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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 25th September 2010

No. 8218—li/1(S)-26/1999-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st June 2010 in Industrial Disputes Case No. 30 of 2000 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of Kalinga Iron Works, Matkambeda, (2) Shri B. K. Mohapatra, Contractor, C/o Kalinga Iron Works and its workman Shri Prasanna Kumar Pradhan 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. 30 OF 2000

The 21st June 2010

#### *Present :*

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

#### *Between :*

1. The Technical Advisor, .. First Party—Management  
Kalinga Iron Works,  
At/P.O. Matkambeda,  
Dist. Keonjhar.
2. Shri B. K. Mahapatra, Contractor,  
C/o. Kalinga Iron Works,  
At/P.O. Matkambeda  
Dist. Keonjhar.

And

Their Workman, .. Second Party—Workman  
Shri Prasanna Kumar Pradhan,  
At Mangalpur, P. O. Jagannathpur,  
Dist. Keonjhar.

#### *Appearances :*

Shri P. K. Pattnaik, Advocate .. For the First Party—Management  
Shri S. Biswal, Advocate .. For the Second Party—Workman

## A W A R D

1. 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. 6531 (5)/L.E., Dtd. 18-5-2000 for adjudication on the schedule questions :

“Whether the refusal of employment to Shri Prasanna Kumar Pradhan by Shri B. K. Mahapatra, Contractor, Kalinga Iron Works, Matkambeda with effect from the 25th June 1992 is legal and/or justified ? If not, to what relief Shri Pradhan is entitled ?”

2. The case of the second party workman stated as follows :

Shri B. K. Mahapatra, the first party management No. 2 Contractor is an establishment licensed by the Government of Orissa to undertake certain jobs on contract basis in Kalinga Iron Works, Matkambeda, Dist. Keonjhar. The Management of Kalinga Iron Works is a Public Sector Undertaking of Government of Orissa, engaged in production and supply of sponge pipe and other products, is the Principal Employer within the meaning of Section 2 (g) of the Contract Labour (Regulation and Abolition) Act. The second party workman was being engaged as supply labour in the post of Mechanical Helper for the accomplishment of the contract jobs offered by the Principal Employer. The second party workman was under the direct supervision and control of the Principal Employer, Kalinga Iron Works and the contractor is a commission agent for the second party workman. The second party workman was engaged as Contract Labour by the Contractor Shri B. K. Mahapatra (First party management No. 2).

The second party workman was engaged by the first party management No. 1 from the year 1984 as a supply labour in Kalinga Iron Works through Contractor and continued as such till he was refused the employment on the 25th June 1992. On the 25th June 1992 the first party management No. 1 without any reason refused employment to the second party workman. While refusing the employment by the first party management No. 1 did not serve any notice nor payment of wages in lieu of notice to the second party workman in violation of Section 25-F of the Industrial Disputes Act, 1947. It is further alleged in the case of the second party workman that on the 25th June 1992 a dead body of one Pitabas Mohanty a supply security guard was detected inside the factory premises of Kalinga Iron Works for which there was tension among the supply workers and they stopped the work. On the report of the General Manager, Kaling Iron Works, the police registered a case under Sections 147/323/427/428/149 of I. P. C. and 7A Act and arrested the second party workman on the 26th June 1992 who was falsely implicated in this case. The second party workman was produced before the learned JMFC, Barbil and remained inside the judicial custody for three days in C. R. Case No. 45/1992 and released on bail. Then the second party workman was acquitted in the said G. R. Case No. 45/1992 by the learned JMFC, Barbil on the 16th May 1998.

3. As alleged the second party workman was working continuously there more than 240 days in a year till he was illegally refused employment on the 25th June 1992. The second party workman was retrenched from his service by the first party management No. 2, Contractor who refused employment of the workman at the instance of the first party management No. 1, Kalinga Iron Works. The management refused the employment of the workman on the allegation of indiscipline and misconduct inside the factory. So the workman raised dispute before the District Labour Officer, Keonjhar, but the first party management did not co-operate in conciliation. The action of the first party management is arbitrary, unjustified, illegal and unfair as statutory provision have not been complied with.

So the workman prayed for an order that the refusal of employment of the concerned workman is not proper and lawful and he is entitled to reinstatement in his service with effect from the 25th June 1992 with full back wages and all other consequential benefits and for any other compensation and relief.

