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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th September 2010

No. 8148—li/1(BH)-30/2006-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st May 2010 in I.D. Case No. 10 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Dispute between the Management of M/s Eastern Minerals & Alloys Pvt. Ltd., Bamnipal, Ferro Alloys Plant, Baliparbat, Keonjhar and its Workman Shri Lal Mohan Das, Heavy Vehicle Driver 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. 10 OF 2007

The 31st May 2010

Present :

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

Between :

The managements of .. First-party Management
1. The Managing Director,
M/s Eastern Minerals & Alloys Pvt. Ltd.,
Bamnival Ferro Alloys Plant,
P.O. Baliparbat, Keonjhar.
2. The management of
Tata Iron and Steel Co. Ltd.,
Ferro Alloys Plant, Keonjhar.

And

Its workman Shri Lal Mohan Das, .. Second-party Workman
Heavy Vehicle Driver,
C/o. General Secretary,
North Orissa Workers' Union,
Orampara, Rourkela-12,
Dist. Sundargarh.

Appearances :

| | |
|---|---|
| None | .. For the First-party Management No. 1 |
| Shri P. K. Mohanty & Associates | .. For the First-party Management No. 2 |
| Shri Sanatan Biswal, Secretary, North Orissa Workers' Union. | .. For the Second-party Workman |

AWARD

The 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. 2768-LE., dated the 24th March 2007 for adjudication of the Schedule questions :

“Whether the action of the management M/s Eastern Minerals & Alloys Pvt. Ltd., Bamnipal Ferro Alloys Plant, Baliparbat, Keonjhar in terminating the services of Shri Lal Mohan Das, Heavy Vehicle Driver with effect from 27-12-2002 is legal and/or justified ? If not, to what relief Shri Das is entitled ?”

2. As per the statement of claim of the second-party workman Shri Lal Mohan Das, the first-party management No. 1 i.e. M/s Eastern Minerals & Alloys Pvt. Ltd., Bamnipal Ferro Alloys Plant, P.O. Baliparbat, Dist. Keonjhar is a Transport Contractor under the management of Tata Iron & Steel Co. Ltd., which is having a systematic activity carried on by co-operation between itself and its workmen for the purpose of transporting the raw materials as well as the finished products of TISCO. The first-party management No. 1 has employed a number of employees for smooth functioning of its activities and the second-party is one of such employee who is a workman within the meaning of Section 2 (s) of the I. D. Act. As alleged, the second-party workman joined the services of the first-party management as a Heavy Vehicle Driver in the year 1992 as temporary basis and subsequently the management regularised the service of the workman in the year September 1995. The workman was terminated from service on 27-12-2002 without any written order. The second-party workman discharged his responsibilities with utmost care and sincerity as well as honesty during his service career. The second-party workman was never served with any charge sheet nor any domestic enquiry was conducted against him nor he was proceeded with any disciplinary action till the date of termination. The second-party workman was working under the first-party management No. 1 from the year March 1992 continuously without any interruption or break in service till the termination date i.e. on 27-12-2002. The first-party management No. 1 had not given any notice to the second-party workman nor had given any written order as to the termination of his service and the reason of such illegal termination is best known to the first-party management No. 1. So the refusal of employment is arbitrary and illegal and is nothing but retrenchment as defined in Section 2 (00) of the Industrial Disputes Act, 1947. The first-party management No. 1 is guilty of violation of the statutory provision of Section 25-F & 25-G of the I. D. Act. Moreover, the first-party management had not given any retrenchment compensation nor any notice or notice pay in lieu of such notice nor followed the basic principle of First Come Last Go or Last Come First Go while retrenching the second-party workman. So the entire action of the first-party management No. 1 is arbitrary. The second-party workman is entitled to be reinstated in his service with effect from March 1992 with full back wages and all other consequential benefits. The second-party workman after termination of his service is leading a miserable life with his family members since he is going without any employment. So the second-party workman prayed that the action of the

first-party management in terminating his services with effect from 27-12-2002 is neither legal nor justified and he also prayed to direct the first-party management No. 1 to reinstate the second-party workman in his service with effect from March 2002 along with back wages and other consequential full benefits.

