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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th November 2010

No. 9662—li/1(S)-53/2000 (Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th April 2010 in Industrial Dispute Case No. 40 /2000 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Orissa Small Industries Corporation Ltd., Rourkela and its workman Shri Sudarsan Moharana 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. 40 OF 2000

Dated the 15th April 2010

Present :

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

Between :

The Management of
M/s Orissa Small Industries
Corporation Ltd., Rourkela.

.. First Party—Management

And

Its Workman
Shri Sudarsan Moharana,
Qrs. No. C/190, Sector-7
Rourkela -3,
Dist. Sundargarh.

.. Second Party—Workman

Appearances :

Shri A. P. Das, .. For the First Party—Management
 Area Manager,
 O.S.I.C. Ltd., Rourkela.

Shri G. N. Tripathy, .. For the Second Party—Workman
 Auth. Representative

A W A R D

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. 14314(5), Dt. 23-11-2000 to adjudicate the schedule question :

“Whether the action of the Management of M/s Orissa Small Industries Corporation Ltd., Industrial Estate, Rourkela, Dist. Sundargarh in terminating the services of Shri Sudarsan Moharana by way of refusal of employment with effect from 1-5-1997 is legal and/or justified ? If not, to what relief the workman Shri Moharana is entitled ?”

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

The first party-management is a Limited Firm in the name and style of Orissa Small Industries Corporation Ltd., which is one of the State Government of Orissa Undertaking. The second party-workman Shri Sudarsan Moharana was appointed as a Choukidar under the first party -management on 1-7-1991 and was posted at I.D.C., Kalunga on the basis of a letter issued by the Manager/ the Project Manager, Orissa Small Industries Corporation Limited, Kalunga. Initially he was paid a consolidated salary of Rs. 664 per month. The second party-workman continued in service till 12-7-1994 (for a period of more than three years). During the period of his service Shri Sudarsan Moharana the second party-workman was very sincere and diligent towards his service for which he was never been charge-sheeted, warned or any sorts of actions he faced.

Further it is alleged in the statement of claim of the workman that after the appointment of second party-workman the first party-management appointed many workers namely, Shri Khalho, Jitendra Naik, Ramu, R. K. Malli and Purusottam as per the requirement. The first party-management, all of a sudden terminated the service of the second party-workman Shri Sudarsan Moharana on 12-7-1994 where his juniors are allowed to continue in their services. The second party-workman immediately asked the reasons of his termination and requested the management to allow him in service but the first party-management refused to give service. Due to adamant attitude of the first party-management, the second party-workman took shelter of local labour machineries and filed complaint before the D.L.C., Rourkela on 14 -7-1994. The Deputy Labour Commissioner intervened on the matter and the first party-management agreed to take back the second party-workman Shri Sudarsan Moharana in employment with effect from the 26-10-1995. Thereafter the second party-workman again joined in service on 26-10-1995. The second party-workman Shri Moharana continued in service up to 3-6-1997 without any break of the service. The workman Shri Moharana engaged by the authority concerned under Raw Material Division situated at Kalunga.

Further it is alleged from his statement of claim that on 3-6-1997 he was verbally told by the Joint Manager (A & M), O.S.I.C. Ltd., Rourkela not to come for work with effect from 4-6-1997. Despite his personal approach he made representation finally on 4-6-1997 regarding non-payment of his salary and service but the first party-management did not pay any heed to the same.

The second party- workman made complaint on 27-6-1997 to the Deputy Labour Commissioner, Rourkela regarding refusal of employment as well as regarding non-payment of the salary from 1-5-1997 to 3-6-1997. The second party-workman was verbally refused for employment whereas his juniors were in service at the time of refusal of employment. His juniors namely Shri Ram Chandra Pradhan, Shri Bidyadhar Malla, Shri Parsuram Parida and Shri Raju Malla were in employment on 3-6-1997. The first party-management without following the procedure laid down in the Industrial Disputes Act, 1947 terminated the workman from his service who was the seniormost workman on 3-6-1997.

