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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd September 2010

No. 8047—li/1(SS)-50/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st August 2010 in Industrial Dispute Case No. 13 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Notified Area Council, Hirakud, Dist. Sambalpur and their workman Shri Lalu Banchhor and 31 Ex-Sweepers and Sweepresses 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. 13 OF 2007

Dated the 21st August 2010

Present :

Miss Sarojini Mahapatra, M.A., LL.B.,  
Presiding Officer,  
Labour Court,  
Sambalpur.

Between :

The Management of the  
Executive Officer,  
Notified Area Council,  
Hirakud, Dist. Sambalpur.

.. First-party Management

And

Their Workmen,  
Shri Lalu Banchhor and 31 ex-Sweepers  
and Sweepresses,  
C/o Shri Gokul Meher,  
General Secretary,  
Sambalpur District Municipality  
Employees Union, Marwaripara,  
Dist. Sambalpur.

.. Second-party Workmen

## Appearances :

Self	.. For Firsty-party Management
Shri Gokul Meher, General Secretary.	.. For Second-party Workmen

## AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department 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 (14 of 1947) in memo No. 2931 (5), dated the 31-3-2007 to adjudicate the Schedule questions.

“Whether the action of the management of Notified Area Council, Hiraakud, District Sambalpur in removing Shri Lalu Banchhor and 31 other Sweepers and Sweepresses from service with effect from the 9th July 2004 is legal and/or justified ? If not, to what relief these workmen are entitled ?”

## 2. The case of the second-party workmen stated as follows :

The second-party workmen were working as Sweeper/Sweepress continuously under the first party-management till the date of their retrenchment, i.e. on the 9th July 2004. They were working to the satisfaction of the management on the 9th July 2004, they were verbally removed from their services by the management as one private organisation namely, BISWA has taken the contract of cleaning work within the area of the first party-management. Neither the management had served any notice one month prior to the retrenchment nor the management provided retrenchment compensation, nor any legal dues such as gratuity, leave pay, etc., so the workmen protested individually and through their Union and demanded to take them back in service but the management did not pay any heed towards them. So the workmen made complaint before the Labour Officer, Sambalpur. But the matter has not been subsided between the parties before the Labour Officer, Sambalpur. The Councils of the Notified Area Council in the meeting held on the 30th June 2004 took the decision to disengage the workmen as per the Order No. 30651, Dt. 15-12-2000 of Government of Orissa in Housing & Urban Development Department to disengage the D.L.Rs./N.M.Rs. engaged after the 29th May 1997. Accordingly the Council of the N.A.C. in its meeting held on the 30th June 2004 took the decision to disengage the workmen. Further it is alleged that the management has violated the provision of Section 25-F of the Industrial Disputes Act, 1947 and the other provisions of law for which the retrenchment made by the management is illegal and void *ab initio*. So the workmen made a prayer that the retrenchment of the second-party workmen be declared as illegal and void *ab initio* and the first-party management be directed to reinstate the workmen with full back wages and all service benefits and also for other reliefs.

3. The management appeared and filed written statement stating that the first-party management is a statutory authority of the Government of Orissa and is governed by the Orissa Municipal Act, 1950. So the entire administration of the first-party management is governed by

State law and is controlled by the Government of Orissa. It comes under the Local Self Government as per the Constitution of India. The first-party management have got powers to undertake and carry out the works *inter alia* relating to health, comforts and convenience of the public and have any power to create any post with the knowledge of the State Government. In this process in case of emergency the first-party management has got the power to make temporary appointment in order to meet the emergent situation.

Further, it is alleged in the written statement that when any permanent Sweepers and Sweepresses of the first-party management remains absent on leave or otherwise Casual Sweepers/ Sweepresses are engaged in that place and the Supervisor who is in charge of cleaning can engage any person to do the work for the day of the absentee. In this process the second-party workmen 32 in numbers were engaged as casual unskilled labourers and were working with the first-party management. They were being engaged at different intervals as and when required and were never in continuous service. Moreover, none of them worked for a continuous period of 240 days in any 12 (twelve) months calendar year. The wages of those second-party workmen were being paid as per the wages fixed by the Government from time to time. None of the second-party workmen were employed in existing vacancy of the first-party management but they were absolutely casual workers and were being engaged as and when required.

4. Further, it is alleged in the written statement that the Government decided that the job of cleaning and sweeping should be contracted out in order to reduce the financial burden of the Urban Local Bodies and to improve such services and accordingly instructed all the Urban Local Bodies of the State not to engage the casual workers or daily rated workers any more even for a single day. Accordingly when the first-party management did not receive any sanction from the Government regarding casual employment no person in any capacity was engaged by the first-party management thereof. So the first-party management is doing the cleaning and sweeping works through private agencies after the aforesaid decision of the Government. As per the provisions of the Orissa Municipal Act no person even if appointed for a temporary basis have right to claim for regularisation and the first-party management have been statutorily barred to regularise any person in their organisation/establishment. Moreover, if any person is in the temporary basis his service is liable to be terminated without any notice and without assigning any reason thereof as per the provision of law.