3. On repeated call, the first-party management No. 1 did not turn up nor filed written statement. So the first-party management No. 1, i.e. M/s Eastern Minerals and Alloys Pvt. Ltd., Bamnival Ferro Alloys Plant, Keonjhar is set *ex parte*.

4. Written statement filed on behalf of the first-party management No. 2, i.e. TATA IRON AND STEEL CO. LTD., Ferro Alloys Plant, Keonjhar who impleaded as a party in this case as per order Dtd. 8-8-2007.

As per the written statement of the first-party management No. 2 the case is not maintainable in the eye of law. The reference is not applicable to the answering first-party management No. 2. The reference is not maintainable in the eye of law. The reference is beyond the scope of the Industrial Disputes Act. The second-party workman has suppressed the material facts as such he is not entitled to get any relief. The first-party management No. 2 is not the necessary party to this case and the case is bad for misjoinder of necessary party. There is no cause of action to proceed against the first-party management No. 2. There is no allegation nor any prayer made by the second-party workman against the first-party management No. 2.

5. Further it is alleged from the written statement that the workman has made allegation only against M/s Eastern Minerals and Alloys Pvt. Ltd., Bamnival regarding the termination of his service before the Assistant Labour Commissioner-*cum*-Conciliation Officer, Rourkela but not made any allegation against the first-party management No. 2. The first-party management No. 2 was not a party on that conciliation proceeding before the Assistant Labour Commissioner-*cum*-Conciliation Officer. Moreover there is no allegation nor any claim against the present first-party management No. 2 in the schedule of reference made by the Government of Orissa, Labour & Employment Department. So the present first-party No. 2 is not liable to pay any claim as prayed by the workman. The first-party management No. 1, i.e. M/s Eastern Minerals and Alloys Pvt. Ltd., Bamnival is liable to pay being the employer of the workman. The second-party is not a workman under the first-party No. 2 as per the provisions of the I. D. Act. The first-party management No. 2 is not a principal employer against the second-party workman as per the provisions of the I. D. Act.

6. Further it is alleged in the written statement that the first-party No. 1 has executed Transportation Agreement with the first-party No. 2 (TISCO) to ensure safe transportation of raw materials and finished products to and from the Ferro Alloys Plant at Bamnival. Except transportation of the said materials and finished products the first-party No. 1 has no other work or involvement with the first-party No. 2. As per the terms of the agreement the employees of M/s Eastern Minerals & Alloys Pvt. Ltd., i. e. the first-party management No. 1 have no claim in any manner on TISCO the first-party management No. 2. So TISCO the first-party management No. 2 is no way responsible or liable to pay any claim or compensation to the second-party. The first-party management No. 2 is no way responsible or liable to give any benefit to the second-party workman. So the first-party No. 2 prayed that as there is no reference against this first-party No. 2 the workman is not entitled to get any relief from the first-party management No. 2 and as such the case is liable to be dismissed.

7. Rejoinder filed by the workman stating that in view of clause 7 (d) and (e) of the Transportation Agreement between the first-party management No. 1 and the first-party management No. 2, i.e. the Principal Employer, the contractor shall comply all the formalities under the labour laws and

license. The employees are to be paid their wages, overtime, bonus and other legitimate dues. In clause 7 (e), the Principal Employer i. e. TISCO agrees to pay which is the ultimate responsibility of the contractor including statutory payments as enumerated in Clause (d) of the agreement. The principal employer is liable for the payments under Section 25-F of the Industrial Disputes Act. For the purpose of implementation of the Award, it becomes a statutory liability on the part of the Principal employer i.e. the first-party management No. 2 to make payment of the dues.

8. Basing on the pleadings of the parties, the following issues have been framed for adjudication—

ISSUES

- i. “Whether the action of the management M/s Eastern Minerals & Alloys Pvt. Ltd., Bamnival Ferro Alloys Plant, Baliparbat, Keonjhar in terminating the services of Shri Lal Mohan Das, Heavy Vehicle Driver with effect from 27-12-2002 is legal and justified ?
- ii. If not, what relief Shri Das is entitled to ?”

