

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 930 CUTTACK, SATURDAY, JUNE 19, 2010/JAISTHA 29, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2010

No.4518–li/1(SS)-29/2006-LE.–In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th February 2010 in I. D. Case No.5 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Dispute between the Management of Executive Engineer, Minor Irrigation Division, Sundargarh and their workmen Shri Sadhu Nath and three others represented by North Orissa Workers' Union, Orempara, Rourkela-12 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 DISPUTES CASE No.5 OF 2007

Dated the 9th February, 2010

Present :

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

Between :

The Management of the Executive Engineer, ... First-party Management
Minor Irrigation Division,
Sundargarh.

And

Their Workmen Shri Sadhu Nath and three others ... Second-party Workmen
represented by North Orissa Workers Union,
Orempara, Rourkela-12.

Appearances :

Self	. .	For the First-party Management
Shri Sanatan Biswal, Secretary, North Orissa Workers' Union, Rourkela.	. .	For the Second-party Workman

AWARD

This matter 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) (for short the 'Act') in Memo No.1670(5), dated 24-2-2007 for adjudication of the Schedule question :-

“Whether the action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Duryodhan Nath, Meghanath Rout and Indra Naik, N.M.R. (unskilled) with effect from 2-10-1998 is legal or justified ? If not, what relief they are entitled to ?”

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

The first-party management, i.e. the Executive Engineer, Minor Irrigation Division, At/District Sundargarh is having a systematic activity carried on by Co-operation between itself and its workmen for the purpose of carrying out irrigation work in its jurisdiction and it is an industry as defined in Section 2 (j) of the I. D. Act, 1947. The first-party management has employed a number of employees for smooth functioning of its activities of the second-party workmen and each of the workman among them is within the meaning of Section 2 (s) of the I. D. Act.

3. It is further alleged in the claim statement filed by the workman that the workmen namely Shri Sadhu Nath, Shri Duryodhan Nath, Shri Meghanath Rout and Indra Naik joined the services of the first-party management in January, 1994 as Mazdoor. They were posted under the S. D. O., M. I. Sub-division, Rourkela and later on their services were regularised in the month of January, 1996. At the time of their joining, the second-party workmen were in receipt of Rs.700 per month as wages. Besides their wages, they were entitled to other benefits admissibility to similar employees/workmen of the first-party management. The second-party workmen discharged their responsibility with sincerity and honesty and the first-party management never dissatisfied with their work during their tenure of service. The second-party workmen were never served with any charge-sheet nor any domestic enquiry was conducted against them nor they were proceeded with any disciplinary action at any point of time. The first-party management without any reason refused the employment of the second-party workmen on 2-10-1998. When the second-party workmen asked their superior authority as to the reason of such refusal of employment, they were informed that they should wait for the advice from Government for their further engagement. The first-party management also advised the second-party workmen to consider their case sympathetically. Subsequently the first-party management did not take any action for their further engagement.

The second-party workmen represented the Deputy Labour Commissioner, Rourkela through their letter dated 24-1-2000 requesting him to intervene in the matter for their employment but it was in vain. Hence the second-party workmen have filed this case and made a prayer that the action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Shri Duryodhan Nath, Meghanath Rout and Indra Naik, N. M. R. with effect from 2-10-1998 is neither legal nor justified and also pray to direct the first-party management to reinstate the second-party workmen in their services with effect from 2-10-1998 along with full back wages and other consequential benefits.