5. Further, it is alleged that this case is liable to be abated in view of the provisions of the Orissa Municipal Act. The second-party workmen were never working continuously in the service of the first-party management but were working very casually as and when required by the first-party management. Their engagement being conditional to the absence of the regular workmen, they do not have any right to claim employment. So the question of retrenchment of the second-party workmen does not arise at all. The workmen did not have the prerequisite eligibility to claim any benefits under Section 25-F of the Industrial Disputes Act as they were never employed for 240 days in any twelve calendar months and the provisions of Section 25-B of the Industrial Dispute Act is not applicable for the second party-workmen. Admittedly in the process of contracting out one BISWA was given the contract of cleaning work and BISWA is not under the contract as on this date and there are so many organisations which are given works of cleaning with the area of the first-party management. The second-party workmen are not deserving any benefits from the first-party management as they are not the regular and permanent workers of the first-party management. So the first-party management made a prayer to pass Award in favour of the first-party management.

6. The rejoinder filed by the second-party workmen claiming the benefits as they narrated in their statement of claims.

7. Out of the pleadings of the parties the following issues have been framed for adjudication:—

#### I S S U E S

(i) “Whether the action of the management of Notified Area Council, Hirakud, District Sambalpur in removing Shri Lalu Banchhor and 31 others Sweepers and Sweepresses from service with effect from the 9th July 2004 is legal and/or justified ?

(ii) If not, what relief these workmen are entitled to ?”

8. Both the parties have filed their documents in support of their respective cases

9. On behalf of the second-party workmen W.W. 1 Lalu Banchhor has only been examined.

On behalf of the first-party management M.W. 1 Shri Sachidananda Satapathy, the Executive Officer of Hirakud N.A.C. is examined.

#### F I N D I N G S

10. *Issue No. (i)*—The first-party management, i.e. Notified Area Council, Hirakud, Dist. Sambalpur is a statutory authority of Government of Orissa and is governed by Orissa Municipal Act, 1950. The entire administration of the first-party management is governed by State law and is controlled by the Government of Orissa. The Notified Area Council, Hirakud is a Local Self Body and is statutorily empowered to undertake and carry out works relating to health, comfort and convenience of the people. So the creation of the posts under the Notified Area Council, Hirakud, Sambalpur is as per the sanction of the strength of the Government and as alleged the Notified Area Council has got no independent power to create any post.

In order to meet the emergent situation, the Notified Area Council has got power to engage labourers for cleaning and scavenging on purely temporary basis for a limited period and their wages are paid basing on the work of the casual labourers as fixed by the Government from time to time. The second-party workmen claim that they were appointed as Sweepers and Sweepresses by the first-party management on different dates, since the date of their appointment they were working as such continuously till the 9th July 2004 when their services were terminated by way of refusal of employment. On the other hand these workmen admitted that the first-party management had given contract to one organisation called BISWA for cleaning and sweeping its Notified Area, Hirakud. Nearly because the first-party management was directed by the Government of Orissa in Housing & Urban Development Department by their Order No. 36051, dated the 15th December 2000 to disengage the D.L.R./N.M.R. who were engaged after the 29th May 2007 and there is no document in support of these above fact. The Council of N.A.C., Hirakud convened a meeting, dated the 30th June 2004 and took decision to disengage the workmen forthwith for which the second-party workmen were removed from their services with effect from the 9th July 2004. The second-party workmen claim that they were engaged as Sweeper and Sweepress by the

first-party management on different dates and since the date of their engagement they were continuously working till their date of disengagement with effect from the 9th July 2004. Moreover, the second-party workmen claim that they were continuously working for the management for more than 240 days in a calendar year. They were removed from their services by the first-party management without complying the requirement of Section 25-F of the I. D. Act. No prior notice to one month was served nor any payment towards one month salary was paid in lieu of notice nor any payment of compensation was given to them. The second-party workmen relied on the documents. Ext. W.1 is the copy of the letter No. 615, dated the 28th March 2005. This letter discloses that the Executive Officer, Notified Area Council, Hira kud made a prayer for permission for payment of compensation to the D.L.Rs. disengaged by the Hira kud N.A.C. Ext. W.2 is the copy of letter No. 693, dated the 16th April 2005 is the similar letter. Ext. W. 3 is the copy of the letter No. 874, dated the 24th May 2005 regarding the permission for payment of compensation to the D.L.Rs. disengaged by the Hira kud N.A.C. Ext. W. 4 is the extract of the Resolution dated the 29th June 2005. Ext W. 5 is the copy of letter No. 2653, dated the 30th June 2005. Ext. W.6 is the copy of the letter No. 1085, dated the 5th July 2005. Ext. W. 7 is the copy of the representation made by all these workmen before the Executive Officer, N.A.C., Hira kud.