9. During the course of hearing the workman has filed some documents in support of his case whereas the first-party management No. 2 has not filed any document in support of his case.

On behalf of the workman, the workman Shri Lal Mohan Das is only examined as W.W. 1. On behalf of first-party management No. 2 Saroj Kanta Sahu, Manager, Administration has been examined as M.W. 1.

FINDINGS

10. *Issue Nos. i and ii*—All the above issues are taken up together as these are interlinked. It is the specific case of the workman Shri Lal Mohan Das that he was illegally terminated from the service without any reason and without complying the mandatory requirements of the statute. So the workman claims that he is entitled to be reinstated in service with full back wages. As alleged from the statement of claim the second-party workman made the entire allegation against the first-party management No. 1 i.e. the Managing Director of M/s. Eastern Minerals & Alloys Pvt. Ltd., Bamnival Ferro Alloys Plant, Dist. Keonjhar. It is also apparent from the schedule reference that whether the action of the management of M/s. Eastern Minerals & Alloys Pvt. Ltd., Bamnival Ferro Alloys Plant, Baliparbat, Dist. Keonjhar in terminating the service of the second-party workman Lal Mohan Das, Heavy Vehicle Driver with effect from 27-12-2002 is legal and justified. So the second-party workman made the entire allegation against the first-party management No. 1. The onus lies on the first-party management No. 1 to prove this case. Since the first-party management No. 1 did not turn up nor filed any written statement, he was set *ex parte* as per Order Dt. 4-11-2009. There is no allegation in the statement of claim against the first-party management No. 2.

11. Let us scrutinise the evidence led by the M.W. 1 for the management No. 2 Saroj Kanta Sahu who is working as the Manager, Administration of the management No. 2. It is alleged from the evidence that he does not know the workman Lal Mohan Das. He came to know that the second-party workman has filed this case against the management. He further stated in his evidence that he verified the office register, service records and other documents of the first-party management No. 2 and found that such type of employee namely Lal Mohan Das was never working in their establishment. The workman has never drawn any salary from the establishment of first-party management No. 2. As alleged from his evidence there is an agreement between the first-party management No. 1 i.e. M/s. Eastern Minerals & Alloys Pvt. Ltd. and the first-party management No. 2 for transportation of raw materials as per Ext. W-6. The Eastern Minerals and Alloys Pvt. Ltd.,

the first-party management No. 1 is an independent establishment and there is no connection with the first-party management No. 2. This witness although was working at Sukinda Chromite Mines but dealing with the affairs of Bamnipal establishment. Further it is alleged from his cross-examination that the management No. 2 and the Chromite Mines of Sukinda are dependant unit but different establishments. To his knowledge the first-party management No. 1 had received the notice from the Court but failed to appear in the Court. It is further alleged from the evidence that he has no liability as per the Contract Labour (Regulation & Abolition) Act. He has no liability as per the said Act. It is his specific evidence that the management No. 1 is the Contractor and M. W. 1 is the Principal Employer. So as per the above Act he is not required to maintain any register of the contract worker. As alleged when the contractor made payment to the workers, as a Principal Employer they are required to be witnessed to those payments. He admitted in his evidence that as per Section 21 (4) of the Contract Labour (Regulation & Abolition) Act, the Principal Employer is liable to make payment to the workers in case, the Contractor has not paid. This witness has nothing to say against the payment nor the termination of the second-party workman from service. As alleged from his evidence he has no knowledge if at the time of termination the workman was paid any compensation.

12. The workman has relied on the documents which are marked as Ext. W-1 to Ext. W-6. Ext. W-1 is the copy of appointment order issued by M/s Eastern Minerals & Alloys Pvt. Ltd., Bamnipal Ferro Alloys Plant, Keonjhar. Ext. W-2 is the xerox copy of E.P.F. slips. Ext. W-3 is the copy of application Dt. 6-1-2003 issued by Lal Mohan Das to the first-party management No. 1 the contractor requesting him to pass order for his reinstatement in service and payment of salary from 27-12-2002 till the date of joining. Ext. W-4 is the complaint made by the workman on Dt. 24-2-2002 for illegal termination from service with effect from 27-12-2002. Ext. W-5 is the copy of failure report. Ext. W-6 is the copy of Transportation Agreement in between the first-party management No.1 and the first-party management No. 2.

