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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th December 2009

No. 11451—Ii/1(B)-76/2007-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd December 2009 in Industrial Dispute Case No. 297 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Orissa Forest Development Corporation and their workmen Shri Arun Kumar Swain, Shri Prakash Samal represented through the General Secretary, Orissa Forest Development Corporation Employees Association, Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 297 OF 2008

Dated the 2nd December 2009

Present :

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

Between :

The Managing Director . . First Party—Management
Orissa Forest Development Corporation Ltd.
A-84, Kharavel Nagar, Bhubaneswar-751 001

And

Shri Arun Kumar Swain . . Second Party—Workmen
At Palda, P.O. Nahapada
Via Rambag, Dist. Jajpur-755 014

Shri Prakash Samal
At Sutahat, Christian Sahi
P.O. Buxi Bazar, Dist. Cuttack

The General Secretary
Orissa Forest Development Corporation
Employees Association, Plot No. 217/218
Satyanagar, Bhubaneswar-751 007.

Appearances :

For the First Party—Management . . Shri B. K. Pattanaik, A. L. O.

For the Second Party—Workmen . . Shri P. K. Swain,
Authorised Representative.

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section(5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 5957—Ii/1(B)-76/2007-LE., dated the 26th May 2008.

> "Whether the retrenchment of Shri Arun Kumar Swain and Shri Prakash Samal from their services with effect from the 28th September 2007 by the management of Orissa Forest Development Corporation Limited, Bhubaneswar is legal and/or justified ? If not, to what relief the workmen are entitled ?"

2. The workmen involved in the dispute owing to their retrenchment from service have knocked the door of this Tribunal for a direction to the management to reinstate them in service with all consequential benefits. The background facts as narrated in their respective statements of claim as also in the rejoinder may briefly be stated thus :—

The workmen namely, Shri Arun Kumar Swain and Shri Prakash Samal were both employed under the first party management i.e., M/s. Orissa Forest Development Corporation as L. D. Assistants with effect from the 28th January 1991 and since then they were discharging their duties sincerely to the best satisfaction of their authorities. They have stated that during their continuance for a period of about 17 years under the management they were also transferred from one place to another according to vacancies and they had been extended D.A., increment, C. L., E. L., etc. and the management had also opened their Service Books. It is stated that in the year 1994 when the Government of Orissa interfered with the administration of the Corporation, the management decided to retrench them for which they ventilated their grievance before the Hon'ble High Court and soon after the dispose of the writ the management without considering the representations, which they had made pursuant to the observation of the Hon'ble Court, retrenched them from service with effect from the 28th September 2007. While admitting about receipt of one month's notice pay, compensation and salary up to the 27th September 2007, both of them have asserted that the same were paid to them on the 27th July 2008. Both of them have alleged that the management violating the provisions of Section 25-N of the Industrial Disputes Act has affected the aforesaid retrenchment and further the management has completely ignored the principle of 'last come first go' while taking action against them. The further allegation of the workmen is that while dispute relating to their regularisation was pending before the D. L. O.-*cum*-Conciliation Officer, the management retrenched them in a most arbitrary and illegal manner. With the aforesaid averments, both the workmen have prayed for their reinstatment in job with full back wages and other consequential benefits.

3. The management, on the other hand, contesting the 'lis' filed its written statement stating there in *inter alia* that both the workmen were appointed temporarily on *ad hoc* basis under the management and their such employment was not in consonance with the due procedure of recruitment. Not disputing the period of engagement of both the workmen under it, the management has specifically taken a stand that in order to curtail the surplus man-power, the Board of Directors after going through the expert's report and the workload of the Corporation decided to retrench all the temporary employees, who were engaged after the 1st January 1990 and apprehending their retrenchment both the workmen approached the Hon'ble Court and as the Hon'ble Court granted stay in that matter they continued under the Corporation and ultimately when the matter was disposed of by the Hon'ble Court with an observation to the management to consider the representation to be made by the workmen, the management after considering the representations and taking into consideration the decision of the Government and the Board of Directors decided to retrench both the workmen and accordingly upon complying with the requirements of law i.e., the provisions of Section 25-F of the Industrial Disputes Act effected such retrenchment. The management has pleaded that there having no illegality in the action of the managment in retrenching the workmen from their services with effect from the 28th September 2007, the reference of the dispute may be answered in the negative as against the workmen.

