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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th March 2010

No. 2464-II/1(BH)-9/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2009 in Industrial Dispute Case No. 44 of 2006 of the Presiding Officer, Labour, Court Bhubaneswar to whom the industrial dispute between the management of the Executive Engineer, Mayurbhanj Irrigation Division, Baripada, Dist. Mayurbhanj and its workman Shri Narendra Mohan Padhi, Ex-N.M.R. was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 44 OF 2006

Dated the 15th December 2009

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of the
Executive Engineer,
Mayurbhanj Irrigation Division,
Baripada.

.. First-party Management

And

Its Workman
Shri Narendra Mohan Padhi.

.. Second-party Workman

Appearances :

Shri P. K. Mohanty, Jr. Clerk.

.. For First-party Management

Shri N. M. Padhi

.. Secondary-party Workman himself

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court vide Order No. 4473– li/1(BH) -9/2006 L.E., dated 6-6-2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the retrenchment of Shri Narendra Mohan Padhi, Ex-N.M.R. by the Executive Engineer, Mayurbhanj Irrigation Division, Baripada with effect from 30-6-1988 is legal and justified ? if not, to what relief Shri Padhi is entitled ?”

3. The case of the workman in brief is that he has been working as N.M.R. with effect from dated 1-1-1975 under the management of Executive Engineer, Kalo Irrigation Project which has been merged under Mayurbhanj Irrigation Division, Baripada, the present management, since 1-8-1992. The workman had performed his duty and completed more than 240 days of continuous employment in twelve calendar months but his employment was terminated with effect from dated 30-6-1988 without complying with the mandatory provisions of law as prescribed under Section 25-F. of the Industrial Disputes Act, 1947. No reason of termination of employment was communicated to the workman and no retrenchment compensation has also been paid to the workman. The management did not recall the workman in any day to resume duty. So the workman had submitted representations to the present management on different dates like dated 3-4-1989, 8-1-1990, 11-3-1991 and 11-5-1999 by under Certificate of Posting but the management did not take any steps and only verbally gave assurance to give employment. When the management failed to comply with the assurance the workman raised a industrial dispute before the competent authority and subsequently it has been referred to this Court for adjudication.

4. The management appeared and filed written statement denying the plea of the workman. According to the management, Mayurbhanj Irrigation Division, Baripada is functioning with effect from dated 28-2-1983. The maintenance work of Kalo Irrigation Project and Sunei Irrigation Project came to the control of Mayurbhanj Irrigation Division, Baripada as per the order of the Government, Department of Irrigation vide Letter No. 17313 dated 25-6-1991 and the same was communicated to the management vide letter No. 26362 dated 12-7-1991. The records and staff of Kalo and Sunei Irrigation Projects were actually transferred from Mayurbhanj Investigation Division, Udala to the control of Mayurbhanj Irrigation Division, Baripada, with effect from dated 1-8-1992. The present management was not the caretaker of the Kalo Irrigation Project when the workman left the job on dated 30-6-1988. The workman was asked to furnish the copies of details like date of engagement/ termination, if any in support of his retrenchment being a N.M.R. by the management as well as under which Junior Engineer/Subdivision he was working so as to enable the management to verify the old records, but the workman could not able to comply the same till the ending of the conciliation

to justify his claim. The claim of the workman after lapse of 25 years was nothing but an afterthought plea. The management has never assured the workman to re-engage in any way of employment. Due to reduction of workload and budgetary allocation for the purpose, surplus workmen were retrenched by the then management and due to induction of some other workmen by the orders of different Courts of Law, the workmen are getting wages for a period of six months in a year. Due to reduction of workload 163 numbers of M.M.R./Work Charged employees have been treated as surplus besides all others re-engaged by the orders of different Courts of Law. So in this background while the workman was not working under the present management and the present management has not retrenched the workman from service, the workman is not entitled to get any relief as prayed for.

5. Initially this case was disposed of on dated 25-3-2008 by way of passing an Award with a finding that the workman is not entitled to any relief whatsoever. Being aggrieved by such Award passed by this Court, the workman preferred a Writ before the Hon'ble Court vide W.P.(C) No. 11232 of 2008 wherein the Hon'ble Court held as follows :

“Without going into the merits of the case, one way or the other, the impugned Award of the Labour Court, Bhubaneswar, in Industrial Dispute Case No. 44 of 2006 is hereby quashed and the matter is remitted back to the Labour Court for fresh adjudication after affording opportunity of hearing to the parties. It is open for the parties to adduce further evidence in support of their respective case.”

