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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th January 2010

No. 89—li/1(BH)-4/2007-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th July 2009 in Industrial Dispute Case No.18/2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of M/s Executive Engineer, O.E.C.F. Division No. III, Jiridamali, Kamakhyanagar, Dhenkanal and their workman Shri Gopabandhu Rout, Vill./P. O. Kanpura, P. S. Kamakhyanagar, Dist. Dhenkanal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 18 OF 2007

Dated the 14th July 2009

Present :

Smt. Suchismita Misra, LL. M.,
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of .. First Party—Management
M/s Executive Engineer,
O. E. C. F. Division No. III
Jiridamali, Kamakhyanagar, Dhenkanal.

And

Their Workman .. Second Party—Workman
Shri Gopabandhu Rout
Vill./P. O. Kanpura
P. S. Kamakhyanagar, Dist. Dhenkanal.

Appearances :

For the First Party—Management . . . Shri A. Sahoo,
 Authorised Representative.

For the Second Party—Workman . . . Shri R. K. Mohanty, Advocate

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them under Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short "the Act") and by their Order No. 7563—li/1(BH)-4/2007-L.E., dated the 8th June 2007, have referred the following dispute for adjudication by this Court :—

“Whether the termination of employment of Shri Gopabandhu Rout with effect from the 1st April 2003 by the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar, Dist. Dhenkanal is legal and/or justified ? If not, what relief Shri Rout is entitled to ?”

2. Shorn of unnecessary details, the facts leading to the present dispute between the first party-management namely, the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar on the one hand and the workman Shri Gopabandhu Rout on the other are stated below :

The claim of the second party-workman as would appear from the statement of claim filed by him in the present proceeding runs as below :

The second party-workman was employed/appointed by the first party-management as a daily rated worker from the year 1975 and continued as such under the first party-management till the 4th January 1982 when his services were regularised on permanent basis and he continued to work as a permanent employee being designated as ‘Helper’ with effect from the 4th January 1982. During the tenure of his employment he had worked to the best of his ability and satisfaction of his employer while being paid wages by the first party-management on monthly basis. However, he was disengaged from his job with effect from the 1st April 2003 by the first party-management who did so without assigning any reason for the same. Thus the second party-workman claims that the order of termination of his employment with effect from the 1st April 2003 was illegal since the first party-management did not follow the procedure laid down in the Industrial Disputes Act, 1947 before retrenching him from his job. It is further pleaded by the second party-workman that the O. E. C. F. Division, Jiridamali, Kamakhyanagar is a State Government Establishment and comes within the ambit of ‘Industry’ as defined in the Industrial Disputes Act. After his illegal termination from service the second party-workman filed a complaint before local Labour Authorities and after investigation of his complaint the local Labour Authority attempted for a conciliation between the parties. However, as no conciliation between the parties could be effected due to rigid attitude of the first party-management, a failure report was submitted by the Conciliation Officer-cum-District Labour Officer, Dhenkanal to the Government and ultimately the matter was referred to the Court. In the aforesaid circumstances, the workman while challenging the order of termination of his employment with effect from the 1st April 2003 as illegal and unjustified made a prayer for his reinstatement in service from which he was terminated with full back wages and regular service benefits. He also pleaded that after the aforesaid termination of

his service he remained unemployed as he could not get any other employment despite his best effort and thus has been leading a miserable life since then.