4. The first party management No. 1 filed written statement stating that B. K. Mahapatra, the Contractor (first party management No. 2) is the employer of the workman and the first party management No. 1 is no way connected with the dispute. So this case is not maintainable as against the first party No. 1. The Kalinga Iron Works is the Principal Employer registered under Section 7 of the Contract Labour (Regulation and Abolition) Act, 1970. The first party management No. 1 uses to engage the Contractor for supply of labour and machinery, etc. for some of its casual nature of work from the month of April, 1990.

The second party workman was engaged by B. K. Mahapatra, Contractor, first party No. 2 as a supply labour for the casual work of the first party No. 1. The second party workman worked under direct control of the Contractor, B. K. Mahapatra and was being paid by him. It is further alleged from the written statement that Shri B. K. Mahapatra, Contractor, first party No. 2 informed the General Manager of Kalinga Iron Works, the first party No. 1 that he had struck off the name of the workman along with some other workmen from his roll vide his letter, dated the 20th July 1992. Shri B. K. Mahapatra was the master/employer in respect of the workman. So there is no master and servant relationship in between the first party No. 1 and the workman. The service conditions of the contract supply labourer are being regulated under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970. Prior to engagement by B. K. Mahapatra, the second party workman was engaged as a supply labour through the Contractor namely Aurobinda Enterprises. On completion of contract, the said contractor disengaged all the workmen engaged by him by paying them closure compensation, etc.

5. Written statement filed by B. K. Mahapatra, Contractor first party management No. 2

As per the case of B. K. Mahapatra, the Contractor, he was undertaken a contract job under the Kalinga Iron Works, Matkambeda on yearly tender basis only for the year 1987 and executing different works in different times. He was engaged as a contractor only in the year 1987 and Shri Prasanna Kumar Pradhan the second party workman was engaged as a unskilled contract labour only from the 1st April 1990 and continued till the 25th June 1992. Each year the contract was awarded on tender basis. Accordingly the second party workman has received all the statutory payment/dues after the closure of the establishment in each year. As per the further case of the first party management No. 2 that on the 25th June 1992 a group of contract labourers created law and order situation which paralysed the law and orders in Kalinga Iron Works and even they assaulted some Officers and destroyed the property of the Kalinga Iron Works for which the local police initiated a criminal case against them and the local police arrested them and forwarded them to Court in G. R. Case No. 45/1992. So the second party workman did not attend his duties. Three days after he was released on bail. But he did not attend his duty. As alleged in every employment by the incoming contractor is a new employment and in the instant case, the second party workman worked only for two months and 25 days for which 25-F of the Industrial Dispute Act is not attracted. The second party workman has not completed 240 days under the first party management No. 2 (Contractor) in the same year. So the Contractor made a prayer that there was no illegality nor violation of statutory provisions committed by the management.

6. Rejoinder filed by the second party workman stating that it is denied by the second party workman that the contract was taken up on yearly basis in the year 1987 by the Contractor. It is denied that the workman was engaged on the 1st April 1990 till the 25th August 1992. It is also denied that the second party workman was paid all statutory dues each year after close of the contract. The second party workman was employed since 1984 under Kaling Iron Works as an unskilled workman and continued as such till the 25th June 1992 when he was refused employment. The workman continued at the same place though the Contractor changed. The workman worked directly under the control and supervision of the principal employer and the contractor is a commission agent. The workman has E. S. T. No. 346565 under the first party management and also E. P. F. No. OR/261-A/1905. The workman was not paid retrenchment compensation. As alleged, the workman denied the contents of the management. As alleged after release on bail after three days the second party workman reported for duty before the management but was refused employment the ground that the criminal case is pending. The workman waited all along to be taken back in service. Finally on the 6th September 1993 the workman gave a written application to be taken back into service, which was received by the Management No. 2 on the 11th September 1993. The workman was never abandoned his work nor he was refused employment. The refusal of employment was in violation of Rule 12 of the Orissa Contract Labour (Regulation and Abolition) Rules, 1975. No retrenchment compensation was paid by any Contractor. The workman continued at the same place since 1984 to 1992. The workman did not remain absent for a single day and he completed the work days, i.e. 240 days in a year. The first party management violated all norms of fair play, violated the Section 25-F of the Industrial Dispute Act, violated the provisions of Contract Labour Regulation and Abolition Act, 1970 and the Contract Labour (A. & R.) Rules, 1975 (Conditions of Service).