As alleged during the conciliation proceeding the first party-management did not attend a single date despite several notices sent by the Conciliation Officer. The Conciliation Officer tried to settle the matter amicably but due to non-co-operation by the first party-management the dispute ended on failure and the report sent to the Government of Orissa, Labour & Employment Department by the Conciliation Officer for reference.

Hence the second party-workman made a prayer on following grounds that :—

- (i) The reference is just proper and maintainable.
- (ii) The action of the first party-management M/s Orissa Small Industries Corporation Ltd., Industrial Estate, Rourkela in terminating the services of the second party-workman Shri Sudarsan Moharana by way of refusal of employment with effect from 3-6-1997 is neither legal nor justified.
- (iii) The second party-workman is liable to be reinstated in service with full back wages with all other consequential benefits.

3. The written statement filed by the first party-management. As per the case of the management the reference is wholly misconceived in fact and law otherwise bad and not tenable. So the reference is not maintainable in the eye of law. The second party -workman was never appointed as a Choukidar under the first party-management on 1-7-1991 and was posted at I.D.C., Kalunga on the basis of a letter issued by the Manager/Project Manager, O.S.I.C. Ltd., Kalunga. The appointment of any person is regulated by certain rules and regulations and no Officer of O.S.I.C. except the Managing Director is entitled to give any appointment to anybody against the said rules. Whenever any vacancy exists or arises it is filled up by inviting applications after due publication of the advertisement in newspapers, etc. The applicant must have been registered in the local Employment Exchange from which the list of candidates as per the required qualification and experience is to be sponsored by the Employment Officer of Local Employment Exchange. After receiving the name of the candidates sponsored by the Employment Exchange or received against the advertisement the candidates are required to appear in interview and the candidates selected is given appointment letter by the Managing Director of O.S.I.C. The second party has

claimed that he is appointed by the Manager/Project Manager in writing by way of a letter, Dt. 1-7-1991 which is not filed in the Court for inspection with regard to the genuineness or otherwise to the said letter. Besides that there was no post of Manager/ Project Manager at Kalunga at the relevant time, i.e. July, 1991. Moreover, no responsible officer of the rank of the Manager and Branch Manager could ever issued any such appointment letter knowing fully that he has no power to give such appointment.

It is further alleged in the written statement that the second party-workman was never paid any consolidated salary of Rs. 664 per month at the initial stage and that he worked up to 12-7-1994 as Choukidar. The second party-workman took the stand before the D.L.O. that he was appointed as Choukidar on N.M.R. basis but in this case he has taken the stand that he was appointed as Choukidar. For regular employees N.M.R. absentee statement is prepared and sent by the local office to the head office for release of payment through local office. Along with the salary statement pay slips are also issued to the regular employees/N.M.Rs. but in this case absentee statement was never sent to head office nor any salary statement or pay slips was issued by the head office of O.S.I.C. Ltd. The second party was never in the pay roll of the first party-management. No such persons like Shri Khalko, Jitendra Naik, Ramu, R. K. Malli and Purusottam were engaged by the first party-management. The first party-management is not aware of any such complaint said to have been made by the second party before the D.L.C. on 14-7-1994. It is false to say that the first party-management ever agreed to take back the second party in employment with effect from 26-10-1995 and continued up to 3-6-1997 without any break of service in Raw Material Division, Kalunga being directed by the Joint Manager (A & M). There is no such post designated as Joint Manager (A & M). Moreover schedule of reference shows that employment was refused to the second party-workman with effect from 1-5-1997 whereas in the statement of claim the workman stated that the employment was refused to him with effect from 4-6-1997 which is contradictory.