3. The first party-management in their written statement contested the pleas advanced by the second party-workman on the following grounds :—

- (a) As per the decisions of Government in the Department of Water Resources, Bhubaneswar vide their letter No. 20222, dated the 29th May 2001 and Chief Engineer and Basin Manager, Brahmani Left Basin, Samal vide his letter No. 6573-83/WE dated the 29th March 2003, the surplus work charged employees were retrenched due to reduction of workload of the Project. They were paid their retrenchment benefits with due compensation according to rules in vogue as per Industrial Disputes Act, 1947. The service of the second party-workman was also terminated on the ground of surplus due to reduction of workload in the Project. Therefore, the retrenchment of Shri Rout (the second party-workman), ex-Helper is legal and justified.
- (b) Further as per the service roll of the second party-workman he had never worked as an N. M. R. Labourer and the first party-management had never appointed him (second party-workman) as work charged Helper. The engagement of the second party-workman was purely temporary and while terminating the services of the second party-workman, the management had paid him all his retrenchment benefits as per the Industrial Disputes Act, 1947. It is also pleaded by the management that they had observed the policy/principle of 'last come first go' while terminating the services of the second party-workman. Therefore the claim advanced by the second party-workman that his services were terminated illegally has got no basis and as such not tenable.

4. The second party-workman filed a rejoinder to the written statement of the first party-management denying the pleas advanced by the first party-management.

5. On the above pleadings only two issues were framed in this proceeding and those are :

- (i) Whether the termination of employment of Shri Gopabandhu Rout with effect from the 1st April 2003 by the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar, Dist. Dhenkanal is legal and/or justified ?
- (ii) If not, what relief Shri Rout is entitled to ?

6. In this proceeding the workman submitted his evidence on affidavit on the 6th April 2009 which was received as his Examination-in-Chief and he was cross-examined on behalf of the first party-management. On behalf of the second party-workman twenty-two numbers of documents were marked as Exts. W.1 to Ext. W. 22. However on behalf of the management no witness was examined though they got some documents exhibited on their behalf after those were admitted by the second party-workman in course of hearing of the case and those documents were marked as Exts. M.1 to Ext. M. 4.

7. In the present proceeding the first party-management though had not taken a plea either in their pleadings or throughout the hearing of the case that the management being an Irrigation Project of the State Government under construction does not come under the purview of the Factories Act, Mines Act and Plantation Act and further as per the recent amendment

in the Industrial Disputes Act, 1947 by the Government of Orissa is not required to give three month's notice to the second party-workman before terminating his service, however, while advancing their argument after completion of trial of the case submitted that the Project under the first party-management does not come strictly within the purview of Section 25-N of the Industrial Disputes Act which provides conditions precedent to retrenchment of workman because of the above stated reasons. I am not able to give importance to their such contentions, as stated above, at this belated stage because throughout in their pleadings (i. e. in their written statement and reply to the rejoinder of the workman), they took a specific plea that the retrenchment of the second party-workman was effected on the ground of surplusage after paying him retrenchment benefits and compensation as per rules in vogue under the Industrial Disputes Act, 1947. Their own document vide Ext. M. 2 which is a notice from the office of the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar, dated the 31st March 2003 and Office Order vide Ext. M. 3 are quite explicit to indicate that due to reduction of workload some workmen were found as surplusage and as such they were retrenched from their services with effect from the 1st April 2003 and they were paid one month salary in lieu of one month notice as admissible under Rule 25-F of the Industrial Disputes Act, 1947.

8. It is noticed from the claim statement of the second party-workman that he has challenged the legality of his retrenchment mainly on the ground that though he had been working in the establishment of the first party-management since the year 1975 as an N. M. R. and then got permanent appointment in the said establishment in the year 1982, was terminated from his services by the order of the first party-management with effect from the 1st April 2003 whereas at the same time services of some workmen juniors to him in service were retained and they were allowed to continue in their respective jobs under the first party-management. Thus the first party-management had flouted the norm "last come first go" while effecting his retrenchment from the establishment of the first party-management. There is no denial to the fact that when an employer in an industry finds that he has labourer which is in excess of the number and hence is surplus, the services of such workmen as are in excess can be terminated and all such termination would be retrenchment only. Therefore, the first party-management whose specific plea in this proceeding that surplusage was the only reason for termination of the services of the workman is certainly required to establish that such retrenchment of the second party-workman was not effected in contravention of any of the provisions contained in Sections 25-F and G of the Industrial Disputes Act, 1947.

