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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th June 2009

No. 5202—li/ 1(BH) - 26/1994(Pt.) - L. E. — In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2009 in I.D. Case No. 241 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Parjang Canal Division, At/P.O. Parjang, Dist. Dhenkanal and its Workman Shri Mohan Charan Sahoo and 16 others, At/P.O. Parjang, Dist. Dhenkanal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.241 OF 2009

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, Parjang Canal Division, At/P.O. Parjang, Dist. Dhenkanal.	..	First Party—Management
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And

Shri Mohan Charan Sahoo & 16 others At/P.O. Parjang, Dist. Dhenkanal.	..	Second Party— Workmen
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Appearances :

For the First Party — Management	..	None
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For the Second Party— Workman	..	Shri Mohan Charan Sahoo Authorised Representative.
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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. 14254—li-1(BH)-26-1994-LE., dated the 23rd November 2000 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 on the ground of imposition of ban order to Shri Mohan Charan Sahoo and 16 others as per Annexure IV without payment of any retrenchment compensation is legal and/or justified ? If not, to what relief the workmen are entitled ?”

“Whether the demand of Shri Mohan Charan Sahoo and 16 others workmen for their reinstatement in the service by the Executive Engineer, Parjang Canal Division in the face of re-employment of Shri Bhubanananda Sahoo and Shri Niranjan Bhutia as per the Government Order No. 15574, dated the 13th May 1991 and No. 21402, dated the 7th August 1991 is legal and/or justified ? If not, what should be the details ?”

2. The case of the workmen in brief is that initially they all (numbering 17) joined the employment of the management as N. M. Rs. on different dates during the year 1981 and continued as such up to 1990 and during the nine years of their service they had discharged their duties continuously and to the utmost satisfaction of the authorities. It is alleged that in 1990 suddenly the management terminated their services and so also the services of Shri Bhubanananda Sahoo and Shri Niranjan Bhutia, who were juniors to the workmen. It is alleged that while doing away with their job, no written order or notice pay and compensation was given to them and their services were terminated by way of refusal of employment. It is also alleged that soon after their termination, the junior employees, namely, Bhubanananda Sahoo and Niranjan Bhutia were taken into employment vide Government Order No. 15574, dated the 13th May 1991 and No. 21402 ignoring the claim of the workmen, who are senior to the aforesaid two employees. Further, it is stated that the above-named two employees are still continuing in employment along with other fresh hands who have been engaged after termination of service of the workmen. According to the workmen, the action of the management in the circumstances narrated above cannot be held to be legal and justified and consequently they have prayed for their reinstatement in service with full back wages and all consequential benefits.

3. The management filed its written statement stating therein that the workmen are not entitled to the benefits claimed as they were all working periodically as and when required being engaged as casual labourers on daily wage basis. The management has denied their continuous engagement under it and stated that the workmen being local labourers were picked-up by the concerned Junior Engineers for some field work as and when required on daily wage basis. The management has pleaded that in view of their casual nature of engagement the question of termination of their service does not arise at all. Disputing the averments made by the workmen with regard to Shri Bhubanananda Sahoo and Niranjan Bhutia, it is stated by the management that both of them were in continuous service under the management for which considering their representations the Government in Irrigation Department approved their re-engagement as N. M. Rs. and out of them the services of Shri Bhubanananda Sahoo has been terminated due to his long absence from duty and only Shri Niranjan Bhutia, N. M. R. Amin is continuing under the employment of the management. It is the specific case of the management that the workmen being casual labourers they remained absent *suo motu* and therefore, question of their termination by way of refusal of employment does not arise at all. With the aforesaid averments the management has

prayed to answer the reference in the negative as against the workmen.

4. In view of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the refusal of employment on the ground of imposition of ban order to Shri Mohan Charan Sahoo and 16 others as per (Annexure IV) without payment of any retrenchment compensation is legal and/or justified ?
- (ii) If not, to what relief the workmen are entitled ?
- (iii) Whether the demand of Shri Mohan Charan Sahoo and 16 others workmen for their reinstatement in the service by the Executive Engineer, Parjang Canal Division in the face of re-employment of Shri Bhubanananda Sahoo and Shri Niranjana Bhutia as per the Government Order No. 15574, dated 13th May 1991 and No. 21402, dated the 7th August 1991 is legal and/or justified ?
- (iv) If not, what should be the details ?

5. The management after filing its written statement did not appear on the date of hearing for which it was set *ex parte* vide order No. 25, dated the 6th June 2006. The workman Shri Mohan Charan Sahoo filed affidavit evidence in the case and proved five documents which have been marked as Exts. 1 to 5.

6. In his evidence on affidavit W.W. No. 1 has deposed that he along with other workmen being employed under the management on different dates during the year 1981 as N.M.Rs. continued to discharge their duties uninterruptedly till 1990 but all of a sudden the management terminated their services during the year 1990 without giving them any notice/notice pay and retrenchment compensation. He further deposed that two junior employees, namely Bhubanananda Sahoo and Niranjana Bhutia, who were also terminated along with them are continuing in employment of the management ignoring their claim.

Since the workmen have claimed to have worked continuously for the period from 1981 to 1990, onus lies on them to prove that they were under continuous employment of the management for more than 240 days in the preceding calendar year i.e. 1989 so as to get the benefit of the provisions of Section 25-F of the Industrial Disputes Act. In this connection, Ext. 5 is the only document which discloses that out of the workmen, only Shri Mohan Charan Sahoo, Shri Sivaram Bhutia, Shri Ganeswar Sahoo, Shri Chaitanya Parida, Shri Trilochan Sahoo and Shri Sarat Chandra Naik have completed 240 days of work during the year 1989. Excepting the above-named workmen the other workmen numbering 11 are found to have not completed 240 days of continuous service during the preceding year of their termination from service. It being the undisputed fact that while terminating the services of the workmen, named above, the management had not complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947, certainly its action in terminating the services of Shri Mohan Charan Sahoo, Shri Sivaram Bhutia, Shri Ganeswar Sahoo, Shri Chaitanya Parida, Shri Trilochan Sahoo and Shri Sarat Chandra Naik cannot be held to be legal and justified.

7. In the result, therefore, the workmen, namely Shri Mohan Charan Sahoo, Shri Sivaram Bhutia, Shri Ganeswar Sahoo, Shri Chaitanya Parida, Shri Trilochan Sahoo and Shri Sarat Chandra Naik are held entitled to re-instatement in service forthwith but without any back wages as there is nothing in the pleading of the workmen that during the period of their unemployment they were not

gainfully employed elsewhere. The other workmen are however held not entitled to any relief in the present proceeding. The management is 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
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