4. The first-party management filed the written statement stating as follows :-

The first-party management engaged temporarily some labourers on daily wage basis for watch and ward of T. & P. materials and other site materials laying at the site of Bisra para M. I. P. (Minor Irrigation Project). The workmen namely Shri Sadhu Nath, Shri Duryodhan Nath, Shri Meghanath Rout and Shri Indra Naik were engaged as daily labourers (Mazdoors) verbally by the then Assistant Engineer, M. I. Sub-division, Rourkela purely on temporary basis. It is a fact that the workmen were refused to work with effect from 2-10-1998 as their services were no more required by the A. E., M. I. Sub-division, Rourkela. As per their request they were also assured to be given preference for engagement as and when required in future. As per the instruction of CEMICO, Bhubaneswar vide his letter No.15950 (23), dated 10-7-2001, 40 (forty) numbers of D. L. R. personnels have been retrenched since 31-10-2001 who were engaged after 12-4-1993 (i.e. banned period). So the plea taken by the second-party workmen are false and baseless. They were engaged temporarily as daily workers. Shri S. Nath and Shri D. Nath workmen were engaged from 12/96 and Shri M. Rout and Shri I. Naik were engaged from 2/98. The work of the workmen were no more required with effect from 2-10-1998. So the question of violation of statutory provisions of Section 25-K and 25-G of the I. D. Act does not arise. The first-party management followed the instruction of the Government as well as D. L. O., Rourkela. As per the instruction of D. L. O., Rourkela, the first-party has given compensation to deprived labourers but they did not turn up to receive the said compensation from the management. Moreover there is clear instruction of W. R. Department vide his letter No.15949, dated 10-7-2001 that Work Charged, N. M. R./D. L. R./Job Contract Workers engaged after 12-4-1993 (banned period) should be retrenched. There is no such provision of Government of Orissa regarding regularisation of daily wages workers to regular establishment. As per the order to C. E., M. I. (O), Bhubaneswar vide his letter No.15949, dated 10-7-2001, 40 (forty) numbers of D. L. R. personnel were retrenched who were engaged after 12-4-1993. So the further engagement of daily wages workers in Bisra para M. I. P. were not made. So the management prayed that the case of the second-party workmen being devoid of merit is liable to be dismissed.

5. The second-party workmen have not filed their rejoinder.

6. Out of the pleadings of the parties, the following issues have been framed in this case.

ISSUES

- (i) "Whether the action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Shri Duryodhan Nath, Shri Meghanath

Rout and Shri Indra Naik, N. M. R. (Unskilled) with effect from 2-10-1998 is legal or justified ?

(ii) If not, to what relief they are entitled ?”

7. The second-party workmen have not filed any document in support of their case whereas some documents were filed by the first-party management which are marked as Ext. M-1 to Ext. M-7.

On behalf of the workmen, Shri Sadhu Nath is only examined as W. W. 1. On behalf of the management Shri Basanta Kumar Panda, Executive Engineer, M. I. Division, Sundargarh is only examined as M. W. 1.

FINDINGS

8. *Issue No.(i)*—The Executive Engineer, Minor Irrigation Division, Sundargarh is having a systematic activities carried on by Co-operation between itself and its workmen for the purpose of carrying out irrigation work in its jurisdiction. The workmen second-party claim that they being employed by the first-party management, they became the workmen within the meaning of Section 2 (s) of the I. D. Act. As alleged from the case of the workmen, the second-party workmen namely Shri Sadhu Nath, Shri Duryodhan Nath, Shri Meghanath Rout and Shri Indra Naik joined in the service of the first-party management in January, 1994 as Mazdoor. They were posted under the S. D. O., M. I. Subdivision, Rourkela and later on their services were regularised in the month of January, 1996. At the time of joining the second-party workmen were in receipt of Rs.700 per month as wages. Besides their wages, they were entitled to get other benefits similar with the other employees of the first-party management. W. W. 1 in his evidence stated that they were joined in the year 1994 on temporary and casual basis. On January, 1996 the workmen second-party became N. M. R. and were getting Rs.700 per month towards their monthly salary. The first-party management orally told the workmen that the work order has already completed and when they would get the work order from the Government, they will intimate and engage the second-party workmen in their job. Admittedly they were retrenched from their daily labour work with effect from 2-10-1998. W. W. 1 stated in his evidence that he was getting Rs.750 per month towards his salary since 1996. He further stated that he was getting Rs.750 per month from the month of March, 1997 to October, 1998 towards his salary from the management. W. W. 1 admitted in his evidence that all the workmen including himself had drawn their salary per month on hand receipts after putting signatures on the hand receipts. He further admitted that he alongwith workmen Shri Duryodhan were called by the management to receive the compensation amount of Rs.2,400 in total.

