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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th June 2009

No. 5197—li/1(S)-84/1996(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th April 2009 in I. D. Case No. 152 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Orissa Grid Corporation, Anandapur Electrical Division, At/P.O. Anandapur, Dist. Keonjhar and Shri Bhagirathi Hansda and 8 (eight) others at Suapur, P.O. Baripal District Keonjhar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 152 OF 2008

Dated the 13th April 2009

Present :

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

Between :

The Executive Engineer, .. First Party—Management
Orissa Grid Corporation,
Anandapur Electrical Division,
At/Post Anandapur, Dist. Keonjhar.

And

Shri Bhagirathi Hansda and 8 others, .. Second Party—Workman
At Suapur, Post Baripal,
Dist. Keonjhar.

Appearances :

Shri B. C. Bastia, Advocate .. For the First Party—
Management.

Shri Subrat Mishra, Advocate .. For the Second Party—
Workman.

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 8737—li/1(S)-84/1996-LE., dated the 23rd July 1997 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138— li/21-32/2007-LE., dated the 4th April 2008:—

“ Whether the refusal of employment of Shri Bhagirathi Hansda, Madan Mohan Marandi, Gobinda Soren, Jitrai Murmu, Lalmohan Soren from the 1st March 1984 Shri Sunaram Murmu, Shri Jitrai Tudu from 1st September 1983, Shri Lalmohan Baskey and Shri Madan Jena from 1st January 1984 by the Executive Engineer, erstwhile O.S.E.B., Keonjhar Division (at present E.E. Grid Corporation, Electrical Division, Anandapur) is legal and/or justified ? If not, what relief of the aforesaid nine workmen are entitled to ?”.

2. The case of the workman, numbering 9 may briefly be stated thus:—

That, all the members of the second party except Shri Sunaram Murmu (Sl. No. 6 of the reference) were working under the Anandapur Electrical Section Office of erstwhile Orissa State Electricity Board (O.S.E.B.) presently known as Grid Corporation of Orissa Ltd. and Shri Sunaram Murmu was working under the Ghasipura Electrical Section being engaged as casual labourers with effect from October, 1981 but suddenly without any rhyme or reason they were all refused employment from the following dates :—

- | | | |
|------------------------|----|----------|
| 1. Bhagirathi Hansda | .. | 1-3-1984 |
| 2. Madan Mohan Marandi | .. | 1-3-1984 |
| 3. Gobinda Soren | .. | 1-3-1984 |
| 4. Jitrai Murmu | .. | 1-3-1984 |
| 5. Lalmohan Soren | .. | 1-3-1984 |
| 6. Sunaram Murmu | .. | 1-9-1983 |
| 7. Jitrai Tudu | .. | 1-9-1983 |
| 8. Lalmohan Baske | .. | 1-1-1984 |
| 9. Madan Jena | .. | 1-1-1984 |

It is asserted that all the workmen named above during their period of employment under the management have discharged their duties sincerely and to the best satisfaction of their authorities. It is averred that during the 12 months preceding the dates of their respective retrenchment, all the workmen have worked continuously without any break which can be ascertained from the Muster Roll and Attendance Registers maintained in the Anandapur Electrical Section Office and Ghasipura Electrical Section Office of GRIDCO. It is alleged that the management without given them one month's notice and compensation as required under law terminated their services which amounts to retrenchment. It is also alleged that the management has contravened the provisions of Section 25-H of the Industrial Disputes Act, inas much as, after terminating their services it has engaged fresh hands to carry out the Jobs. The workmen have asserted that after their retrenchment they have not been gainfully employed elsewhere and all of them are unemployed now. With the averments as aforesaid, the workmen have prayed to pass an award in their favour holding the retrenchment to be illegal and unjustified and granting them the benefit of reinstatement in service with full back wages.

