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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 15th November 2010

No. 9564-li/1(B)-11/2009-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th October 2010 in I. D. Case No. 10 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of A. G. M. (Executive Engineer), Khurda Electrical Division, CESU, Khurda and their workmen Shri Purna Chandra Rath and B. B. Arisal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.10 OF 2009

The 11th October 2010

Present :

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of A. G. M. (Executive Engineer), Khurda Electrical Division, CESU, Khurda. . . First party-Management

And

Their Workmen Shri Purna Chandra Rath & B. B. Arisal, C/o Working President, O. S. E. B. Shramik Mahasangha, 302/B, Nayapalli, Bhubaneswar-12. . . Second party-Workmen

Appearances :

Shri N. Jena, Dy. G. M. . . For the First party-Management

Shri P. C. Rath & Shri B. B. Arisal . . The Second party-Workmen themselves

A W A R D

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in Labour & Employment Department vide their Order No.5697-li/1 (B)-11-2009-LE., Dt. 29-6-2009 for adjudication. The Schedule of reference runs as follows :

“Whether the termination/retrenchment of Shri Purna Chandra Rath and B. B. Arisal, N. M. R. workers by the management of A. G. M. (Executive Engineer), K. E. D., CESU, Khurda with effect from Dt. 1-4-1995 are legal and/or justified ? If not, to what relief Shri Rath and Shri Arisal are entitled ?”

2. The claims of the second party/workmen as narrated in their claim statement are to the effect that from Dt. 11-1-1987 they were engaged for electrical installations and construction works under the Junior Engineer (Electrical) of Jankia and Malipada Sections under the Executive Engineer, Khurda Electrical Division, Khurda. They used to get wages as per the minimum rates of wages prevalent from time to time. The wages used to be paid through N. M. R. Registers kept and maintained in the Electrical Subdivision, Jankia. They worked continuously till Dt. 31-3-1995. From 1-4-1995 they were disengaged. Though their services were terminated the statutory provisions to bring about a valid retrenchment were not complied with. Their termination was also arbitrary in as much as most of their contemporaries are still continuing under the first party/management. Claiming their retrenchment to be illegal and unjustifiable they have prayed for their reinstatement with full back wages.

3. The case of the first party/management is that the second party members were engaged on daily need basis and for specific miscellaneous work during the period of construction of electrical lines. Therefore, their disengagement does not amount to retrenchment covered under Section 25-F of the Act. Further more, the second party members had never completed 240 days of work during the twelve calendar months preceding the date of the alleged termination. No Muster Roll was being maintained for workmen like the second party members. It is also contended that the second party members should not have been allowed to raise the dispute about more than twelve years after the alleged date of termination.

4. To answer the reference, the following issues have been settled :

ISSUES

- (i) Whether the termination/retrenchment of Shri Purna Chandra Rath & B. B. Arisal, N. M. R. workers by the management of A. G. M. (Executive Engineer), K. E. D., CESU, Khurda with effect from Dt. 1-4-1995 is legal and/or justified ?
- (ii) If not, to what relief Shri Rath and Shri Arisal are entitled ?

5. On behalf of the second party three witnesses have been examined. W. W. No.1 and 2 are the second party members and W. W. No.3 is a workman of the first party who claims that he and the second party members used to work together with the first party. The Deputy General Manager (Electrical), Khurda Electrical Division is examined as M. W. 1. The workmen have exhibited some documents but no document has been exhibited on behalf of the management.

FINDINGS

6. *Issue No. 1* : There is no dispute that the second party members were given employment by the first party and that with effect from Dt. 1-4-1995 they are out of employment. The parties are at variance on the nature of employment. While the first party claims that the workmen used to be engaged on daily wages as and when work was available and their management was co-terminus on the completion of the work for which they were engaged or by efflux of time, the second party claims that between Dt. 11-1-1987 and Dt. 1-4-1995 there was no break as they had been engaged by the management continuously. When the management claims that the workmen have never completed 240 days of work during the twelve calendar months preceding the date of disengagement, the second party claims that they were engaged continuously without any break and they have completed 240 days of continuous employment by the time of their retrenchment. There is no dispute that the provisions of Section 25-F of the Act have not been complied with.

Though it is claimed by the first party that the engagement of the workmen was co-terminus either on the completion of the work for which they used to be engaged or by efflux of time, the management has not adduced cogent evidence to prove the assertion. Therefore, the nature of employment of the second party member cannot be brought under Section 2(o) (b) of the Act. Therefore, if it is found that the workmen were in continuous service for a period of one year as laid down under Section 25-B of the Act, then their disengagement with effect from 1-4-1995 will be illegal.