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 refusal of employment to Shri Prasanna Kumar Pradhan by Shri B. K. Mahapatra, Contractor, Kalinga Iron Works, Matkambeda with effect from the 25th June 1992 is legal and/or justified ?
- (ii) If not, what relief Shri Pradhan is entitled to ?"

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

On behalf of the management Abhiram Mohapatra, Manager (HRD), M/s IDCOL Kalinga Iron Works Limited (IKIWL) is examined as Management workman No. 1. On behalf of the second party workman Shri Prasanna Kumar Pradhan himself is examined as W. W. 1.

#### FINDINGS

9. *Issue Nos. (i) and (ii)*—In order to facilitate this case, issue No. (i) and (ii) should be considered at a time. M. W. 1 Abhiram Mohapatra, Manager (HRD), M/s IDCOL Kalinga Iron Works Ltd. (IKIWL) is examined. As alleged Shri B. K. Mahapatra, Contractor died on the 12th June 2004 on accident. So, none was substituted nor examined on behalf of the Management No. 2, Late B. K. Mahapatra, Contractor. The specific schedule question leads that whether the refusal of employment to Shri Prasanna Kumar Pradhan by Shri B. K. Mahapatra, Contractor, Kalinga Iron Works, Matkambeda with effect from the 25th June 1992 is legal and/or justified ? If not, what relief Shri Pradhan is entitled to ? Admittedly Shri B. K. Mahapatra is a licensed Contractor and used to take different assignments on contract basis in Kalinga Iron Works, Matkambeda and also as contract

labour licence to supply labourer to Kalinga Iron Works. Kalinga Iron Works is a Public Sector Undertaking of Government of Orissa engaged in production in big iron and sponge pipe for supplying water. The workman was being engaged as Mechanical Helper under the direct supervision of Kalinga Iron Works though he was supplied as contract labour by the contractor Shri B. K. Mahapatra. The second party workman was an employee of Kalinga Iron Works and the Contractor, B. K. Mahapatra was only a commission agent of Kalinga Iron Works. It is not in dispute that the present workman was being engaged by Labour Contractor B. K. Mahapatra. It is also not a case that the workman was under the pay roll of Kaling Iron Works. The second party workman claims that he was engaged by the first party management from the year 1984 as a supply labour in Kalinga Iron Works through Contractor and continued as such till the 25th June 1992.

10. The second party workman in his evidence stated that he was engaged as a supply labour in the post of Mechanical Helper by the first party management No. 2 (Contractor) under the first party management No. 1, i. e. the Principal Employer. It is further alleged from the evidence that on the 25th June 1992 all on a sudden the first party management without any rhyme and reason refused the employment of the workman without issuing any prior notice nor any back wages to the workman. The workman claims that the arbitrary action of the first party management in refusing employment is unfair and illegal. The second party workman relied on some documents such as Ext. No. 1 is the E.S.I. Identity Card issued in the name of the workman Prasanna Kumar Pradhan. Ext. No. 2 is the provident Fund Account slip. Ext. No. 3 is the letter, dated the 6th September 1993 addressed to the management (first party). Ext. No. 3/1 is the xerox copy of the postal receipt. Ext. No. 3/2 is the A. D. Ext. No. 4 is the certified copy of the judgement, dated the 16th May 1998 in G. R. Case No. 45/1992 passed by the learned JMFC, Barbil. As per his evidence the Contractor Code Number is 2346. It is very clear from the evidence that the Contractor engaged him and he was working under the supervision of the Contractor in the year 1992. The contract work of B. K. Mahapatra has already been completed. The legal heir of deceased B. K. Mahapatra are not impleaded as party in this case in place of deceased B. K. Mahapatra, Contractor. The Contractor and his supervisor were working in the said office, i.e. in Kalinga Iron Works. As alleged the workman was drawing his salary and other benefits such as Gratuity from the office of the Contractor B. K. Mahapatra. The Contractor B. K. Mahapatra issued him gate pass. It is also apparent from his evidence that he had received compensation for the year 1991-1992 from the Contractor B. K. Mahapatra (First party Management No. 2). Moreover, he had received all his claim amounts for the month of April, May and June in the year 1992 from the Contractor B. K. Mahapatra. The workman stated that he had never approached the Contractor B. K. Mahapatra for his monetary benefits as well as for his employment. The second party workman has not filed any documents to prove that he had approached the management frequently for his engagement. The workman admitted that Kalinga Iron Works the first party management No. 1 is a Public Sector Undertaking of Government of Orissa. There is codified rules and principles for engagement of any employee. So, as alleged after successful in the interview one can get the job by the management. His service rule is under the Contract Labour Regulation and Abolition Act and accordingly effected.