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

ISSUES

(i) "Whether the retrenchment of Shri Arun Kumar Swain and Shri Prakash Samal from their service with effect from the 28th September 2007 by the management of Orissa Forest Development Corporation Limited, Bhubaneswar is legal and/or justified ? If not, to what relief the workmen are entitled."

5. In order to prove their respective stand, both parties have adduced oral as well as documentary evidence. The workmen have examined themselves as W. Ws. 1 and 2 and filed and proved documents which have been marked Exts. 1 to 31. Similarly, the management has examined two witnesses on its behalf and filed and proved documents which have been marked Exts. A to GG.

6. It is not in dispute that both the workmen were not under the employment of the management from the 28th January 1991 till they faced their retrenchment on the 28th September 2007. It is also not in dispute that they were not paid retrenchment compensation etc. as per Section 25-F of the Industrial Disputes Act (for short 'Act'). The grievance of the workmen is that while effecting the retrenchment the management has not complied with the mandatory requirements of Section 25-N of the Act and further it has completely ignored the provisions of Section 25-G of the Act. Per contra, it was contended on behalf of he management that the organisation of the management is not an 'industrial establishment' within the definition of Section 25-L of the Act and consequently the provisions of Section 25-N of the Act are not at all attracted. It was further contended that it is totally false to allege that the management has violated the provisions of Section 25-G of the Act. In view of the submissions, therefore, it is first to be determined as to whether the concern of the first party is coming within the definition of 'industrial establishment' as provided in Section 25-N of Chapter V-B of the Act so as to attract the provisions of Section 25-N of the Act in the matter of retrenchment of its employees.

Chapter V-B of the Act prescribes a special Provision relating to Lay-off, retrenchment and closure in certain establishment and Section 25-K of the Act provides applicability of Chapter V-B, which reads as under :—

"25-K. application of Chapter V-B :

(1) The provisions of this Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months.

(2) XX XX XX XX".

Section 25-K of the Act is squarely applicable to the first party organisation in view of the documentary evidence brought on record by the workmen. Exts. 21, the copy of the transfer order and Ext. 31, the copy of the seniority list of L. D. Assistant in the O. F. D. C. as on the 31st January 2007 are two such documents which show that more than 100 workmen were working under the organisation on an average per working day at the relevant time.

7. Now it is to be seen whether the organisation of the first party is coming within the definition of an 'industrial establishment' as provided in Section 25-L of the Act. Section 25-L of the Act defines 'industrial establishment' to mean—

"(a) (i) a factory as defined in clause (m) of Section 2 of the Factories Act, 1948 (63 of 1948).

(ii) XX XX XX XX

(iii) XX XX XX XX

(b) XX XX XX XX

(i) XX XX XX XX

(ii) XX XX XX XX"

A plain reading of the above statutory clauses suggest that in order to bring an organisation within the definition of 'industrial establishment', it must be shown that such organisation is a 'factory' as defined in Clause 2(m) of the Factory Act, 1948 and further 'manufacturing process' as defined in Section 2(k) of the Factories Act is being carried on in the said organisation. For better appreciation, Section 2(m) and Section 2(k) of the Factories Act are quoted below :—

Section 2(m) :

"factory" means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a Mine subject to the operation of the Mines Act, 1952 (35 of 1952) of a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place."

Section 2(k) :

"manufacturing process" means any process for—

(i) making, altering, repairing, ornamenting, finishing, packing, olding, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.".

Keeping in view the above provisions, it is to be seen whether the workmen have been able to establish that the organisation of the first party is an 'industrial establishment' within the meaning of Section 25-L of the Act. In this connection, the evidence of M. W. No. 1 may be referred to wherein he has stated in Para. 34 of his evidence that the work of the Forest Corporation is to cut trees from forest and sell them by cutting it in sizes. The evidence, as above, is sufficient to conclude that the activities of the first party being it well within the meaning of Section 2(k) of the Factories Act and consequently it can be held that it being a 'factory' as defined u/s 2(m) of the Factories Act the same is an 'industrial establishment' within the meaning of Section 25-L of the Act.

