

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1427 CUTTACK, MONDAY, SEPTEMBER 6, 2010 / BHADRA 15, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th August 2010

No. 7188-li/1(BH)-8/2003-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th June 2010 in I.D. Case No.36 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Dispute between the Managements of (1) Executive Engineer, Mayurbhanj Irrigation Division, Baripada, (2) Executive Engineer, Deo Head Works Division, Karanjia and its workmen Shri Man Mohan Nayak and 6 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 36 OF 2003

Dated the 24th June 2010

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Managements of .. First-party Managements
(1) Executive Engineer, Mayurbhanj,
Irrigation Division, Baripada.
(2) Executive Engineer, Deo Head Works
Divisions, Karanjia.

And

Its Workmen Shri Man Mohan Nayak, .. Second-party Workmen
and 6 others.

Appearances :

Shri U. K. Behera	.. For First-party Management No.1
Shri S. N. Das.	.. For First-party Management No.2
<hr/>	
Shri M. M. Nayak	.. For Second party Workmen.

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 to this Court vide Order No. 8116–li/1 (BH)-8/2003-L.E., Dt. 21-8-2003 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Man Mohan Nayak, Shri Rajendra Kumar Mohanta, Shri Gagan Kumar Nayak, Shri Purusottam Patra, Shri Narendra Nath Mohanta, Shri Banshidhar Tarai and Shri Khageswar Naik with effect from 1-10-1991 by the Executive Engineer, Deo Head Works Division (Deo Canal Division), Karanjia./ Executive Engineer, Mayurbhanj Irrigation Division, Baripada is legal and/or justified ? If not, what relief are the workmen entitled to”?

3. The case of the seven workmen in brief is as follows :

The workmen were working as N. M. R. under the management of Karanjia Irrigation Subdivision under Mayurbhanj Irrigation Division. The said Division has been subsequently merged in different Division of Water Resources Department from 1983 to 1987 till 30-9-1991. From June 1991 the Karanjia Division was merged in Bankbal Irrigation Division No. II, Rairangpur and the said Division was again renamed as Deo Canal Division and after creation of the Division the said Karanjia Subdivision was under the management No. 2 with effect from 1-10-1991. The management No. 2 did not engage the workmen since 1-10-1991 with a plea that the names of the workmen have not been found place in the N. M. R. Roll with the management No. 2. It is the legal responsibility of the management No. 1 to enlisted the workmen in the N. M. R. Roll and send the name of the workmen to the management No. 2 in which the said Karanjia Irrigation Subdivision was merged. There is no fault with the workmen in preparing N. M. R. Roll. Both the managements have not acted in accordance with the provisions under Section 25-F of the industrial disputes Act by not providing employment to them. So the termination of the workmen are illegal and unjustified in the eye of law and against the principle of natural justice. So they have raised an Industrial Dispute before the labour authority and when the conciliation failed, the matter has been referred to this Court for adjudication. Hence, they have prayed for reinstatement in service with full back wages.

4. Both the managements appeared and filed separate written statements. According to the management No. 1 the workmen might have been engaged in survey and investigation work of Deo Irrigation Project under Karanjia Investigation Subdivision during the year 1983 to 1987, when the investigation work of Deo Irrigation Project was in progress under Mayurbhanj Irrigation Division. The survey and investigation work was continued till the end of March, 1989. After the survey work was abandoned due to non-approval of project by Government as well as stoppage of funds, the staff of the said Subdivision were transferred to the control of Bankbal Irrigation Division, Rairangpur with effect from 10-6-1991 and subsequently it was renamed as Deo Canal Division, Rairangpur.

The workmen were under different category of labour and payment were made to them through N. M. R. forms as per their attendance for working days and as per C. P. W. D. Code. After merger of the Subdivision with Bankbal Irrigation Division, the workmen might have not gone to Rairangpur. They might have left their job in their sweet will. So the retrenchment of the workmen do not arise at all by this management. The management No. 1 has never violated the provisions of the Industrial Disputes Act. The workmen have left their job on their sweet will. The Government has imposed ban on engagement of N. M. R. So the re-engagement of the workmen would not be proper. So in this background the management has prayed for answering the reference in his favour.

5. According to the management No. 2 it was started functioning with effect from 1-10-1991, after taking over charges of Deo Irrigation Project from defunct Bankbal Irrigation Division No. II, Rairangpur. None of the workmen were transferred by the defunct Bankbal Irrigation Division No. II, Rairangpur at the time of handing over the charges. The fact of engagement of workmen is not known to this Division, i.e. management No. 2. Now, there is banned order of the Government for fresh engagement of N. M. R. So when the claim of the workmen are not related to this management, it is liable to be rejected against him.

