursuant to the Corrigendum, therefore, the issue which need determination in the present proceeding are :—

Issues

- (i). “ Whether the demand of the General Secretary, Jagatpur Industrial Workers Union for enhancement of wages of the workers of M/s Utkal Galvanisers (P) Ltd. is legal and/or justified ?
- (ii) If not, what should be the details ?”

6. The record reveals that in order to substantiate their respective stand, both parties had adduced oral as well as documentary evidence in the case. The workmen while examined two witnesses on their behalf and proved nine documents which have been marked as Exts. 1 to 9, the management had examined M. W. No. 1 to be its sole witness and brought on record documents which have been marked as Exts. A to K.

7. It was rightly contended by the Management that the Notification of the Government, dated the 30th June 1990 prescribing minimum wages for the unskilled category of workmen marked Ext. A in the case has since been struck down by the Hon'ble Court in Utkal Chamber of Commerce and Industry Ltd. *Vrs.* State of Orissa & others, reported in 73 (1992) CLT Page-882 and therefore, the workmen involved in the dispute cannot claim any benefit therefrom.

As regards the subsequent Notification of the Government, dated the 27th December 1990 prescribing minimum wages for the semi-skilled, skilled and highly skilled workmen marked Ext. B in the case, the stand of the Management is that the strength of the workmen employed in its industry being more than 50, the same has no application and accordingly, no benefit therefrom can be derived as claimed by the workmen. In this connection, it was submitted on behalf of the workmen that nowhere they have claimed minimum wages as per the Government Notifications, rather their claims relate to an upwar revision of wages of different categories of workers employed in the industry as per their demand mentioned in Ext. 4. It was therefore contended that evidence having been adduced by the workmen justifying their demand for increase of Rs. 5 in each category, i.e. unskilled, semi-skilled, skilled and highly skilled, the management cannot take the advantage of the Government Notifications alone and plead that the claim of the workmen is either unreasonable or unjustified because of the non-application of the Government Notification to its industry.

8. In connection with the above, the evidence of W.W. No. 1 reveals that when the management did not incline to pay wages according to the minimum wages, he made a demand as per Ext. 4 claiming wages at a rate higher than the minimum wages but the management without making any communication to the workmen wrote a letter to the D.L.O. as per Ext. 5 reiterating the self same plea of non-applicability of the minimum wages to its organisation and further due to heavy loss the management was contemplating for closure of the Unit. His evidence reveals that about 200 workmen are in employment of the management. However, he has admitted in his cross-examination at Para. 13 that in 1990 . 43 workers were regularly working in the Plant and that they were all members of the Union. To the suggestion of the management he denied that the workers were being paid more than the prescribed rate of minimum wages notified by the Government of Orissa.

W. W. No. 2 in his evidence has stated that on declaration of minimum wages by the Government, their Union made a demand for payment of the same as per Ext. 1 and on the management's denial about applicability of the said Notification to its establishment, their Union claimed more than the minimum wages as per Ext. 4. He admitted about the execution of the tripartite agreement as per Ext. 7 but deposed that, that was done without prejudice to

their claim pending adjudication in the instant reference. He stated that as the management took the stand that it was running on heavy loss, and thereby avoided to fulfill their demands the present reference was made upon failure of the conciliation. In cross-examination he stated that at the time of termination of his service, i.e. in the year 1992, he was getting Rs. 19.50 paise per day. He denied the suggestion of the management that since the 1st January 1991 the management was paying Rs. 30, Rs. 35, Rs. 40 and Rs. 45 to unskilled, semi-skilled, skilled and highly skilled workmen respectively.

M.W. No.1 being the lone witness examined for the management stated nothing in his examination-in-chief as to how the demand made by the workmen can be treated to be either unreasonable or not genuine. It only reveals from his evidence that as the Government Notifications do not apply to their establishment, the demand made on that score is not justified. Referring to Ext. H, the copy of a bipartite settlement, he stated that although the workmen gave it in writing that they would try to achieve the targetted production, but it was not as per the commitment and in that regard he has proved the copy of the monthly production statement, Ext. K. In his cross-examination he admitted that the management was paying minimum wages to its employees as per the Notifications of 1990 and 1991. He admitted in cross-examination that the management has not produced the Wage Registers of 1990 and 1991 as the same are not available. He denied the suggestion of the workmen that there was fall in production due to short supply of materials. He further denied the suggestion of the workmen that in July 1990 the management was paying wages between Rs. 13 and Rs. 23.50 paise to all categories of workmen.

9. From the evidence, as above, it reveals that when in one hand the management asserts that the minimum wages fixed by the Government are not applicable to its organisation, in the other it brings out by way of suggesting the workmen's witnesses that it has been paying more than the minimum wages prescribed by the Government since the 1st January 1991. Therefore, the fact of paying minimum wages to the workers by the management since 1991 cannot be believed in absence of any documentary proof i.e. Wage Register or any such Registers maintained for disbursement of wages to different categories of workmen. Moreover, on the face of the correspondences made with the Labour Authorities as well as the Management, which have been marked Exts. 2, 3, 5, & 8 and Exts. 1 and 4 respectively clearly show that as because the management was paying less than the minimum wages, the dispute arose culminating the present reference.

10. It is next contended by the management that due to heavy loss it is not possible on the part of the management to shoulder additional burden, if any made on account of revision of wages of the workmen. The workmen, on the other hand raised objection to this and submitted that the management despite earning sizeable profit from the industry is trying to avoid the legitimate demand of the workmen. In this connection, no evidence is forthcoming from the side of the management which could reveal that in the event of wage revision of the workmen the extra monetary burden will further deteriorate the financial strength of the

management. Further, it is surprising to note here that even if the management has pleaded that its Unit is running on heavy loss, yet no documentary evidence such as balance sheet/ profit and loss account is produced to visualise the fact that actually it has been incurring heavy loss and therefore, it will not be within its capacity to bear the additional burden on account of any hike in the wages of the workmen.

11. Taking stock of the situation and the fact that as per the version of M. W. No. 1 minimum wages declared by the Government was being implemented by the Management at the time of raising the dispute, it is thought appropriate to ask the management to extend its workers a further hike of Rs. 2 over and above the per day wages which the workmen in each category were receiving, from the date of the reference, i. e. the 29th December 1993 till their wages were revised with effect from the 1st March 1996 as per Ext. 9 . The differential wages for the period from the 29th December 1993 to 1st March 1996 be made available to the workers of each category within a period of two months from the date of publication of this Award in the Official Gazette.

12. In the result, the reference regarding the claim of the workmen for revision of wages is allowed to extent indicated in the preceding paragraph.

Dictated and corrected by me.

P. C. MISHRA
18-2-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
18-2-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

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