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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23th October 2010

No. 8945–li/1(BH)-34-1998-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th August 2009 in Industrial Dispute Case No. 185/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Ispat Alloys Ltd., At Balgopalpur, Dist. Balasore and its workman represented through the General Secretary, Ispat Alloys Karmachari Sangha, Balgopalpur, Balasore was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 185 OF 2008

Dated the 12th August 2009

Present :

Shri P. C. Mishra., O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

M/s Ispat Alloys Ltd.,
At Balgopalpur,
Dist. Balasore.

.. First Party—Management

And

The General Secretary,
Ispat Alloys Karmachari Sangha,
At Balgopalpur,
P.O. Rasalpur,
Via Mitrapur,
Dist. Balasore.

.. Second Party—Workman

Appearances :

Shri Prabir Kumar Das,
Authorised Representative

.. For the First Party—Management

Shri Arun Kumar Das

.. For the Second Party—Workman himself

AWARD

Originally, the Government of Orissa, in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer Labour Court, Bhubaneswar vide its Order No. 2500/LE., Dt. 20-2-1999 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-li-21-32-2007-LE., Dt. 4-4-2008.

“Whether the action of the contract agency Sk. Juman and the management of Ispat Alloys Ltd., Balgoplapur, Balasore is not engaging Shri Arun Kumar Das in employment with effect from 12-3-1993 and not regularising his services there after is legal or justified ? If not, what relief Shri Das is entitled to ?”

2. The case of the workman, as set out in his claim statement in brief is that he was refused employment by the contract agency of M/s Ispat Alloys Ltd., with effect from 12-3-1993 without any valid reason and ignoring his seniority persons junior to him have been retained in the employment. It is alleged that while refusing him employment, the employer has not complied with the requirements of law and all his representations made to the principal employer for his engagement having proved futile, he raised the present dispute which culminated into the present reference after failure of the conciliation. The workman has prayed for his reinstatement in job with all service benefits.

3. M/s Ispat Alloys Limited, the Principal Employer filed written statement in the Dispute challenging the maintainability of the reference and further stating *inter alia* that the claimant is in no way concerned with it, in as much as, he was engaged as a contract worker by Sk. Juman who was awarded some piece-rated contract job under the management and in order to execute such contract work the said contractor Sk. Juman had engaged the claimant and others on piece-rate basis as and when required. The management has further stated that said Sk. Juman has already closed his business since 2-3-1998 and consequently the management has cleared all the legal dues of the contractor including the full and final settlement in respect of his contract labourers. The management has resisted the plea of the workman for regularisation on the ground that the being a contract labourer working on piece-rate basis, the question of his regularisation under the management does not arise at all. According to the management, the workman voluntarily abandoned the job under his employer M/s Sk. Juman and it is completely a false assertion in the claim statement that the workman had made representation to the principal employer for consideration of any of his grievances. With the averments, as aforesaid, the management has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed:—

ISSUES

- (i) Whether the action of the contract agency Sk. Juman and the management of Ispat Alloys Ltd., Balgopalpur, Balasore in not engaging Shri Arun Kumar Das in employment with effect from 12-3-1993 and not regularising his services thereafter is legal or justified ?
- (ii) If not, what relief Shri Das is entitled to ?

5. In order to substantiate his plea the workman has examined three witnesses on his behalf including himself and has filed and proved three documents which have been marked as Exts. 1, 2 and 3. The management of M/s Ispat Alloys Ltd., on the other hand, examined two witnesses on its behalf and has filed and proved five documents which have been marked as Exts. A to F.

6. W.W. No. 1 admitted in his evidence that he was engaged as a contract labourer under the contractor Sk. Juman. Similarly, the other two witnesses examined on behalf of the workman have also deposed that the workman was working along with them as a contract labourer and they were all working under the contractor, Sk. Juman. W.W. No. 3 specifically deposed that the contractor was paying the employer's contribution towards their E.S.I., W.W. Nos. 2 and 3 corroborating the statement of W.W. No. 1 have deposed that the workman was working under the contractor from 1987 till 1993. It further reveals from the evidence of W.W. No. 1 that he was getting his wages at the end of the month for the days he works in that month. Exts. 1 and 3 also disclose that the workman was engaged by the contractor Sk. Juman. The of engagement of the workman under the contractor for the period from 1987 till his alleged refusal of employment with effect from 12-3-1993 is not at all questioned by the management although the workman as well as the witness examined on behalf of him were cross-examined by the management. It can therefore be said that the workman had rendered more than 240 days of continuous service under his employer M/s Sk. Juman and thereby he was entitled to the protection of the provisions of Sections 25-F of the Industrial Disputes Act, while he was disengaged from employment. The contractor having failed to comply the provisions of the Industrial Disputes Act, while refusing employment to the workman, which is nothing but an act of retrenchment within the meaning of the Industrial Disputes Act, certainly the workman is entitled to the benefit claimed, but as the evidence on record discloses that the contractor has expired in the meantime and further in absence of any evidence that the work in which the workman was engaged is still continuing under the Principal Employer on contract basis, no order with regard to reinstatement of the workman is possible. The Contract Labour (Regulation and Abolition) Act provides that for failure of the contractor to discharge his responsibility in the matter of payment of wages or any monetary due of contract labourers the Principal Employer would be held liable for the same. Hence, while awarding a compensation of Rs. 20,000 (Rupees Twenty Thousand only) in favour of the workman, this Tribunal directs the Principal Employer i.e. M/s Ispat Alloys Ltd., to pay the same to the workman within a period of three months hence.

7. As regards the claim of the workman for his regularisation in service under the Principal Employer, the same is not at all tenable in view of the admitted fact that the workman was employed as a contract labourer under the contractor Sk. Juman. In connection with the above, the verdict of the Hon'ble Supreme Court in the case of Steel Authority of India Ltd., Vrs. State of West Bengal, reported in 2008 (119) FLR-589 may be seen wherein their Lordships of the Hon'ble Apex Court have held that workers engaged through contractors are not entitled to absorption and regularisation.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
12-8-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
12-8-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

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