13. It is alleged from the evidence of the workman that he joined in the service of the first-party management No. 1 as a temporary Heavy Vehicle Driver in the year 1992 and his service became regularised by the management in the year 1995. He continued in the said post till the termination date i.e. 27-12-2002. It is further alleged from his evidence that he was never served with any charge sheet nor any domestic enquiry was conducted against him nor he was proceeded with any disciplinary action till the termination of his service. As alleged he was a hard worker under the first-party management No. 1 from the year March 1992 till the date of his termination from service with effect from 27-12-2002. The first-party management No. 1 had not given any notice to him nor had given any written order as to the termination of his service. So the second-party workman claims that the first-party managements are guilty in violation of the statutory as well as to the provision of Contract Labour (Regulation & Abolition) Act. Besides that the first-party management had not given any retrenchment compensation nor any notice to the workman while the workman was retrenched from his service. So the workman claims that the entire action of the management are not only whimsical and arbitrary but also inconsistent with the statutory provisions. So the action of the first-party management in refusing employment to the workman with effect from 27-12-2002 in a most arbitrary manner without following the basic principles of natural justice and in violation of the provisions of the I.D. Act and Contract Labour (Ragulation & Abolition) Act. It is apparent from his evidence that he was driving the vehicle of the management during his service period from 1992 to 2002. He was drawing his monthly salary from Bamnipal office of the management No. 1. Admittedly, the first-party management No. 1 i.e. M/s Eastern Minerals &

Alloys Pvt. Ltd. issued appointment letter in favour of the workman which is marked as Ext. W-1. The entire allegation made by the workman against the first-party management No. 1. The first-party management No. 2 has no liability so far as the present claim of the workman is concerned. The workman made a prayer for his reinstatement in his service as well as for his back wages. So the entire evidence adduced by the workman relates to the management No. 1. So after going through the entire evidence on record as well as the documents filed by the second-party workman, it can safely be concluded that the action of the first-party management No. 1 in terminating the services of the second-party workman with effect from 27-12-2002 is illegal and without any basis. So as there is no allegation against the first-party management No. 2 this Court cannot impose any responsibility on the first-party management No. 2 to discharge in case of the second-party workman. The entire liability and responsibility lies with the first-party management No. 1 which is also clear in the reference.

14. Accordingly the second-party workman has proved his documents and established his claim. Since the first-party management No. 1 has not filed written statement nor adduced any evidence, it presumes that the first-party management No. 1 has no mind to proceed with the case and the first-party management No. 1 became set *ex parte*. So the evidence led by the workman is unchallenged and there is no reason to disbelieve on the evidence and documents filed by the workman. There is no good ground shown by the first-party management while the workman was retrenched from his service without giving him any service benefits. In the facts and circumstances it can safely be concluded that the workman has clearly established his case. So he is entitled to get his claim. Accordingly the above issues are answered. Hence the following Award.

AWARD

The reference is answered on *ex parte* basis against the first-party management No. 1 and dismissed against the first-party management No. 2. The action of the management M/s Eastern Minerals & Alloys Pvt. Ltd., Bamanipal Ferro Alloys Plant, Baliparbat, Keonjhar in terminating the services of Shri Lal Mohan Das, Heavy Vehicle Driver with effect from 27-12-2002 is held to be illegal and unjustified. The workman Shri Lal Mohan Das is entitled to be reinstated in service with full back wages. The first-party management No. 1 M/s Eastern Minerals & Alloys Pvt. Ltd., Bamanipal Ferro Alloys Plant, Baliparbat, Keonjhar is directed to reinstate the workman Shri Lal Mohan Das in service with full back wages within three months from the date of publication of the award in the *Orissa Gazette*.

Dictated and corrected by me.

SAROJINI MAHAPATRA
31-5-2010
Presiding Officer
Labour Court, Sambalpur

SAROJINI MAHAPATRA
31-5-2010
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

P. K. PANDA

Under-Secretary to Government