11. Management Workman No. 1 stated in his evidence that M/s. IKIWL (M/s. IDCOL Kalinga Iron Works Ltd.) in order to execute some casual nature of work decided to deploy Contractors/ Outside Agency through open bid. B. K. Mahapatra is a licensed contractor under the Contract Labour (Regulation and Abolition) Act having the licence No. 368/1998. Getting successful result in the bid B. K. Mahapatra was awarded with the job for supply of casual labourer to

Sponge Pipe Division vide Letter No. SPS/PNL/952, dated the 17th June 1991 for a period of one year from the 16th June 1991 to the 15th June 1992 along with the terms and conditions of the work. As per the terms and conditions the Contractor shall be responsible for his employees. As alleged the Contractor shall abide all rules, laws and regulations which may be in force from time to time regarding the employment or conditions of service of his employees and also responsible for their conduct. The contractor also shall comply all statutory formalities under different labour legislations and shall be bound to comply with the provisions of Contract Labour (Regulation and Abolition) Act, 1970 and Rules framed thereunder as the immediate employer of all the employees engaged by him.

12. The period of work awarded to B. K. Mahapatra, Contractor was extended for a further period from the 16th June 1992 vide office Order No. 155, dated the 13th June 1992. No further extension was given to B. K. Mahapatra. As per the terms, conditions and rules B. K. Mahapatra was responsible for payment of wages, leave salary, bonus, E.P.F., E.S.I., closure compensation, etc. Accordingly B. K. Mahapatra has paid all the dues including closure compensation to each of the workman engaged by him every year. The workman Prasanna Kumar Pradhan was being engaged by B. K. Mahapatra the immediate employer who has paid all the dues, leave salary, bonus and other dues to the workman.

M. W. 1 relied on some documents, i. e. Ext. M. 1 is the licence of B. K. Mahapatra the Employer Contractor. Ext. M. 2 is the certificate of registration No. 9/84 under Contract Labour Regulation and Abolition Act, Kalinga Iron Works Ltd. Ext. M. 3 is the letter No. 155 (13), dated the 13th June 1992 for extension of contract in respect of B. K. Mahapatra. Ext. M.4 is the letter No. 952, dated the 17th June 1991, the work order in respect of the Contractor B. K. Mahapatra. Ext. M. 5 is the instructions to tender and special terms and conditions of the contract. He admitted in his cross-examination that permanent workers and contract labourers are working in his company and for casual nature of jobs. The contract labourers have been engaged. So it is the common evidence of the witnesses that the contract labourers are being engaged for casual nature of jobs. There are two divisions in the management establishment one is big iron manufacturing division and another is sponge pipe manufacturing division. It is a continuous manufacturing process for which labourers were engaged through the Contractors. As alleged from Ext. M. 4 the Contractor B. K. Mahapatra accepted the terms and conditions for which he put his short signature in Ext. M. 4 which is marked with objection. From the above facts and circumstances it is inferred that the second party workman was working under B. K. Mahapatra, the licensed contractor under Contract Labour (Regulation and Abolition) Act, 1970. So M/s. IDCOL Kalinga Iron Works Limited was not the employer in respect of the second party workman.