The second party-workman besides filing documents relating to his service period in the establishment of the first party-management has also exhibited certain documents which are Service Books of the workmen Trilochan Sahu, Dileswar Pradhan and Khageswar Pradhan vide Exts. W.16, W. 17 and W.18, respectively. These service rolls clearly reveal that the workman Trilochan Sahu was appointed in the Government service with effect from the 5th January 1982 (Ext. W.16) whereas the workmen Dileswar Pradhan and Khageswar Pradhan were appointed on the 4th January 1982 (vide Exts. W.17 and W.18, respectively) i. e., the same date on which the second party-workman was appointed as 'Helper' in the work charged Establishment of Additional Chief Engineer (Irrigation), Rengali, Kohira and Samkoi Project (vide Ext. W. 9) . It is further revealed from the documents exhibited on behalf of the first party-management vide Ext. M. 2 and Ext. M. 3 and documents exhibited by the workman vide Exts. W. 19, W. 20 and W. 21 that a number of work charged employees were retrenched by the management from time to time from the year 2002 onwards on the ground of surplusage.

It is also revealed from the document Ext. W. 19 which is the common seniority list in respect of the employees of work charged establishment of Major Irrigation Project under the Government of Orissa, Department of Water Resources that the employees namely, Trilochan Sahu and Dileswar Pradhan were juniors to the second party-workman in service as per the aforesaid Gradation List vide Ext. W. 19. Both of them are still in service as revealed from their Service Books vide Ext. W. 16 and Ext. W.17, respectively.

Section 25-G provides procedure for retrenchment and envisages where any workman in an Industrial establishment who is a citizen of India is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was last person to be employed in that category unless for reasons to be recorded the employer retrenches any other workman. In the instant case the first party-management has not taken the plea that some of the employees in the work charged establishment who were juniors to the second party-workman in service were not terminated because of some specific reasons. On the other hand the first party-management have pleaded specifically in Para. 11 of their written statement that no junior employees to the second party-workman has been retained by the first party-management. When the second party-workman reiterated this plea again in his rejoinder then the first party-management in their reply to the rejoinder mentioned that no juniors except the workmen belonging to the submerged area of Rengali Dam Project were retained in service. According to them the workmen belonging to the fully submerged areas have not been retrenched as per Order No. 6080-81/ WE., dated the 22nd March 2003 of C.E. and B.M., B.L.B., Samal, Annexure-4. (Para.11 of their reply to rejoinder). From their such reply it could be gathered that while denying the retention of employees juniors to the second party-workman in service, they also pleaded that some employees who were juniors to the second party-workman were not retrenched as they belonged to submerged areas under the Rengali Dam Project.

To counter their such plea the workman pointed out submergible certificates of the workmen Trilochan Sahu and Dileswar Pradhan who were admittedly juniors to him in service. On perusal of their submergible certificate it could be noticed that the village of workman Trilochan Sahu namely, Ludung comes under the submerged area of category-A, whereas the village of workman Dileswar Pradhan i. e., Bajar comes under the category of fully submerged area village due to construction of Rengali Dam Project. In the present proceeding the workman has also filed a certificate to prove that his village had also been included in the submerged area and their lands were also acquired by the Rengali Irrigation Project (vide Ext. W. 15). He also filed a map showing the places acquired by the Rengali Dam Project vide Ext. W. 22. However, as the xerox copies of the maps filed and proved as Ext. W. 22 appear to be not legible, I am not able to consider the same to come to a conclusion that villages Ludung and Bajar do not come under the submerged area of Rengali Dam Project as the workman asserts in this case while advancing his argument. But the representative of the management had never challenged this map vide Ext. W. 22 during trial of the case.

Considering all these aforesaid circumstances it could be gathered that the reason assigned by the first party-management for retaining services of some of the employees who were juniors to the second party-workman is not justified and as such not tenable in the eye of law. Thus contravention of the provisions of Section 25-G of the Industrial Disputes Act, 1947 in the case of retrenchment of the second party-workman is quite tell tale from the circumstances as described above.