3. During pendency of the proceeding, workmen Madan Mohan Marandi (Sl. No. 2 of the reference), Jitrai Murmu (Sl. No. 4) Lalmohan Soren (Sl. No. 5) and Jitrai Tudu (Sl. No. 7) having expired, their legal heirs have been substituted as per orders passed on the 4th April 2005 and 6th July 2006.

4. The management entered appearance and filed its written statement resisting the claim of the workmen on the following grounds :—

- (1) That, the dispute having been raised after lapse of 12 years, the same is time-barred and as such the reference is liable to be rejected ;
- (2) That, the workmen were engaged on purely casual and temporary basis for a particular construction work and prior to completion of the said work, they all absconded and were not available to work further in the Sub-division ;
- (3) That, the engagement of the workmen was intermitten in nature and none of them have worked continuously for more than 240 days preceding the dates of their alleged termination and as such their termination does not amount to retrenchment ;
- (4) That, the management having imposed ban on engagement of N.M.R. workers since 1991 and in the meantime the erstwhile O.S.E.B. having been abolished as per Orissa Electricity Reforms Act, 1995, the workmen are not entitled to get any relief from the present management i.e., Grid Corporation of Orissa.

With aforesaid assertions, the management has prayed to answer the reference in the negative as against the second party workmen.

5. The workmen have filed a rejoinder to the written statement filed by the management wherein it is averred that soon after their retrenchment, they approached the D.L.O., Keonjhar during January 1985, March 1988, February 1992 and on the 15th November 1995 for initiation of conciliation proceeding and ultimately the Hon'ble Court in O.J.C. No. 5374 of 1996 which was disposed of with a direction to the Conciliation Officer to take an early action on the complaint of the workmen . It is stated that since the workmen have raised the dispute way back in 1985, the dispute cannot be said to be time-barred. It is stated that the workmen were engaged both for the construction and maintenance work and in the event, their termination is held to be illegal, they are to be reinstated under GRIDCO, which deals with the Distribution, Transmission and Maintenance work as per the Orissa Electricity Reform (transfer of Undertaking, Assets, Liability, Proceeding and Personnel) Scheme Rules, 1996.

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

ISSUES

- (1) Whether the refusal of employment of Shri Bhagirathi Hansda, Madan Mohan Marandi, Gobinda Soren, Jitrai Murmu, Lalmohan Soren from the 1st March 1984 Shri Sunaram Murmu, Shri Jitrai Tudu from the 1st September 1983 , Shri Lalmohan Baskey and Shri Madan Jena from the 1st January 1984 by the Executive Engineer, erstwhile O.S.E.B. Keonjhar Division (at present E. E., Grid Corporation, Electrical Division, Anandapur is legal and/or justified ?
- (2) If not, to what relief the aforesaid nine workmen are entitled ?

7. The workmen in order to prove their case have examined one witness on their behalf and have brought on record documents which have been marked as E xts. 1 to 1/d and Exts.2 to 2/g. The management, on the other hand, examined one witness on its behalf but did not adduce any documentary evidence.

8. It being the settled principle of law that burden of proof lies on the claimants to show that they had worked for 240 days during 12 calendar months preceding the date of their termination, it is first to be seen whether the workmen involved in the case have satisfactorily discharged the burden in order to claim protection of Section 25-F of the Industrial Disputes Act. In this connection, the learned counsel appearing for the management contended that the workmen being engaged in a Project Work were working purely on casual basis and before completion of said work, they all voluntarily left the job for which the question of complying with the provisions of the Industrial Disputes Act was not at all required. *Per contra*, it was submitted by the learned counsel for the workmen that all the workmen involved in the dispute were working countinously under the management and in the process, they had all completed more than 240 days work in in one year preceding the dates of termination of their services and further that their engagement was not against any Project Work nor they have voluntarily left the job, as alleged by the management.