In view of the aforesaid order of the Hon'ble Court after affording opportunity of further hearing to both the parties the present adjudication is being made.

6. In view of the above pleadings of the parties the following issues are settled :—

ISSUES

- (i) “Whether the retrenchment of Shri Narendra Mohan Padhi, Ex-N.M.R. by the Executive Engineer, Mayurbhanj Irrigation Division, Baripada with effect from dated 30-6-1988 is legal and justified ?
- (ii) If not, to what relief Shri Padhi is entitled ?”

7. In order to substantiate his claim, the workman has examined three witnesses altogether on his behalf out of whom W.W.1 is the workman himself, W.W.2 and W.W.3 are his co-workers. Similarly the management has examined one witness on its behalf who is a Junior Clerk of Mayurbhanj Irrigation Division, Baripada. The workman has proved documents marked as Exts. 1 to 10 on his behalf. Similarly the management has proved the documents marked as Exts.A and B on its behalf.

FINDINGS

8. Issue Nos. (i) and (ii)—Both the issues are taken up together being co-related.

W.W.1 deposes that he has been working as N.M.R. under the control of Kalo Minor Irrigation Project for the period from 1-1-1975 to 29-6-1988. His last wage was Rs. 270 per month. He was engaged in Civil and Mechanical Section in Kalo Dam Project. He was terminated from service with effect from dated 30-6-1988 without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947. The principles of natural justice has not been followed at the time of his termination. He also further deposes that he has submitted his representations to the management on 8-4-1989, 8-1-1990, 31-3-1991 and 11-5-1999. Three xerox copies of representations addressed to the Executive Engineer, Mayurbhanj Irrigation Division, Baripada has been marked as Exts. 2, 2/a and 2/b respectively which are of dated 3-4-1989, 11-3-1991 and 8-3-1990. Ext.3 is the xerox copy of the postal receipts showing sending of letters by registered post as well as by under Certificate of Posting. W.Ws.2 and 3 also depose in support of the evidence of W.W.1 and according to them they were also working with the workman. W.W.1 also deposes that the said Kalo Minor Irrigation Project is now renamed as Mayurbhanj Irrigation Division. M.W.1 deposes that Mayurbhanj Irrigation Division, Baripada started functioning with effect from 28-2-1983. When the construction work of Kalo Irrigation Project and Sunei Irrigation Project were completed, the Government vide letter No. 17313, dated 25-6-1991 directed to take care of maintenance work of the said two Projects to the Executive Engineer, Mayurbhanj Irrigation Division, Baripada. The xerox copy of the said order has been marked as Ext. A on behalf of the management which clearly discloses that Kalo Irrigation Project was renamed as Mayurbhanj Investigation Division and Mayurbhanj Irrigation Division with all its Subdivisions which were renamed as Mayurbhanj Investigation Division and Investigation Subdivisions will continue as Mayurbhanj Irrigation Division and Irrigation Subdivisions. So Ext. A is the order of the Government regarding re-organisation of Division and Subdivisions therein under the Irrigation Department. So it clearly shows that Kalo Irrigation Division is renamed as Mayurbhanj Investigation Division and will continue as Mayurbhanj Irrigation Division. M.W.1 further deposes that the management had never given any wages or salary to the workman at any time. The workman had never worked under the present management at any time. In the cross-examination W.W.1 admitted that he was not working under the present management, i.e. Mayurbhanj Irrigation Division, Baripada. Now it is the case of the workman that he was never worked under the Executive Engineer, Mayurbhanj Irrigation Division, Baripada, but after reorganisation of the Division and Subdivisions as stated earlier, the present management has all the responsibilities and liabilities of Kalo Irrigation Division. So when the present workman was working under Kalo Irrigation Division as stated by him, the present management has also the duty about the responsibility and liability of the workman. In support of his working under Kalo Irrigation Division in addition to oral evidence, the workman has produced a xerox copy of experience certificate issued by the in Junior Engineer,

Kalo Dam Subdivision, Chuinposi, Mayurbhanj which has been marked as Ext.1 without objection from the side of the management. The said certificate (Ext.1) discloses that the present workman has been working as N.M.R. from 1975 to till dated 30-6-1988 under Kalo Dam Subdivision. So the plea of the management that he workman has failed to produce the document to show that he was working as N.M.R. under Kalo Irrigation Division is no force at all. Rather it clearly confirms that he was working as N.M.R. under Kalo Irrigation Division.