4. The officer of the first party-management were pre-occupied for which they could not attend the conciliation proceeding and prayed for time but unfortunately the D.L.C. closed the matter without giving further chance to hear them in the matter. As alleged the first party -management had engaged a Security Agency called Jaguar Security Service, E Block Market Fertiliser Town, Rourkela owned by Dr. K. K. Rao for the watch and ward of O.S.I.C., Rourkela/Kalunga with effect from 17-8-1990 to 30-9-1998. So there is no question of the second party being engaged as a Choukidar. For the purpose of handling materials of O.S.I.C. the first party-management engaged Labour Supplier as and when required. The second party-workman was engaged in the said work by the aforesaid Labour Supplier as and when required. The Project work undertaken by the first party-management in Rourkela closed since 1997 August. So the first party-management prayed that the second party is not entitled to get any relief :

5. The additional written statement filed by the management denying all the allegations taken by the workman.

6. Out of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the action of the management of M/s Orissa Small Industries Corporation Ltd., Industrial Estate, Rourkela, Dist. Sundargarh in terminating the services of Shri Sudarsan Moharana by way of refusal of employment with effect from 1-5-1997 is legal and/or justified ?
- (ii) To what relief, if any, the workman Shri Moharana is entitled ?”

7. Both the parties have filed their respective documents in support of their case. The first party -management has filed documents which are marked as Ext. M. 1 to Ext. M. 6. On behalf of the first party-management Shri Akhaya Prasad Dash has only been examined as M.W. 1 (Area Manager), Orissa Small Industries Corporation Limited, Rourkela.

The second party-workman has filed some documents which are marked as Ext. W. 1 to Ext. W. 15. On behalf of the second party-workman Shri Sudarsan Moharana has been examined as W.W. 1.

FINDINGS

8. *Issue No. (i)*—The schedule question to be considered “whether the action of the management of M/s Orissa Small Industries Corporation Ltd., Industrial Estate, Rourkela, Dist. Sundargarh in terminating the service of Shri Sudarsan Moharana by way of refusal of employment with effect from 1-5-1997 is legal and justified.” As per the case of the workman he was appointed as a Choukidar under the first party-management on 1-7-1991 and was posted at I.D.C., Kalunga on the basis of a letter issued by the Manager/Project Manager, Orissa Small Industries Corporation Ltd., Kalunga and initially he was drawing a consolidated salary of Rs. 664 per month. He continued in service till 12-7-1994. The second party-workman has filed xerox copy of appointment letter which is marked as Ext.W. 1 with objection. He has stated in his evidence that when he got information about the employment of some unskilled posts, he met with Bipin Dung of Sales Stockyard and requested for his employment. Thereafter Mr. Dung took him to Shri A. P. Dash one of the Higher Officer of the O.S.I.C. Shri A. P. Dash asked the workman to produce the School Leaving Certificate, employment exchange card and residential certificate and the workman produced the same before him. Shri A.P. Dash handed over the appointment letter to the workman on 1-7-1991 and advised him to join in the job. The workman in his evidence adduced his new above facts which he has not mentioned in his statement of claim. It is the settled principles of law that the new facts adduced in the evidence cannot be taken into consideration as the same has not taken place in the statement of claim. Moreover as per his statement of claim the second party-workman Shri Moharana was continued in service till 12-7-1994. He has further stated that after his appointment the first party management appointed many workers namely, Shri Khalko, Jitendra Naik, Ramu, R. K. Malli and Purusottam as per the requirement.

9. It is further alleged from the case of the second party-workman that on 12-7-1994, all of a sudden he was terminated from the service whereas his juniors allowed to continue in their service. Thereafter, he filed application before the Deputy Labour Commissioner and due to intervention of Deputy Labour Commissioner, the first party-management agreed to take back the second party-workman Shri Sudarsan Moharana in employment with effect from 26-10-1995. Thereafter the second party-workman again joined in service on 26-10-1995 and continued in service up to 3-6-1997 without any break in service. The authority engaged the workman at Kalunga Raw Materials Division. It is alleged from his evidence that on 3-6-1997 he was verbally told by the Joint Manager (A & M), O.S.I.C. Ltd., Rourkela not to come for work with effect from 4-6-1997. The workman relied on many documents such as Ext. W. 2 is the xerox copy of the School Leaving Certificate, Ext. W. 3 is the xerox copy of Employment Exchange Card, Ext. W. 4 is the xerox copy of receipts, all the documents marked with objection. The management has disputed all these above documents, Ext. W. 5 is the xerox copy of application filed before the D.L.C., Rourkela and he has also filed Ext. W. 6 to Ext. W. 13 which are marked with objection and Ext. W. 14 and Ext. W. 15 are marked without objection.