In view of the discussions made above I have no hesitation to hold that the termination of service of the second party-workman by the first party-management with effect from the 1st April 2003 is illegal and unjustified.

Now the question comes as to what relief is the workman entitled to ? It is evident from the record that the workman filed a complaint before the District Labour Officer, Dhenkanal on the 27th January 2006 alleging about his illegal retrenchment from the service by the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar with effect from the 31st March 2003 ignoring his seniority in the service. After being satisfied about the existence of an industrial dispute, the Conciliation Officer-*cum*-Assistant Labour Officer, Dhenkanal admitted the matter into conciliation with effect from the 30th August 2006. As no settlement could be arrived at between the parties during the said conciliation proceeding, the aforesaid reference was made by the State Government in the Labour & Employment Department basing on the report of the Conciliation Officer-*cum*-Assistant Labour Officer, Dhenkanal. In his statement of claim the workman made a prayer for his reinstatement in service with full back wages from the date of termination of his service i. e., from the 1st April 2003 along with cost. Since it has already been held that the termination of services of the second party-workman by the first party-management is illegal and unjustified, he is certainly entitled for his reinstatement in the post which he had held during the period of his appointment/ employment under the first party-management. So far as his claim for full back wages is concerned, the settled position of law is that a claim of back wages should not be the normal and natural consequences of an order of reinstatement and a workman cannot claim for such relief as a matter of right. Relief of back wages may be denied where that would place an exorbitant burden on the employer as period of interregnum being fairly long. In this respect I would like to quote here the decision in the case between Devendra Sahu and Presiding Officer, Industrial Tribunal-*cum*-Labour Court, Vishakhapatnam and another reported in 2008-III-LLJ, October, at page 466 wherein it has been held by the Hon'ble Court that "while awarding back wages care should be taken to find out whether the employee has pleaded and established with reference to material on record that in spite of his best efforts he could not secure any alternative employment during the period of his absence".

In the present proceeding the workman pleaded in his claim statement that he remained unemployed after termination of his service by the first party-management despite his best efforts to secure alternative employment and as such leads a miserable life due to poverty. He deposed before the Court about his unemployed state since the time of termination of his service by the management. The management has not controverted his such assertion in any manner. In the aforesaid circumstances it has to be held that the workman is entitled to back wages and other service benefits like continuity of service. However it is also noticed from the materials on record and from the admission made by the workman in course of advancing his argument(referred the written note of argument submitted by the workman which is on record) that he had received some amount of money from the management towards his retrenchment benefits. The workman in his written note of argument also stated that in the event of his reinstatement in service he would refund the amount which was received by him from the management at the time of his termination. Under such circumstances, I feel the

purpose of justice will serve its best if the reference would be disposed of with a direction to the first party-management to reinstate the second party-workman into service as a Helper in the office of the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar, Dhenkanal with fifty per cent back wages and continuity of service. Hence the following Award :—

AWARD

The reference is answered on contest in favour of the second party-workman and against the first party-management. The termination of services of Shri Gopabandhu Rout, Helper with effect from the 1st April 2003 by the management of the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, Kamakhyanagar, Dhenkanal is held illegal and unjustified and the first party-management is directed to reinstate the second party-workman Shri Gopabandhu Rout into service as a Helper forthwith in the office of the Executive Engineer, O. E. C. F. Division No. III, Jiridamali, with fifty per cent back wages and continuity of service benefits after deducting the amount of money paid to the second party-workman as compensation at the time of his retrenchment with effect from the 1st April 2003 from his back wages.

Dictated and corrected by me.

SUCHISMITA MISRA
14-7-2009
Presiding Officer
Labour Court, Sambalpur

SUCHISMITA MISRA
14-7-2009
Presiding Officer
Labour Court, Sambalpur

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