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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2009

No. 5104—li/1(BH)-19/2001-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2009 in Industrial Dispute Case No. 16 /2001 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Executive Engineer, Mayurbhanj Irrigation Division, At/P.O. Baripada, Dist. Mayurbhanj and Shri Ghanashyam Nayak and others At Pingu, P.O. Niddiha, Dist. Mayurbhanj was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 16 OF 2001

Dated the 31st March 2009

Present :

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

Between :

The Executive Engineer, .. First Party —Management
Mayurbhanj Irrigation Division,
At./Post. Baripada, Dist. Mayurbhanj.

And

Shri Ghanashyam Nayak and others, .. Second Party—Workmen
At. Pingu, P.O. Niddiha,
Dist. Mayurbhanj.

Appearances :

Shri Amitav Kumar Das, .. For the First Party—Management
Stenographer,

Shri S. K. Kar and Shri Alora Kar, .. For the Second Party—Workmen
Authorised representatives.

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12 readwith Clause (c) 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. 12434-li/1(BH)-19/2001-LE., dated the 4th September 2001.

“Whether the termination of services of Shri Ghanashyam Nayak and others (as per list attached to the order of reference) made by the Executive Engineer, Mayurbhanj Irrigation Division, Baripada is legal and/or justified? If not, to what relief the workers are entitled?”

2. The Tribunal had earlier passed an award in the dispute holding that there having no termination of service of the second party-workmen as alleged, they are not entitled to any relief. Being aggrieved with the said Award, dated the 6th May 2003 the workmen filed W.P. (C) No. 7069 of 2003 before the Hon'ble High Court of Orissa and while disposing of the aforesaid writ Petition the Hon'ble Court held as follows :—

“xx xx without going into the merits of the case one way or the other, the impugned award of the Industrial Tribunal, Bhubaneswar in Industrial Disputes Case No. 16 of 2001, is quashed and the matter is remitted back to the learned Tribunal for fresh adjudication after providing opportunity of hearing to the parties.

It is open for the petitioner to adduce further evidence, if any, in support of their claims and if such evidence is adduced, necessary opportunity shall be given to the opposite parties to rebut the same. xx xx.”

In view of the aforesaid order of the Hon'ble Court after affording opportunity of further hearing to both the parties, the present adjudication is being made.

3. The case of the workmen as narrated in their claim statement in brief is that as their homestead and cultivated land were acquired by the O. P. Management under the Land Acquisition Act for the purpose of construction of Kalo and Sunei Irrigation Project, they were all provided with employment and accordingly they served continuously under the management being employed during the period from 1974 to 1977. It is averred in the claim statement that in spite of their rendering continuous service under the management for a long time, they were all retrenched from service during the period from 1979 to 1982 and while effecting such retrenchment, the management had neither given them any notice nor notice pay and retrenchment compensation and thus it has violated the provisions of Industrial Disputes Act. It is stated that after merger of the Kalo and Sunei Irrigation Projects with the Mayurbhanj Irrigation Division, although they all approached the present management for their reinstatement and back wages, yet all their attempts yielded no fruitful result. According to them, their retrenchment being contrary to the provisions of law, they are all entitled to reinstatement in service with full back wages.

4. The management filed its written statement stating therein *innter alia* that w.e.f. the 28th February 1983, the Mayurbhanj Irrigation Division started its functioning and Kalo Irrigation Project and Sunei Irrigation Project came to its control for maintenance vide letter No. 17313, dated the 25th June 1991 of the Government Department of Irrigation, which was communicated to the management vide letter No. 26362, dated the 12th July 1991. It is stated that pursuant to such Government order the records of Kalo and Sunei Irrigation Projects

were transferred from Mayurbhanj Investigation Division, Udala to the control of Mayurbhanj Irrigation Division, Baripada w.e.f. the 1st August 1992, and therefore, the management has asserted that it had got no role to play in the matter of retrenchment of the present workmen, in as much as, neither it had issued them any appointment order nor retrenched them from service, as alleged. The management has further pleaded that the claim of the workmen is barred by the law of limitation and further they having failed to produce any documentary proof regarding their engagement in the Projects, they are not at all entitled to any relief in the present proceeding. It is stated that for acquisition of land of the workmen for construction of Kalo and Sunei Irrigation Projects, the workmen have been compensated adequately and those working as N. M. Rs. have left the job on their own sweet will. According to the management, since the Government have imposed ban on engagement of N. M. Rs. the claim advanced in the present dispute is not at all tenable.

5. On the basis of the pleadings of the parties, the following issue has been framed :—

ISSUE

- (i) “Whether the termination of services of Shri Ghanashyam Nayak and others (as per list) made by the Executive Engineer, Mayurbhanj Irrigation Division, Baripada is legal and/or justified ? If not, to what relief the workers are entitled ?”