In connection with the above, my attention was drawn to the petition filed by the workmen on the 7th November 2000 calling for the Muster Roll and Attendance Register in respect of the workmen from October, 1981 to December, 1984 from the possession of the management and the orders passed on the 17th March 2001 asking the management to produce the documents. It was contended that despite the prayer of the workmen and the orders of the Tribunal, the management neither produced the documents nor intimated anything about the same. A scrutiny of the record reveals that the management in spite of instruction has not produced the documents, which are very much relevant for an effective adjudication of the dispute. For non-production of the Muster Roll and Attendance Register of the workmen, an adverse inference can be drawn against it and can be held that the management has intentionally avoided to produce the documents knowing it fully well that had the same been produced it, would have supported the claim of the workmen. W. W. No. 1 in clear terms while deposing for himself as also for other workmen has stated that they were all working with the management and were engaged in the work of digging holes, erecting poles and pulling wires and helping the Lineman during maintenance work. It is further stated by him that they were getting Rs. 600 per month as their wages. He stated that they were all working under the management from 1981 and on the 1st March 1984, the management refused employment to him along with four others on the 1st January 1984, it refused employment to Madan Jena and Lal Mohan Baske and on the 1st September 1988 Sunaram Murmu and Jitray Tudu were refused employment. He has produced the experience certificates granted in favour of Madan Mohan Jena, Sunaram Murmu, Lalmohan Baske, Jitray Murmu and Madan Mohan Marandi, which have been marked as Exts. 1 to 1/d. The authenticity of these documents though challenged by the management, yet no cogent evidence is brought on record to disprove the genuineness or authenticity of the same, in as much as, the management has not examined the concerned authorities to ascertain the purpose for which such certificates were issued. The management having not produced the documents such as Muster Roll and Attendance Register which could have thrown light in the matter, the secondary evidence produced by the workmen cannot be brushed aside easily on the pretext that the same were not issued officially. In this connection, the decision reported in 2006 Supreme Court Cases (L &S) 396 (State of Punjab and others Vrs. Babita Kumari) may be seen wherein their Lordships have held that "material that could have rebutted claim of workmen not produced by employer even though same was available with it."

No document is also filed by the management showing that the workmen were engaged under a Project and on completion of the same, they faced automatic termination of their service. Hence, as held by their Lordships in *S. M. Nilajkar and others Vrs. telecum*, District Manager, Karnataka, reported in 2003 (97) FLR 608, the plea advanced by the management on that core fails.

Similarly, the plea of voluntary abandonment taken by the management is found to have not been substantiated in absence of any documentary proof that owing to the workmen's leaving the job voluntarily, they were noticed to resume their work after they were allegedly absconded. In this connection, the decision reported in 2004 (Supp.) O.L.R. 694 (Divl. Manager, O.F.D.C. Ltd., Boudh *Vrs. Kanista Bisoi and another*) may be seen wherein our own Hon'ble High Court have held that " the plea of voluntary abandonment being a question of fact, onus is on the management to prove the same through cogent evidence. As stated above, since the management has not discharged its burden satisfactorily in proving its plea of voluntary abandonment of job by the workmen, the argument advanced on that score also fails.

9. M.W. No. 1 who has been examined as the sole witness for the management has deposed that he was working as a Clerk in the Anandapur Electrical Subdivision during March , 1981 to 1982. He deposed that he has no personal knowledge about the workmen and whatever he is deposing in the case is based on official records. Though he deposed that the workmen involved in the case were not working continuously and they were engaged on need basis but he admitted in his cross-examination that the workmen were not engaged for any specific period and as a Clerk, he has not handled the file of the workmen. It further reveals from his cross-examination that the Lineman used to maintain the attendance of the workmen. Except the oral evidence of M.W. No.1, not a single documentary proof is adducted by the management in support of its contentions raised. In absence of any documentary proof, therefore, it cannot be held that the workmen were either engaged in a project or they had left the job on their own accord. Alternatively, on the basis of evidence available on record, it is held that all the workmen involved in the dispute having rendered continuous service under the management for more than 240 days preceding the dates of their disengagement, they were all entitled to the protection of Section 25-F of the Industrial Disputes Act. The admitted position being that they were not given any notice/notice pay and retrenchment compensation, which is a pre-condition for effecting retrenchment, the action of the management is held to be illegal and unjustified.