6. In view of the above pleadings of the parties, the following issues have been settled.

ISSUES

- (i) Whether the termination of services of Shri Man Mohan Nayak, Rajendra Kumar Mohanta, Shri Gagan Kumar Nayak, Shri Purusottam Patra, Shri Narendra Nath Mohanta, Shri Banshidhar Tarai and Shri Khageswar Naik with effect from 1-10-1991 by the Executive Engineer, Deo Head Works Division (Deo Canal Division), Karanjia/Executive Engineer, Mayurbhanj Irrigation Division, Baripada is legal and/or justified ?
- (ii) If not, to what relief are the workmen entitled ?

7. In order to substantiate their plea, the workmen have examined one of the workman namely Man Mohan Nayak as W. W. 1 and proved documents marked as Exts. 1 to 4. Similarly, the managements have examined two witnesses altogether on their behalf out of which M. W. 1 is the management No. 1 whereas M. W. 2 is the management No. 2. The M. W. 1 has proved the document marked as Ext. A.

FINDINGS

8. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience. W. W. 1 deposes that they were engaged by the management No. 1 as N. M. R. from 1-6-1983 to 1989 in different span under Karanjia Irrigation Subdivision, Karanjia and from 21-3-1989 to 30-9-1991 as D. L. R. After merger of Karanjia Irrigation Subdivision with Bankbal Irrigation Division No. II, Rairangpur, their engagement have been denied. It is now named as Deo Head Works Division, Karanjia i.e. management No. 2. Since 1-10-1991 they were not engaged in duty with a plea that their names were not found place in the muster roll in the management No. 2. At the time of termination of service the provisions of Section 25-F of the Industrial Disputes Act has not been followed at all by the managements. So they are entitled to be reinstated in service with full back wages.

9. Perused the documents marked as exhibits on behalf of the workmen and the management. Both the managements have cross-examined the W. W. 1 but nothing has been elicited from his mouth to disbelieve his sworn testimony to show that they were not working as N. M. R. and have not completed the statutory period to attract the provisions of the Industrial Disputes Act. Admittedly Section 25-F of the Industrial Disputes Act has not been followed in this case. The M. W. 1 has submitted the xerox copy of the ban order of the Government regarding engagement of

N. M. R. etc. But it has been argued by the workmen that for such ban order is for engagement of fresh N. M. R. but not for the old N. M. R. who were continuing in service and not regarding non-compliance of mandatory provisions of Section 25-F of the Industrial Disputes Act. The evidence of M. Ws. 1 and 2 nowhere helpful to show their action in non-engaging the workmen with effect from 1-10-1991 is justified. When the engagement of the workmen as N. M. R. and D. L. R. is not disputed and completion of statutory period of working to attract the provisions of Section 25-F of the Industrial Disputes Act is also not dispute and when such provision has not been followed while terminating their services with reference to the documents available in the case record, I am of the opinion that it is a fit case to allow the claim of the workmen in respect of reinstatement in their services as the termination of their service by the management is illegal and not justified.

10. Regarding back wages when the workmen had not worked for the management during the period in question and they had not proved by cogent evidence that they were not gainfully employed elsewhere payment of back wages is not justified. Further in view of the settled principle of law that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. However on careful consideration of all the materials available, I am of the opinion that instead of giving full back wages, a lump sum amount of Rs. 10,000 to each workman as compensation in lieu of full back wages will meet the ends of justice in this case. Hence, both the issues are answered accordingly.

11. Hence ordered :

The termination of services of Shri Man Mohan Nayak, Rajendra Kumar Mohanta, Shri Gagan Kumar Nayak, Shri Purusottam Patra, Shri Narendra Nath Mohanta, Shri Bansidhar Tarai and Shri Khageswar Nayak with effect from 1-10-1991 by the Executive Engineer, Deo Head Works Division (Deo Canal Division), Karanjia/Executive Engineer, Mayurbhanj Irrigation Division, Baripada is neither legal nor justified. The above named workmen are entitled to be reinstated in service with a lump sum amount of Rs. 10,000 (Rupees ten thousand) only to each workman as compensation in lieu of full back wages. Both the managements are directed to implement this Award forthwith.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
24-6-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
24-6-2010
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government