6. The record reveals that earlier both parties had examined one witness each in support of their respective stand. The workmen had brought on record 53 documents and the same had been marked as Ext. 1 to 53 and the management had proved a copy of the Resolution which had been marked as Ext. A. On remand of the matter from the Hon'ble Court, W.W. No. 1 further filed his affidavit evidence and got marked Exts. 54 to 61 as their further documentary evidence. The management, however, remained content with its earlier oral as well as documentary evidence.

7. It is not disputed that the workmen involved in the dispute are all displaced persons; their land being acquired under the Land Acquisition Act for the purpose of Kalo and Sunei Irrigation Projects. and it reveals so from the documentary evidence produced by the workmen which have been marked as Exts. 2, 3, 7, 15, 16, 17, 18, 19, 20, 22, 25 to 28, 30, 31, 32, 35, 36 and 37. It is also not disputed that the workmen were not engaged under the management during the period as claimed by them because of the fact that the management has admitted in its written statement that the petitioner have left job on their sweet will and thereby the management has not violated the provisions of the Industrial Disputes Act or O. I. D. Rules. W. W. No. 1 in his evidence has stated that in the year 1974, he was working as a work Sarkar in the Kalo-Sunei Irrigation Project and named the other 19 workmen who were working with him. He deposed that they were all engaged under the Project and their disengagement took place phasewise during the period from 1977 to 1986. It is deposed by him that by the time of their disengagement, they were told orally by the management that they would be provided with further engagement by the management. It is in his evidence that neither any notice nor notice pay was given to them while terminating their services and after their termination, the management has employed fresh hands who are still continuing. In his

evidence on affidavit, he deposed that out of the 20 workmen involved in the dispute, the workman at Sl. No. 14 of the list i.e., Shri Hemendra Hansda has in the meantime got employment and for that he is not interested in the 'Lis'. The rest 19 workmen including him were all working as N. M. Rs. in the Kalo Irrigation Division which was subsequently merged with the present management. The experience certificates Exts. 1, 5, 6, 8, 9, 10, 11, 12, 13, 14, 23, 24, 29, 33, 38, and 39 which have been marked on consent and even subsequently the authenticity and genuineness of which have not been challenged, disclose that the workmen were all employed under the Kalo Irrigation Project as N. M. Rs. W. W. No. 1 was cross-examined by the management but nothing substantial was brought in his cross-examination to discredit his version on the aforesaid aspect.

M. W. No. 1 only deposed to the effect that neither the management appointed nor retrenched the workmen involved in the dispute. He stated that as per the Government maintenance yardstick, there are 162 surplus N. M. R. workers. Referring to Ext. A, a copy of the resolution of the Irrigation and Power Department., he deposed that as per the said Instruction, the persons affected have already been rehabilitated.

8. From the evidence as aforesaid, it is clearly established that the workmen were under the employment of the management for a substantial period and for their disengagement they are entitled to the protection of law as envisaged u/s 25-F of the Industrial Disputes Act. In this connection, the decision reported in 2008 (119) FLR 398 (Div. Manager, New India Assurance Co. *Vrs.* A. Sankaralingam) may be referred to.

9. The plea of voluntary abandonment of job taken by the management can also not be sustainable in view of absence of any documentary proof that despite notice by the management, the workmen did not respond and therefore there was reason to presume that they had all left their job voluntarily. In this connection, the decision reported in 2004 (103) FLR-102 [M/s. Nicks (India)] Tools *Vrs.* Ram Surat] may be referred to.

10. In view of the discussions made above, it is held that the termination of services of Shri Ghanashyam Nayak and 18 others excepting Shri Hemendra Hansda, Sl. No. 14 of the list by the management is neither legal nor justified.

11. Now coming to the question of relief to which the workmen are entitled, it was submitted on behalf of the workmen with reference to Ext. 56, the copy of the Award passed in I. D. Case No. 58 of 1992 and Ext. 57, the copy of the Award passed in I. D. Case No. 18 of 1995 which have been confirmed by the Hon'ble Court in O. J. C. No. 5928 of 1995 and O. J. C. No. 12763 of 1999 respectively that the persons involved in the aforesaid disputes having been reinstated in service with all their wages, the same benefit may also be extended in favour of the present workmen, the facts of the dispute being same and similar. The management on the other hand simply resisted the contention of the workmen on the ground that the facts

involved in the aforesaid disputes are not similar to the instant dispute and as such, the same cannot be utilised as a piece of evidence to grant relief in favour of the workmen.

12. Keeping in view the respective contention of the parties and the documentary evidence cited on behalf of the workmen vide Exts. 56 and 57 and the orders of the Hon'ble Court in O. J. C. No. 5928 of 1995 (Ext. 58) and O.J.C. No. 12763 of 1999 (Ext. 59) and the verdict of the Hon'ble Supreme Court in Div. Manager, New India Assurance Co.'s case (*supra*), it is held that the workmen involved in the dispute except Shri Hemendra Hansda, Sl. No. 14 of the list are all entitled to reinstatement in service with a lump sum amount of Rs. 5,000 (Rupees five thousand only) each in lieu of back wages. The management to implement the Award within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
31-3-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
31-3-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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