13. The next question here arises whether there was refusal of employment by the Contractor or the workman has abandoned his service on his own sweet will. In this respect the workman has stated in his evidence that on the 25th June 1992 a dead body of one Pitabas Mohanty a supply security guard was found inside the factory premises of Kaling Iron Works for which tension erupted among the supply workers and work was stopped. Basing on the report of the General Manager, Kalinga Iron Works, the police registered a case under Sections 147/323/427/428/149 of IPC and Section 7A Act and on the 26th June 1992 the workman was arrested and forwarded to the Court of Learned JMFC, Barbil and he remained inside judicial custody for three days in G. R. Case No. 45/1992. However at the first instance the workman was prosecuted for commission of offence in G. R. Case No. 45/1992 and subsequently after trial acquitted in the said case on the

16th May 1998 (Ext. 4). So when the workman was arrested and was remanded to jail custody he has abandoned the service. Moreover, the workman clearly admitted in his evidence that he received compensation money for the year 1991-1992 and all the claim amounts for the month of April, May and June 1992 from the Contractor B. K. Mahapatra and never approached for any further monetary benefits nor for his employment. So it is clear that although the workman was aware about the facts and circumstance and he abandoned his job. He has never approached B. K. Mahapatra, Contractor for his re-engagement.

14. The next question arises whether the Contractor is only a commission agent as claimed by the workman. It is clear from his evidence of the workman that B. K. Mahapatra is a licensed Contractor under the Contract Labour (Regulation and Abolition) Act, 1970 and the workman was drawing his salary and other benefits from the Contractor B. K. Mahapatra and the Contractor B. K. Mahapatra also issued gate pass and his leave statement. B. K. Mahapatra got an office in the IDCOL Kalinga Iron Works Limited and his supervisors were in the said office. M. W. 1 also admitted in his evidence that the Contractor is responsible for all the payment of wages and all the benefits. B. K. Mahapatra, Contractor has paid all the dues including closure retrenchment compensation to the workman who was under the direct supervision of Contractor B. K. Mahapatra. So evidence led by M. W. 1 can not be wiped out since the workman admitted that Ext. M. 1 is the E. S. I. Slip in respect of the Contractor Establishment. Moreover, Ext. M. 1 to Ext. M. 5 disclose that the second party workman is the workman of B. K. Mahapatra the licensed contractor and the service conditions of the workman were being regulated under the provision of the contract Labour (Regulation and Abolition) Act, 1970. So in the facts and circumstances it can safely be said that the first party management No. 1 M/s. IDCOL Kalinga Iron Works Limited is neither the employer nor any responsibility shouldered regarding employment nor refusal of employment of the workman. Admittedly the Contractor in the meantime died on the 12th June 2004 and his establishment has already been closed since long which is also admitted by the workman in his evidence.

15. The Learned Advocate on behalf of the first party management No. 1 relied on the reported decision—

1997 LLR P. 415 (Ram Sarup and Others *Vrs.* Labour Court, Patiala & Others)

“That it is a well settled that a dismissed or terminated workman of the contractor has no right to claim reinstatement against the principal”.

The Learned Advocate on behalf of the management No. 1 also relied on the reported decisions—

2010 LLR P. 9 (V. I. P. Industires Ltd. *Vrs.* Athar Jameel and Others) and

2010 LLR P. 69 (M/s. Bharat Cocking Coal Ltd. *Vrs.* Workmen M/s. Bharat Cocking Coal Ltd. & Others).

“The workers of the Contractor have no right to claim regularisation or absorption in the post of the Principal Employer”.

16. The Learned Advocate on behalf of the second party workman submitted that due to illegality and high handedness of the Principal Employer, the workman should not be suffered in such manner, as the detail things had already been discussed and the workman admitted in his evidence regarding the entire responsibility of his employer B. K. Mahapatra, Contractor, the

submission made by the Learned Counsel has not created any worthiness. Moreover, the cause of action arose in the year 1992 whereas this workman raised this dispute in the year 2000 admitting all the facts. So in view of such facts and circumstances, the workman is not entitled to get any relief in this case. Accordingly the above issues are answered. Hence, the following Award.

A W A R D

The reference is answered on contest but without any cost. So the refusal of employment to Shri Prasanna Kumar Pradhan by Shri B. K. Mahapatra, Contractor, Kalinga Iron Works, Matkambeda with effect from the 25th June 1992 is legal and justified. The workman is not entitled to get any relief in this case.

Dictated and Corrected by me.

S. MAHAPATRA  
21-6-2010  
Presiding Officer, Labour Court  
Sambalpur

S. MAHAPATRA  
21-6-2010  
Presiding Officer, Labour Court  
Sambalpur

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