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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd September 2010

No. 8072-li/1-(S)-2/2009-L.E.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th June 2010 in I. D. Case No. 8 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Hirakud Power System under O.H.P.C. Ltd., Burla and its workman Shri Rabindra Gardia 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.8 OF 2009
Dated the 11th June 2010

Present :

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

Between :

The Management of Hirakud Power System .. First party-Management
under O. H. P. C. Ltd., Burla, Dist. Sambalpur

And

Their Workman, Shri Rabindra Gardia, .. Second party-Workman
At Kardola, P.O. Chiplima, Via Burla,
Dist. Sambalpur.

Appearances :

For the First party-Management .. Shri K. Swain, Autho. Representative

For the Second party-Workman .. Self

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under 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.5708 (5), dated 29-6-2009 to adjudicate the Schedule questions :-

“Whether the termination of services of Shri Rabindra Gardia, Daily Wages Labourer by way of refusal of employment with effect from September, 2005 by the management of Hirakud Power System, Orissa Hydro Power Corporation Ltd., Burla, Dist. Sambalpur is legal and/or justified ? If not, to what relief of the workman is entitled ?”

2. As per the claim statement of the workman Shri Rabindra Gardia, he was working as a Casual Labourer termed as N. M. R. in replacement of Copper conductor into Aluminium conductor of Cross Regulator Line, Water Supply Works and sometimes engaged in cutting of bushes in Chiplima Colony area under the direct control and supervision of Electrical Operation Division, Chiplima during 1984–1987 and during the period of December, 1998. Later on the workman was re-engaged in his duty from 2005-2006. During the tenure of his service, he was working to the satisfaction of the Assistant Electrical Engineer, Chiplima Power House for which the Assistant Electrical Engineer, Chiplima furnished one conduct certificate of excellence showing that he is a sincere, hard working, obedient and punctual in his duty on 17-5-1987. Further it is alleged that the workman Shri Rabindra Gardia was terminated from his service without assigning any reason and without serving prior notice to that effect.

The Workman Shri Gardia belongs to Scheduled Caste Community and hails from a very poor family consisting five dependants including his aged and ailing mother. It is very difficult on his part to maintain a family in such condition. So the workman made a representation to the Deputy Labour Commissioner, Sambalpur Division for which a joint enquiry was conducted by him with the Management on 19-9-2003 and on 23-9-2003 but there is no effect. The management has terminated the workman from his service without assigning any reason or framing any charge against him. During the tenure of his service he was not paid in respect of his remuneration, gratuity and other benefits. So the workman made a prayer that the management should be directed to reinstate the workman in his service and for other benefits.

3. The first-party management filed written statement and contested the case. As per the written statement, the case as laid is not maintainable in the eye of law. This case is barred by limitation and the workman has filed the statement of claim stating the false allegation against the management. The workman was never engaged in any manner by the first party-management for any work in Chiplima Colony area during the period of 1984–1987 and during 1988. It is also denied that the workman was again re-engaged in his duties during the period 2005 to 2006. The Assistant Engineer never issued any such certificate regarding experience and conduct of the alleged workman and the said certificate has not been issued by this office as no record is available in the office regarding issuance of such certificate. The said document also does not indicate the name of Assistant Engineer who has issued such document. The documents might have been issued in his private capacity. So no reliance can be placed on such documents on the claim of the workman. There is no such record to show that the workman was engaged by the management and his services were terminated. Moreover there is no such record available with the management to show that the workman was engaged by the management. So there is no question of termination of his service. There is no question of backdoor entry of anybody in service of the management in a illegal and irregular manner. When the workman was not an employee of the management there is

no question of payment of his remuneration, gratuity and other benefits. It is further alleged from the written statement that the workman claims that he was working during the year 1984–1987 which is by now twenty-five years old. Delay of twenty-five years raising this dispute itself is a ground of rejection of his claim. Delay and laches kill his own case in due course of time and matters cannot be adjudicated after lapse of twenty-five years. So the management prayed to reject the claim of the workman as he is not entitled to get any relief in this case.

4. Rejoinder filed by the workman denying all the case of the management and claimed the relief as per his prayer.

5. Out of the pleadings of the parties, the following issues have been framed for adjudication :

ISSUES

- (i) “Whether the termination of services of Shri Rabindra Gardia, Daily Wages Labourer by way of refusal of employment with effect from September, 2005 by the management of Hirakud Power System, Orissa Hydro Power Corporation Ltd., Burla, Dist. Sambalpur is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?”