9. It is argued by the management that the present management is not the employer of the workman and the workman had left his job on 30-6-1988 while working under Kalo Irrigation Division. From the materials available in the record it shows that the workman was working under Kalo Irrigation Division for more than 240 days in 12 calendar months preceding to the date of termination. In A.I.R. 1982, S.C. 854 in the case of *L. Robert D'Souza Vrs. Executive Engineer, Southern Railway* and another it has been held that termination of service of a workman if brought to any reason whatsoever it would be retrenchment except if the case follows within any of the excepted category, i.e. (i) termination by way of punishment inflicted on disciplinary action, (ii) voluntary retirement of the workman, (iii) retirement of the workman on reaching the age of superannuation if the contract of the employment between the employer and the workman concerned contains a stipulation in that behalf or (iv) termination of the service of a workman on the ground of continued ill-health. If the case does not follow within in any of the above-mentioned Clauses, the same will amount to retrenchment within the meaning of Section 2(00) of the Industrial Disputes Act, 1947. So in the instant case the termination of service of the workman does not come within such exceptional category, so it amounts to retrenchment. But the provisions of Section 25-F of the Industrial Disputes Act, 1947 has not been followed in support of such retrenchment. It has been argued by the management that the workman remained silent for a long period and now come with a plea that he has not been re-employed under the management without sufficient reason. But according to the settled principles of law limitation is not applicable to the industrial dispute in strict sense and the delay should not be taken as a ground of denying relief to the workman. The workman has also stated that he has not received any retrenchment compensation either from the present management or from Kalo Irrigation Division where he was originally working. Since the workman was in service under Kalo Irrigation Division which was reorganised and came under Mayurbhanj Irrigation Division, Baripada, burden of proving that the workman voluntarily left the service falls on the management and in the case instant case, the management has failed to establish the same. Merely because the workman was not working under the present management, the management cannot shift his responsibility in respect of the claim of the workman. The workman has relied upon an Award passed in Industrial Dispute Case No. 58/92 of this Court and Award passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No. 18/95. The Award of Industrial Dispute Case No. 18/95 was challenged by the management before the Hon'ble Court in which the Award passed by the Presiding Officer, Industrial Tribunal, Bhubaneswar was confirmed. Thereafter

number of workmen were re-engaged by implementing the said Award by the management. Lastly he has also relied upon the Award passed by the Industrial Tribunal, Bhubaneswar in Industrial Dispute Case No. 16/2001 vide Ext.10. In support of the argument led by he workman reliance can be placed on the authority reported in 2008 (119) F.L.R. 398, 2004 (103) F.L.R. 102. So now on a careful consideration of the materials available in the case record as discussed above, I came to the finding that the termination of the services of the workman with effect from 30-6-1988 by the management of Kalo Irrigation Division is neither legal nor justified.

10. Now coming to the question of relief to which the workman is entitled. It has been submitted by the workman that he is entitled to be reinstated in service with full back wages. But in the instant case it is an admitted fact that workman was not working under the present management and has not given any service to the present management during the relevant period after retrenchment from service. So following the principles 'no work no pay' normally he should not be granted with all back wages. Further according to the settled principles of law, it is well settled by reason of catena of decisions of the Apex Court that the relief of reinstatement with full back wages should not be granted automatically only because it would be lawful to do so. For the said purpose several facts are required to be for consideration. But on a careful consideration of the materials available in the case record and the circumstances under which the workman is entitled for reinstatement in service, in my opinion a lump sum amount of Rs. 10,000 (Rupees ten thousand) only in lieu of back wages will meet the ends of justice in the case. Therefore, the workman is entitled for reinstatement in service with a lump sum amount of Rs. 10,000 (Rupees ten thousand) only in lieu of back wages. The management to implement the Award within a period of three months from the date of the publication of the Award in the official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
15-12-2009
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
15-12-2009
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government