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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th May 2009

No. 4127—li/1(B)-87/2007-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2009 in Industrial Dispute Case No. 118/2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, M.C.I.I. Stores and Mechanical Division, Gandarpur, Dist. Cuttack and their 39 Workmen represented through Mahanadi-Birupa Barrage and Chitrotpala-Genguti Irrigation Project Employees Union, Gandarpur, Dist. Cuttack was referred to for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 118 OF 2002

Dated the 28th March 2009

Present :

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

Between :

The Management of the Executive .. First Party—Management
Engineer, M.C.I.I. Stores and Mechanical
Division, Gandarpur, Cuttack.

And

Their 39 Workmen represented through .. Second Party—Workmen
Mahanadi-Birupa Barrage and
Chitrotpala-Genguti Irrigation Project
Employees Union.

Appearances :

Shri A. K. Pradhan, Head Clerk .. For First Party—Management

Shri C. R. Mohapatra, .. For Second Party—Workman himself
General Secretary.

AWARD

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 matter in dispute between the parties to this Court for adjudication vide Order No. 12952—li/1 (B)-87/2002-L.E., dated the 24th October 2002 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows :

“Whether the termination of employment of Shri Dhobi Swain and 38 others (Annexure-I) by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack with effect from the 1st December 2001 is legal and/or justified ? If not, to what relief the 39 affected workmen are entitled ?”

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

The workmen Shri Dhobi Swain and 38 others were working as N.M.R. employees in different posts under the control of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack (in short the management) continuously for 15 to 20 years prior to their retrenchment on the 30th November 2001. Due to preparation of faulty seniority list, they were retrenched from service whereas some employees who were junior to them were allowed to continue in service. The condition precedent to retrenchment was not followed at the time of their retrenchment and therefore, they raised an industrial dispute. A conciliation proceeding was initiated by the labour machinery which ended in failure. The workmen have prayed to reinstate them in service with full back wages.

4. The management in the written statement has admitted that the 39 workmen were working as Work-charged and N.M.R. employees in different posts. Due to financial stringency and reduction of work the Department of Water Resources, Orissa, Bhubaneswar vide letter No. 20222, dated the 29th May 2001 directed to retrench the surplus staff on the principle of ‘last come first go’. Accordingly the workmen of the present case were retrenched with effect from the 30th November 2001 afternoon. Before retrenchment a provisional gradation list in respect of each category of Work-charged and N.M.R. employees was prepared by the Superintending Engineer, Mahanadi-Chitrotpala Island Irrigation Circle, Cuttack basing on the informations supplied by the Division offices and the same was communicated to all concerned inviting objection. Subsequently a final gradation list was published on the 23rd November 2001. The condition precedent to retrenchment as provided in the Industrial Disputes Act, 1947 was properly followed, also Section 25-G of the Industrial Disputes Act, 1947 was kept in view while retrenching the workmen of the present case. No person junior to the workmen was retained at the time of the retrenchment of the workmen. Therefore the question of reinstatement and payment of back wages to the workmen does not arise.

5. The following issues were settled.

ISSUES

- (i) “Whether the termination of employment of Shri Dhobi Swain and 38 others (Annexure-I) by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack with effect from the 1st December 2001 is legal and/or justified ?
- (ii) If not, to what relief the 39 affected workmen are entitled ?”

6. In order to substantiate their claim, out of 39 workmen, 9 workmen examined themselves as W. Ws. 1 to 9. Similarly the management also examined a witness as M. W. 1 who is working as Head Clerk in the office of the management.

FINDINGS

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

Almost all the workmen in their testimony have stated that some persons who were junior to them were retained in service while they were retrenched. They have also named the junior persons in their testimony. It is also consistently stated by them that the retrenchment compensation was not paid to them simultaneously. Some of them have admitted to have received their retrenchment compensation but at the same time they have stated that the retrenchment compensation was paid to them about two to three years after their retrenchment.

8. M. W. 1 in his deposition has stated that he knows all the 39 workmen of the present case who were retrenched on the 30th November 2001. Subsequently it came to the notice of the authority that they were senior to other employees and therefore 21 out of 39 workmen were reinstated in service. The other 18 workmen have not yet been reinstated. During cross-examination he admitted that without obtaining any permission from the appropriate authority at a time 256 employees including the workmen of the present case were retrenched. However in this meanwhile the Government has directed to reinstate all of them in the same post in which they were working at the time of retrenchment. Their service continuity will be maintained and already the process has commenced.

Therefore from the aforesaid admission of M.W. 1 it is clear that the other 18 workmen who have not yet been reinstated are likely to be reinstated in service in a near future date.

According to M. W. 1 though 21 employees out of 39 have already been reinstated the back wages were not paid to them on the principle of ‘no work no pay’. Admittedly the 39 workmen were senior to other employees and due to faulty preparation of seniority list they were retrenched. It is not they were retrenched from service due to their own defect. So, it would not be appropriate to deny the back wages to them on the principle of ‘no work no pay’.

It is admitted by M. W. 1 that no notice or notice pay or compensation was paid to any of the 39 workmen prior to the retrenchment. The same was paid subsequently i. e. about two years after their retrenchment. Some of them have received the amount under protest and some other have not yet received the same. According to settled position of law payment of

retrenchment compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 is a condition precedent to retrenchment and if the same is violated by the management, the workmen will be entitled to claim for reinstatement as well as back wages.

9. In view of the admission of M. W. 1 it can be safely concluded that Section 25-F of the Industrial Disputes Act, 1947 was not complied at the time of retrenchment of the workmen of the present case. Also Section 25-G of the Industrial Disputes Act, 1947 was not followed while the workmen were retrenched. But it is stated by M. W. 1 that 21 out of 39 workmen have already been reinstated and the process to reinstate the other 18 workmen has already commenced. I have already come to a conclusion that the principle of 'no work no pay' is not applicable to the present case. Hence at the end I would say that not only the other 18 workmen are required to be reinstated in service immediately but also all the workmen are entitled to get full back wages for the period they were out of employment. Accordingly both the issues are answered.

10. Hence ordered :

The termination of employment of Shri Dhobi Swain and 38 workmen of the present case by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack with effect from the 1st December 2001 is illegal and unjustified. The management has already reinstated 21 out of them and so the remaining 18 workmen shall be reinstated in service within one month from the date of publication of the Award in the Official Gazette. All the 39 workmen are entitled to get full back wages from the 1st December 2001 till the date of their reinstatement. The retrenchment compensation if any, paid to any one of them, shall be deducted from the amount of back wages and the rest amount shall be paid to them within the aforesaid stipulated period.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
28-3-2009
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
28-3-2009
Presiding Officer
Labour Court, Bhubaneswar

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