9. As per the case of the management, these workmen were engaged as daily labourers (Mazdoors) verbally by the then A. E., M. I. Subdivision, Rourkela purely on temporary basis. As per the instruction of C. E., M. I. (O), Bhubaneswar vide letter No.15950 (23), dated 10-7-2007, 40 (forty) numbers of D. L. R. personnels have been retrenched since 31-10-2001 who were engaged after 12-4-1993 (banned period). So the plea taken by the second-party workmen is false. As per the evidence of M.W.1 the Executive Engineer, Minor Irrigation Division, Sundargarh these second-party workmen were temporarily engaged as Daily Labourers (Mazdoors) verbally by

B. K. Mohanty, the then Assistant Engineer, R. I. Subdivision, Rourkela at Bisra para M. I. P. under M. I. Section, Kuanrunda for maintenance, watch and ward of site and Tools and Plant Materials laying in the site. Admittedly, the second-party workmen were getting their daily wages through hand receipts. As alleged they were disengaged after completion of Project as their services were no more required by the management. Moreover, as per the instruction of Chief Engineer, M. I. (O), Bhubaneswar vide his letter No.15950, dated 10-7-2001, the workmen working as D. L. R. have been disengaged since 31-10-2000 who were engaged during banned period, i.e. 12-4-1993. Shri Sadhu Nath and Shri Duryodhan Nath were engaged from December, 1996 and Shri Meghanath Rout and Shri Indra Naik were engaged from February, 1996 during the ban period, without sanction from any appropriate authority.

10. The M. W. 1 has filed some documents, i.e. Ext.M-1 is the xerox copy of written information relating to this case prepared by M. W. 1 marked with objection. Ext. M-2 is the xerox copy of hand receipts which disclose that the workmen received their wages from the management after putting their signatures on the hand receipt. Ext. M-3 is the xerox copy of the letter of District Labour Officer, Rourkela in Memo No.7297, dated 10-8-2001. Ext. M-4 is the xerox copy of the letter of the Office of the Chief Engineer, Minor Irrigation, Orissa, Bhubaneswar on dated 10-7-2001 to all the Superintending Engineers under Minor Irrigation wings for mid-term fiscal measurers. Abolition of Work Charged and N. M. R. Staff. Ext. M-5 is the xerox copy of letter of the Office of the Assistant Engineer, M. I. Sub-division, Rourkela, dated 26-2-2004 to Executive Engineer, M. I. Division, Sundargarh for submission of monthly cash accounts for the month of February, 2004 on dated 26-2-2004. Ext. M-6 is the xerox copy of Imprest Cash Account. Ext. M-7 is the xerox copy of Imprest Cash Account of M. C. Swain, J. E., M. I. Section, Bisra for the month of February, 1998.

The workmen have not filed any documents in support of their case. As the second-party workmen were working as N. M. R. their attendance register were not maintained by the management. As alleged their attendances were taken on the date they being engaged by the management. Their muster roll is also maintained by the management. The management has not filed the attendance register as well as muster roll in this case. The workmen never started their work since January, 1994. Admittedly the workmen second-party being engaged by the first-party management as daily wage labourers, they were getting their monthly wages from the management after putting their signatures in the hand receipts. The management has followed the instruction of Water Resources Department vide their letter No.15949, dated 10-7-2001 to disengage Work Charged/N. M. R./other workers engaged after 12-4-1993. The first-party management is bound to guide the instruction of the Government of Orissa. The above work were never working in regular and permanent establishment of the first-party management. The management has clarified that the workmen worked in the project as per the measurement book and Imprest Cash Book of M. I. Section, Kunarmunda and Bisra. So it appears from the evidence on record that the second-party workmen being engaged by the first-party management were working as daily labourers in a temporary basis. The management had rightly refused the engagement/work of the second-party workmen on 2-10-1998. So the refusal of engagement of the workmen second-party is not arbitrary nor illegal. The first-party management had not violated the statutory provisions of Sections 25-F and 25-G of the I. D. Act. So the action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Shri Duryodhan Nath, Shri Meghanath Rout and

Shri Indra Naik, N. M. R. (Unskilled) with effect from 2-10-1998 is legal and justified. Accordingly the Issue No.(i) is answered.

11. *Issue No.(ii)* –In view of such above facts and circumstances, it can safely held that the workmen are not entitled to get any relief in this case. Hence the Award.

AWARD

The reference is answered on contest but without cost. The action of the Executive Engineer, Minor Irrigation Division, Sundargarh in terminating the services of Shri Sadhu Nath, Shri Duryodhan Nath, Shri Meghanath Rout and Shri Indra Naik, N. M. R. (Unskilled) with effect from 2-10-1998 is legal and justified. The second-party workmen are not entitled to get any relief in this case.

Dictated and corrected by me.

S. MAHAPATRA
9-2-2010
Presiding Officer
Labour Court
Sambalpur

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9-2-2010
Presiding Officer
Labour Court
Sambalpur

By order of the Governor
K. C. BASKE
Under Secretary to Government