6. The workman has filed documents in support of his case whereas no document has been filed on behalf of the management.

7. On behalf of the workman, two witnesses have already been examined. W. W. 1 Shri Rabindra Gardia the workman, W. W. 2 Shri Bhagabatia Pradhan who was working as a Labourer with one Shri Rangila Ray, Operator.

On behalf of the Management two witnesses have also been examined. M. W. 1 Shri Saroj Kumar Panda, The Manager, Generation Division, Chiplima, M. W. 2 Shri Binyamin Limma, Deputy Manager, Electrical.

FINDINGS

8. *Issue Nos. (i) and (ii) :—* In order to facilitate this case issue No. (i) and (ii) should be taken together for consideration. The case of the workman Shri Rabindra Gardia leads to the fact that he worked as a casual labourer termed as N. M. R. in replacement of Copper conductor into Aluminium conductor of Cross Regulation Line, Water Supply Works and sometimes engaged in cutting of bushes in Chiplima Colony area under the direct control and supervision of Electrical Operation Division, Chiplima during 1984–1987 and during December, 1998. Later on, the workman was re-engaged in his duty from 2005–2006. Then the management terminated the workman from his service without assigning any reason. The workman obtained one good conduct certificate on dated 17-5-1987 from the Assistanat Electrical Engineer of Chiplima Power House. As per the case of the management the workman was never engaged in any manner by the management for any work in Chiplima Colony area during the period 1984–1987 and 1988. He was never re-engaged during the period from 2005-2006. The conduct certificate might have been issued to the workman in his private capacity. So as per the case of the management no reliance can be placed on such documents Ext. W-4 and Ext. W-6.

9. As per the schedule question “whether the termination of services of Shri Rabindra Gardia, Daily Wages Labourer by way of refusal of employment with effect from September, 2005 by the management of Hirakud Power System, Orissa Hydro Power Corporation Limited, Burla, Dist. Sambalpur is legal and/or justified. If not, what relief the workman is entitled to ?” The workman filed some documents which are marked as Exts. W.1 to Ext. W.7. Ext. W.1 is the xerox copy of temporary pass. Ext. W.2 is the xerox copy of the application dated 5-4-1999 filed by the workman Shri Rabindra Gardia. Ext. W.3 is the application filed by the workman Shri Rabindra Gardia on dated 7-8-2007 addressing to the Hon’ble Minister, Shri Jayanarayan Mishra, Commerce & Transport and Labour & Employment Department, Government of Orissa. Ext. W.4 is the certificate issued by the Assistant Engineer, Electrical, Chiplima Power House, Chiplima in favour of the workman. Ext. W.5 is the application placed by the workman Shri Rabindra Gardia before the M. L. A., Sambalpur. Ext. W.6 is the xerox copy of certificate issued by Subdivisional Officer, Main Subdivision-I, O. H. P. C., Chiplima. Ext. W.7 is the xerox copy of letter dated 10-8-2009 placed by the workman Shri Rabindra Gardia addressing to the Assistant General Manager, Electrical, Hirakud Power System, Chiplima for his engagement.

10. The workman in his evidence stated that he was working as a N. M. R. under the direct control and supervision of Electrical Operation Division, Chiplima during 1984–1987 and during December, 1998 and later on he was re-engaged in 2005-2006 whenever the authority required his presence as an N. M. R. The workman has not filed any document regarding his appointment nor filed any documents regarding his wages. Moreover he claims that he was working as a Daily Wages Labourer. W. W. 2 stated that he knows the workman who was working at Switch Yard of the management from 1984 to 1987. W. W. 2 was working as a Helper with one Rai Babu, Operator. He has further stated that the workman was working and cleaning the grasses inside the compound of the office of the Power House.

11. Admittedly, the workman has not stated the exact date of his termination from service. He has not given the exact date and month when he got his job as Daily Wages Labourer nor stated when he engaged as N. M. R. by the management.