11. As alleged from the case of the first-party management the members of the second-party workmen 32 in numbers were engaged as casual unskilled labourers and were working as and when required by the Notified Area Council, Hira kud in the capacity of scavengers, but none of the second-party workmen have worked for a continuous period of 240 days in a calendar year. The Government of Orissa decided that the cleaning and sweeping work of the Urban Local Bodies required to be outsources in order to reduce the financial burden and since the 9th July 2004 no casual workers or daily rated workers are being engaged even for a single day. Neither there is any sanctioned post nor any job is available for any person other than the permanent employees appointed by the Notified Area Council. M.W.1 the Executive Officer, Hira kud N.A.C. stated in his evidence that no person has got a right to claim regularisation under any Statutory Bodies save and except upon a sanction of the Government. The first-party management being a Statutory Body can not absorb any person without the leave of the Government. The documents filed by the management should be scrutinised in a careful manner. Ext. M. 1 is the xerox copy of letter No. 3024, dated the 2nd February 2005 regarding filling up of vacant sanctioned posts of Sweepers/Sweepresses in Urban Local Bodies. Ext. M.1 further discloses "the job of cleaning and sweeping should be contracted out. This would reduce the financial burden of the Urban Local Bodies as well as result in improvement of services". Ext. M. 2 is the xerox copy of the letter No. 16447, dated the 11th August 2004 received by the Executive Officer from the Government which discloses "if any D.L.Rs./M.N.Rs., J.Es./Assts., are allowed to work in the vacant posts, their appointments should immediately be cancelled otherwise the amounts towards salary particulars in which Government have posted personnel may be surcharged on the Council and Executive Officer". Ext. M. 3 is the xerox copy of the letter No. 41813, dated the 31st December 1997. Basing on this letter received from the Government, the Executive Body meeting convened in the Executive Office, N.A.C., Hira kud and accordingly they have taken the decision to disengage the casual labourers (second -party workmen) since the date of 9th July 2004.

12. Although, the workmen claim that they were working continuously and completed their work for 240 days in a calendar year, no such document filed by the workmen nor by the management. No muster roll nor any attendance register towards the claim of the workmen filed in this case in order to establish their continuous work for 240 days in a calendar year, so the plea taken by the second-party workmen does not appear to be relevant. On the other hand it is the specific case of the management that these workmen were engaged as casual and unskilled labourers and they were working as and when required by the N.A.C., Hirakud. Admittedly they were casual and unskilled workers/labourers.

13. It is the specific reference made by the Government that “whether the action of the management of Notified Area Council, Hirakud, Dist. Sambalpur in removing Shri Lalu Banchhor and 31 other Sweepers and Sweepresses from service with effect from the 9th July 2004 is legal and/or justified?”. This Court can not pass any order beyond the schedule questions. As alleged from the evidence on record as well as the documents filed by both the parties, the action taken by the management of Notified Area Council, Hirakud, Dist. Sambalpur only based on the documents, i.e. Ext. M. 1 and Ext. M. 2.

14. On the other hand the second-party workmen have failed to establish their case as per their plea. When the second-party workmen have not completed their work for 240 days continuously in a calendar year, there is no need to comply the Section 25-F of the I. D. Act. So in view of the said facts and circumstances the action of the management of Notified Area Council, Hirakud, Dist. Sambalpur in removing Shri Lalu Banchhor and 31 other Sweepers and Sweepresses from service with effect from the 9th July 2004 is legal and justified, Accordingly the issue No. (i) is answered.

15. *Issue No. (ii)*—In view of such above facts and circumstances the second-party workmen are not entitled to get any relief in this case. Hence the following Award :

#### AWARD

The reference is answered on contest but in the circumstances without cost. The action of the management of Notified Area Council, Hirakud, Dist. Sambalpur in removing Shri Lalu Banchhor and 31 other Sweepers and Sweepresses from service with effect from the 9th July 2004 is legal and justified and the second-party workmen are not entitled to get any reliefs in this case.

Dictated and corrected by me.

S. MAHAPATRA  
21-8-2010  
Presiding Officer  
Labour Court  
Sambalpur

S. MAHAPATRA  
21-8-2010  
Presiding Officer  
Labour Court  
Sambalpur

By order of the Governor

P. K. PANDA

Under-Secretary to Government