The learned representative on behalf of the workman submitted that the second party-workman started his job being engaged by Shri A. P. Dash, the Joint Manager (A & M), O.S.I.C. and without any cause the management has terminated the workman from his service admittedly, the Orissa Small Industries Corporation Ltd. (Management) is a Government Undertaking. The representative of the management has disputed all the facts led by the second party workman. As per the case of management, it is clear from the pleading of the workman that he was no way out of service as referred with effect from 1-5-1997 and it is not the case of the second party-workman that the first party refused his employment with effect from 1-5-1997. So the learned representative of the management submitted that the claim of the second party is not as per the reference made u/s 10 of the Industrial Disputes Act. It is the settled position of law that the Court should not proceed beyond the reference. So the first party management relied on the reported decision 2009 (1)OLRF. (M/s 532 Steel Authority of India Ltd. Vrs. Shri Panchu Behera and 208 others). In the reference it is clear that whether the workman Shri Sudarsan Moharana was terminated from his service by way of refusal of employment with effect from 1-5-1997 is legal and justified. Admittedly the second party-workman stated that for the first time he was terminated from service on 12-7-1994 and then for the second time he was asked verbally not to come for work since the date of 4-6-1997. So it is clear that there is completely difference in the reference date, i.e. 1-5-1997 and the date of refusal as per the case of the workman, i.e. on 4-6-1997. It is the settled principles of law that this Court can proceed with the case within the four corners of the reference made by the Government. In the instant case the reference made to adjudicate the schedule of question to examine the way of refusal of employment with effect from 1-5-1997 whereas the pleading of the workman is something different which is not within the reference. Moreover the second party workman stated that he was appointed as a Choukidar under the first party-management on 1-7-1991 and was posted at I.D.C., Kalunga on the basis of a letter issued by the Project Manager, Orissa Small Industries Corporation Ltd., Kalunga. The copy of the letter, Dt. 1-7-1991 Ext. W. 1 which is filed by the workman. The management claims that this letter Ext. W. 1 is a fabricated one. The workman in his cross-examination stated that Ext. W. 1 is the letter issued by the Project Manager Shri A. P. Dash. The management has examined Shri A. P. Dash who has deposed in his evidence that the signature appears in Ext. W. 1 is not his signature and he has filed a complaint case in the Court of S.D.J.M., Panposh, Rourkela on 21-1-2010 vide I.C.C. Case No. 40/2010. The second party-workman also

admitted in his evidence that Ext. W. 1 is not the office pad of the management. So the management claims that Ext. W. 1 is the manufactured one. Besides that the management disputing on the series of documents which are marked Ext. W. 4 in the receipts showing payment made to the second party-workman. As per the case of the first party-management all these documents are manufactured documents. It is also clear in the receipt on Dt. 6-10-1993 which discloses that the payment was made for the month of Novemeber on dt. 6-10-1993.

10. Moreover the second party-workman is not consistent in his statement. He has stated before the Conciliation Officer that he was appointed as a Choukidar on N.M.R. basis in the office of the O.S.I.C. Ltd. But in his pleadings he has stated that he was appointed as Choukidar under the first party-management. So nowhere he has whispered that he was engaged by the Orissa Small Industries Corporation Ltd., as Choukidar on N.M.R. basis. The representative of the first party-management submitted that there is no such sanctioned post like Choukidar is available in order to prove this case. The first party-management filed office order showing that there was no sanctioned post like Choukidar.