7. It is now well settled that the initial burden is on the workmen to prove that they had worked for 240 days in preceding twelve months prior to their retrenchment. They have adduced oral evidence claiming that they had worked with the first party continuously from Dt. 11-1-1987 to Dt. 31-3-1995. In addition to that they have exhibited certificates said to have been granted by the Junior Engineer (Electrical), Jankia and Junior Engineer (Electrical), Malipada, marked as Ext. 1 series. From the certificates it is found that they had worked as N. M. Rs. under Jankia Electrical Subdivision from Dt. 11-1-1987 to Dt. 20-7-1987 and from Dt. 1-3-1989 to Dt. 8-7-1989 and they had also worked as N. M. Rs. under Malipada Electrical Section from Dt. 5-2-1991 to Dt. 15-7-1991 and from Dt. 1-2-1992 to Dt. 5-6-1992. The first party does not admit these documents (certificates) contending that those were not officially issued to the workmen and the Junior Engineers had no competency and authority to issue such certificates. It is also contended that to help the workmen the Junior Engineers have issued such certificates after their retirement. Save and except these certificates no other documentary evidence is adduced by the workmen with regard to the duration of their employment. On behalf of the workmen it is argued that the management having failed to produce the records/registers despite of direction given by this Tribunal, an adverse inference is to be drawn to the effect that the records were intentionally suppressed lest they should go against the management. It is true that on the prayer of the second party this Tribunal directed the first party to produce the Muster Roll form for the period from 1987 to 1995 but the management did not produce them taking the plea that the documents as called for were not available. M. W. No. 1 has stated in his cross-examination that the Muster Roll for the relevant period was not produced as no such Registers related to engagement of N. M. Rs./D. L. Rs. are available with the management. The workmen claim that for about seven to eight years they were in continuous employment under

the first party. It is not believable that the workmen having served continuously for such a long period would not possess any documents with regard to their employment. Reliance is placed on the decision of the Hon'ble Supreme Court reported in AIR 2010(S.C.) 1236 (Director, Fisheries Terminal Division Vrs. Bhikubhai Meghajibhai Chavda) on the burden of proof. In this judgment it is held that burden of proof is on the workman to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box and adducing cogent evidence both oral and documentary. It is further held that in cases of termination of services of daily waged earners there will be no letter of appointment or termination and also there will be no receipt of proof of payment for which in most cases the workman can only call upon the employer to produce before the Court the Nominal Muster Roll for the given period, the letter of appointment and the letter of termination, if any, the wage register, the attendance register etc. It is further held that drawing of adverse inference ultimately would depend on the facts of each case.

In the case at hand, the management has failed to produce any such documents/registers/records. The workmen are admittedly, daily wagers but they claim to have worked continuously with the first party for a long period. Yet it took them about twelve years to raise the dispute before the concerned Labour Officer. There is no satisfactory explanation to explain the delay. Each of them has exhibited two experience certificates showing the period of their engagement. Even on the basis of the certificates it cannot be said that they had continuously worked for one year preceding the disputed retrenchment or during any of the calendar years. In the certificates the periods of their engagement have been clearly mentioned where from it can be found that in none of the calendar years the workmen have completed 240 days of work. The disputed disengagement is with effect from Dt.1-4-1995. There is no documentary evidence that in twelve calendar months preceding the disputed retrenchment the workmen had ever been engaged by the first party. These are the circumstances which compel this Tribunal not to draw adverse inference against the management for non-production of the registers/records showing engagement of N. M. Rs.

It is claimed by the workmen that after their retrenchment they made several representation to different authorities challenging their illegal termination. To prove the said contention they have exhibited Xerox copy of several representations marked Exts.2, 3, and 4. However, there is no material to hold that these representations were actually served on the authorities. Such self-serving documents can be created at any stage. There is no proof that the originals of Exts.2, 3 and 4 were actually delivered to the respective addresses or those were actually sent to them by registered post. So, no reliance can be placed on these documents. Exts. 6 and 7 are representations Dt. 18-6-2007 addressed to the Executive Engineer with copy to the General Secretary of O. S. E. B. Shramik Mahasangha. It appears, on receipt of Exts. 6 and 7, the General Secretary of the Union addressed letters marked Exts. 8 and 9 to the Executive Engineer to consider the representations of the second party members. In Exts. 6 and 7 the workmen have made a prayer to give them re-employment. The workmen made the representations only after having come to know that some of their contemporaries had been given re-employment. It appears, when the management did not take favourable action on Exts. 6 to 9, the Union wrote to the Labour Officer vide Ext. 10 seeking permission to espouse the cause of the workmen. On the basis of Exts. 6 to 10 it can be said that till 2007 the workmen were totally silent on their disengagement. There is no limitation against raising of an industrial dispute but the delay in this case reflects on the veracity of

the claim advanced by the workmen. If the certificates (Ext.1 series) issued by the Junior Engineers (Electrical) and relied on by the workmen reflect the actual periods of engagement then the workmen have no case. Since the workmen rely on these certificates and fail to adduce further evidence to show that they were engaged beyond the periods mentioned in the certificates it is to be presumed that all the spells of their actual engagement have been correctly mentioned in the certificates. It is also to be presumed that since they had not completed one year of continuous service they remained quiet till 2007 and when they came to know that some of their colleagues had been given re-employment they made efforts for their re-employment.

8. Taking the facts and circumstances discussed hereinbefore this Tribunal is unable to raise adverse inference against the management for non-production of registers/records. It is also unable to accept the plea of continuous employment from 1987 to 1995. In the considered view of this Tribunal the second party members have failed to prove that they have rendered one year of continuous service preceding the alleged retrenchment and therefore, the termination of their services cannot be said to be illegal.

9. It is also not shown by the second party that even otherwise the termination of their services is improper. It is not their case that at the time of their disengagement their juniors were retained but they were denied employment. No other similar grounds showing the denial of employment to be improper has been pleaded by the workmen. Consequently, Issue No. 1 is answered against the second party/workmen.

10. *Issue No.2* : Since the disputed termination of service is not found to be either illegal or improper, the second party members are not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

R. B. DASH
11-10-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar.

R. B. DASH
11-10-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar.

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