8. The finding that the organisation of the first party is an 'industrial establishment' leads this Tribunal to further delve into the question as to whether the management while effecting retrenchment had complied with the mandatory requirements of Section 25-N of the Act which is applicable to the present case. It is the stand of both the parties that in the present case there has been compliance of Section 25-F of the Act and not Section 25-N. Section 25-N of the Act provides the following criterion for affecting retrenchment of an employee by the management.

"25N. Conditions precedent to retrenchment of workmen—

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given three month's notice in writing indicating the reason for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this Section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in prescribed manner stating clearly the reason for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) XX XX XX XX

(4) XX XX XX XX

(5) XX XX XX XX"

(6) XX XX XX XX

(7) XX XX XX XX

(8) XX XX XX XX

(9) Where permission for retrenchment has be granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4) every workman who is in employment in that establishment immediately before the date of application for permission under this Section shall be entitled to receive at the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months.".

The admitted position being that the management has not complied with the mandatory requirements of Section 25-N of the Act, its action is held to be illegal as well as unjustified. In this connection reliance is placed on a decision of the Hon'ble Apex Court in the case of Uttaranchal Forest Development Corporation and another *Vrs*. Jabar Singh and others, reported in 2007 (113) FLR-1(S.C.) wherein their Lordship while dealing with a similar case have held the Urraranchal Forest Development Corporation to be an 'industrial establishment' within the meaning of Section 25-L of the Act and further held to the following effect :—

> "The appellant-Corporation, while issuing the retrenchment notices, dated the 31st May 1995 as well as other notices issued between the 31st March 1995 to the 31st May 1995 did not comply with either of the two requirements of Section 25-N, namely, giving 3 months notice to the workman in writing or paying the 3 months wages in lieu thereof and taking prior permission from the appropriate Government, the retrenchment of the respondent-workmen by the Corporation was done contrary to the provision of Clause (1) of Section 25-N and is illegal.
>
> The retrenchment notices mentioned above being illegal from the date of the said notices and the workmen being entitled to all the benefits, in the present case, all the concerned workmen are entitled to be reinstated with full back wages and continuity of service.

9. The other assertion of the workmen that the management has also violated the provisions of Section 25-G of the Act while retrenching them from service is also found to be well proved through Ext. 31 which discloses that by continuing the workmen under daily wages regular appointment to the post of L. D. Assistants was made in the year 1992 and even in the year 2006. Hence, there is yet another infraction of the provisions of Section 25-G of the Act by the management while effecting retrenchment of the workmen which renders its action both illegal as well as unjustified.

10. In view of the categorical finding that the action of the management is not sustainable in the eye of law, all the arguments advanced on behalf of the management resisting the claim of the workmen have no legs to stand. The decision referred to by it in the case of Secretary, State of Karnataka and others *Vrs*. Umadevi & others, reported in AIR 2006 S. C. 1806 being on the question of regularisation of daily wagers the same is not at all applicable to the present case as the question posed in this reference is relating to the legality and justifiability of the order of retrenchment passed by the management. Similarly, the other decision cited by the managment in the case between Parry & Co. 2nd Judge, 2nd Industrial Tribunal, Calcutta, reported in AIR 1970 S. C. 1334 would not be applicable in the present proceeding as the records disclose a clear-cut victimisation meted out to the workmen in the matter of their retrenchment by violating the provisions of Section 25-G of the Act by their employer.

11. In view of the finding that the action of the management in retrenching the workmen from service is illegal and so also unjustified, the next question that falls for determination is as to what relief the workmen are entitled in the present proceeding.

It is the admitted fact that the management has utilised the services of the workmen like regular employees by opening their Service Books and granting them scale of pay, increment, E. L., C. L., etc. and in the process both the workmen have served under in for nearly sixteen years. In the meanwhile both the workmen have also lost their hope of future employment if any, on account of their crossing the age limit. So, taking the aforesaid factor into consideration and the verdict of the Hon'ble Apex Court in Uttaranchal Forest Development Corporation's Case (*Supra*), this Tribunal directs the management to reinstate the workmen in their services and grant them service continuity. As regards back wages, it being the admitted fact that both the workmen have received the benefits of Section 25-F of the Act. It would be proper to direct the management to pay each workman a lump sum amount of Rs. 10,000 (Rupees ten thousand only) in lieu of back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
2-12-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
2-12-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
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