12. M. W. 1 Shri Saroj Kumar Panda, Manager, Generation Division, Chiplima stated in his evidence that he has never seen the workman Shri Rabindra Gardia nor detected any document nor any register maintained in the office to show that the workman was working as N. M. R. at Chiplima Division. Previously it was under Government which was known as Orissa State Electricity Board. After privatisation, it becomes Orissa Hydro Power Corporation. There is no such Muster Roll for the concerned period, i. e. for the period from 1984 to 1987 nor for the period from 2005 to 2006 to know whether the workman after putting his signature on the Muster Roll, was drawing his monthly salary from the management. The workman has also not filed any documents regarding payment of wages by the management. As per the evidence of M. W. 2 by filing the gate pass Ext. W. 1 the workman cannot claim that he was a regular N. M. R./D. L. R. employee of the management. Moreover, the workman has not filed any documents to show that he has worked for more than 240 days during any calendar year. M. W. 2 further stated that the xerox certificate, i. e., Ext. W. 6 dated 29-8-2005 is not an authenticated document unless the original copy of the same is produced.

M. W. 2 denied his signature on Ext. W. 6. As per his evidence the rubber seal appears on Ext. W.6 is a manufactured one. In this regard he has stated that on 29-8-2005 when he was about to leave Chiplima after packing his luggage for his training deputation to Moscow, Russia, some nearby villagers to Chiplima came to him and requested him for issue of certificate which they will use to get employment elsewhere. So in good faith he issued some certificate to help the poor people not in official capacity but on a personal capacity who were identified by the Labour Contractors to have worked in the Chiplima (O. H. P. C.) area in time to time. So it is the evidence of M. W. 2 that it is not possible to know whether the certificate Ext. W. 6 filed by the workman is one of them. The labour contractor had engaged some labourers to work at different times. M. W. 2 being the responsible officer of the management has admitted that he has issued some documents out of which Ext. W. 6 is one of them. It appears from Ext. W. 6 that M. W. 2 knows the workman since 2003 as a hard labourer. Moreover it is reflected in Ext. W. 6 that the workman is an obedient and punctual in work and was working as Man-mulia (Labourer) in this organisation (management) as a workman in temporary basis. So the previous evidence led by M. W. 2 is not trustworthy which prevails the contents in Ext. W. 6. Therefore no reliance can be placed on the evidence of M. W. 2 that he does not know the workman Shri Rabindra Gardia and the signature and the rubber seal of the office appears to be the signature of M. W. 2 and the said seal is the office seal.

13. Admittedly the workman is a very poor man and belonged to Scheduled Caste Community and living in a wretched condition with his family members and ailing mother. The workman obtained the temporary gate pass from Subdivisional Officer, Chiplima O. H. P. C. Subdivision to enter inside the office area as per Ext. W. 1. Ext. W. 1 is also bear the office seal. Moreover the workman has obtained the certificate Ext. W. 4 from which it is apparent that "Rabindra Gardia the workman has worked as casual labourer in replacement of Copper conductor into Aluminium conductor of Cross Regulator Line, Water Supply Works and sometimes in cutting bushes in colony area during the period 1984–1986. This engagement was not continuous during these period. His work and conducts were good". The Assistant Engineer, Chiplima Power House, Chiplima has issued this certificate Ext. W. 4 from which it is clear that the workman was working as a Casual Labour in the management. When the workman was retrenched from service, he requested the management for his re-engagement in service by filing different applications before different dignitaries. From the evidence on record as well as from the documents it is clear that the workman was working as Daily Wages Labourer being engaged by the management. So it is obvious not to maintain any Muster Roll nor any register for payment of wages to the workman by the management. It is also apparent from the evidence of M. W. 2 that the contractor also engaged some labourers to do some works for the management. However, after going through the evidence on record it cannot be said that the workman was never working for the management. The workman being a Labour Class people only wants to do some labour work inside office area of the management. The responsible officer of the management who has issued the certificate to the workman proves that the workman is a sincere, punctual and good worker. It is also clear that the workman has rendered some service to the management. In the fact and circumstances it can safely be concluded that being the good, punctual

and obedient worker as per Ext. W. 4 and Ext. W. 6, the workman is entitled to get relief. Accordingly the above issues are answered. Hence the following Award.

AWARD

The reference is answered on contest but without any cost. The termination of services of Shri Rabindra Gardia, Daily Wages Labourer by way of refusal of employment with effect from September, 2005 by the management of Hirakud Power System, Orissa Hydro Power Corporation Ltd., Burla, Dist. Sambalpur is illegal and unjustified. So the workman is entitled to get relief. Therefore the management is directed to reinstate the workman as Daily Wages Labourer in the management within two months from the date of publication of the Award in the *Orissa Gazette*, which needs for the ends of justice.

Dictated and corrected by me.

S. MAHAPATRA
11-6-2010
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
11-6-2010
Presiding Officer
Labour Court
Sambalpur

By order of the Governor
P. K. PANDA
Under-Secretary to Government