11. The management relied upon some documents which are marked as Ext.M. 1 to Ext. M. 6 without any objection from the side of the workman. Ext. M. 1 is the letter Dt. 16-1-2010 of A. P. Dash M.W. 1. Ext. M.1/1 is the signature of A. P. Dash in Ext. M. 1. The signature appears in Ext. M. 1 does not tally with the signature in Ext. W. 1. A. P. Dash is working as Area Manager of the concerned Department. Ext. M. 2 is the complaint case before the S.D.J.M., Rourkela filed by A. P. Dash, Area Manager in I.C.C. Case No. 40/2010, Dt. 21-10-2010. Ext. M. 3 is the copy of the Service Rules, Ext. M.4 is the office order showing sanctioned post, Ext. M. 5 is the copy of documents indicating contract award to the management, Ext. M.6 is the documents indicating Project Manager Office of O.S.I.C., Rourkela.

12. The second party-workman has filed some xerox copy of letters to prove that he had joined from 1-7-1991 as per Ext. W. 1. The copy of letter, Dt. 26-10-1995 discloses that he had joined in the first party-management (Ext. W. 9) and was getting remuneration from the management which are marked as Ext. W. 4 series. The second party-workman has not filed any relevent documents relating to his employment being engaged by the management as a permanent employee. He has filed his School Leaving Certificate from which it is disclosed that he read up to Class VII. Moreover he has not filed any documents sponsored by the Employment Exchange Office. It is an admitted fact that the first party-management is a State Government Undertaking having its own Employees Service Rules, 1979. The appointment of any person is regulated by the service rules. The first party-management on the other hand admitted that the second party-workman sometimes engaged by Jaguar Security Service and Agency who had engaged the second party-workman to handle the raw materials for inward and outward movements of the Project under the contract awarded in favour of the first party-management for expansion and modernisation of the Rourkela Steel Plant. So as per the case of the management the alleged work awarded in favour of the first party-management was for a specific purpose and for a specific period which was completed on 30-5-1997. It is also evident from the letter issued by the Steel Authority of India Limited. So the stockyard was opened at Kalunga for execution of the awarded work which has been closed. The second party workman never disputed the above facts raised by the first party-management . So it is clear from the evidence on the record that the contract awarded in favour of the first party-management was for a specific period till 30-5-1997.

13. The learned representative on behalf of the second party-workman submitted that on the request of the Assistant Labour Commissioner, Rourkela, the first party agreed to engage the second party-workman as a casual labourer as and when exigencies will arise. The said fact is evident from Ext.W. 7. It is clear from the record on evidence that the first party-management has never issued any appointment letter to the second party-workman nor the second party-workman received any joining report. The learned representative on behalf of the second party-workman has not submitted in any manner regarding Ext. W. 1 and Ext. W. 9. The management relied on the reported decision AIR 2002 S.C 2495 “that engagement for specific purpose and for a particular period, termination of service after purpose and period of engagement was over—Does not amount to retrenchment”. The evidence as well as documents filed by the management is more believable and trustworthy than the evidence and documents filed by the second party-workman.

14. In view of such facts and circumstances, it can be said that the second party-workman has failed to prove his cases. Accordingly the *Issue No. (i)* is answered.

15. *Issue No. (ii)*—In view of such facts and circumstances, the second party-workman is not entitled to get any relief since he was not permanent employee under the first party-management. Hence the following Award :

AWARD

The reference is answered on contest against the second party-workman but in the circumstances without any cost. The action of the management of M/s Orissa Small Industries Corporation Ltd., Industrial Estate, Rourkela, Dist. Sundargarh in terminating the services of Shri Sudarsan Moharana by way of refusal of employment with effect from 1-5-1997 is legal and justified. Accordingly the second party-workman is not entitled to get any relief in this case.

Dictated and corrected by me.

SAROJINI MAHAPATRA
15-4-2010
Presiding Officer
Labour Court
Sambalpur

SAROJINI MAHAPATRA
15-4-2010
Presiding Officer
Labour Court
Sambalpur

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