10. Learned counsel appearing for the management contended that even if it is held that the workmen were entitled to the protection of Section 25-F of the Industrial Disputes Act but the reference of the dispute having been raised twelve years after the alleged action, the same is time-barred and can be held to be a stale claim in view of the decision of the Hon'ble Apex Court in the case of *Manager, R.B.I. Vrs. Gopinath Sharma*, reported in 2006 (110) FLR 803 and in the case of *State of Maharashtra Vrs. Dattatraya Digamber Birajdar*, reported in 2007 (114) FLR 1191. In both the aforesaid decision, the Hon'ble Apex Court while holding on merit that the workmen had no case observed that sufficient time having been elapsed in ventilating their grievance, the dispute raised by the workmen concerned can be held to be a stale claim and accordingly passed orders disentitling the workmen any relief. It was contended on behalf of the workmen that the facts of the instant case being not similar to that of the above-referred two cases of the Hon'ble Apex Court, the citations referred are of no help to the management. He goes on to contend that in the present dispute, it is the consistent case of the workmen that after their removal i.e., from 1985 onwards, they approached the management as also the Labour authorities in a phased manner but when no action was taken on their grievance ultimately they approached the Hon'ble High Court in O.J.C. No. 5374 of 1996 and consequent upon direction of the Hon,ble Court conciliation of the dispute was taken up and ultimately the present reference was made for adjudication. A scrutiny of the conciliation failure report which is available on record reveals that although the workmen claimed to had ventilated their grievance before the Labour Authorities in the year 1985 and again in 1992 but no such records were available and consequently pursuant to the direction of the Hon'ble Court in the aforesaid O.J.C., the conciliation of the dispute was taken up in the year 1996. M.N. No. 1 also admitted in his examination in chief that in the year 1992 when the process of regularisation of the N. M. Rs. was going on, the present disputant workmen raised their voice to get into the employment of the first party. On the face of the aforesaid evidence, therefore, it can not be said that the instant dispute is a stale claim. In this connection, it is appropriate to refer to a decision of the Hon'ble Apex Court, reported in 2006 Supreme Court Cases (L & S) 644 (*Shahaji Vrs Executive Engineer, PWD*), wherein their Lordships have held thus :—

“..... even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal it, could have suitably moulded the relief to be granted to the workmen in view of the delay. In such cases, the award of back wages may either be not permitted or curtailed.....”

Keeping in view the observations of the Hon'ble Apex Court and the discussions made with regard to the issue in the foregoing paragraphs, it is held that the reference of the dispute is not time-barred as alleged by the management and accordingly the stand taken on that score by the management fails.

11. In the result, therefore, the action of the management in refusing employment to the workmen named in the reference with effect from the dates mentioned against each is held to be a retrenchment and since the management has not taken recourse to the compliance of Section 25-F of the Industrial Disputes Act while taking such action the same is illegal as well as unjustified.

12. Now coming to the question of relief, it is seen that out of the nine members of the second party-workmen, four namely, (1) Madan Mohan Marandi, (2) Jitrai Murmu, (3) Lal Mohan Soren and (4) Jitray Tudu having expired in the meantime, their Legal heirs, namely, Pauda Marandi, Mukta Murmu, Golekha Behari Soren and Arshu Tudu respectively have been substituted. It is, therefore, felt appropriate that the heirs of the workmen named above be compensated with a lump sum amount of Rs. 40,000 (Rupees Forty Thousand) only each and the rest workmen, namely, (1) Bhagirathi Hansda, (2) Gobinda Soren, (3) Sunaram Murmu, (4) Lalmohan Baskey and (5) Madan Jena be reinstated in service with Rs. 5,000 (Rupees five thousand) only each towards back wages. The management is accordingly directed to implement the Award within a period of two months from the date of its publication in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA

13-4-2009

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. C. MISHRA

13-4-2009

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government