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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th June 2010

No. 4689-li/1(B)-8/2005 (Pt)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th November 2009 in I.D. Case No. 2 of 2006 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of OSWAL Chemicals & Fertilizers Ltd., Musadia, Paradeep/Management of M/s. Balaji Traders and M/s. Bhagaban Parida, C/o Management of OSWAL Chemicals & Fertilizers, Paradeep and their workmen represented through the President, OSWAL Sarakarakhana Shramik Sangha, Paradeep district Jagatsinghpur was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 2 OF 2006
Dated the 17th November 2009

Present :

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

Between :

The Managing Director,
OSWAL Chemicals & Fertilizers Ltd.,
Musadia, Paradeep.

.. First-party Management

Management of
M/s. Balaji Traders &
M/s. Bhagaban Parida,
C/o. Management of OSWAL
Chemicals & Fertilisers, Paradeep.

And

Their workmen represented through .. Second-party Workmen
the President, OSWAL Sarakarakhana,
Shramik Sangha, Paradeep,
Dist. Jagatsinghpur.

Appearances :

Shri B. C. Bastia, Advocate .. For First-party Managements

Shri Susanta Dash, Advocate .. For Second-party Workmen

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12 readwith 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. 1121–li/1 (B)-108/2006-L.E., dated the 6th February 2006 :

“Whether the disengagement of 1139 workers (list enclosed) working in M/s. OSWAL Chemicals and Fertilizers Ltd., Musadia, Paradeep is legal and justified ? If not, to what relief the said workmen are entitled ?”

2. The present Award is the out-come of the orders passed in the proceeding on dated 4-11-2009 on the point of maintainability, which reads as under :–

The present order is pursuant to the observation of the Hon’ble High Court in W. P. (C), No. 3562 of 2009; the operating portion of which runs as follows :–

“In view of such consensus between the parties, the writ petition is disposed of with a direction to the learned Industrial Tribunal, Bhubaneswar to take-up issue No. i relating to maintainability of the reference as a preliminary issue for adjudication in I. D. Case No. 2 of 2006. xx xx.”

Consequent upon the aforesaid observations of the Hon’ble Court, the parties advanced their respective argument on the point of maintainability. Before discussing the same in detail, it is felt appropriate to put on record the brief factual scenario which led this Tribunal to pass orders on the preliminary question of maintainability of the reference.

3. The Government of Orissa in the Labour & Employment Department had earlier made a reference to this Tribunal for adjudication vide its Order No. 8737, dated 23-7-2002 to the following effect :–

“Whether the workmen engaged in M/s. OSWAL Chemicals and Fertilisers Ltd., Musadia, Paradeep through M/s. Balaji Traders (list enclosed) are entitled to absorption in M/s. OSWAL Chemicals and Fertilisers Ltd., Musadia, Paradeep on expiry of contract on dated 31-8-2001 or entitled to absorption/engagement under new contractors establishments entrusted with the execution of the said work ?”

The above dispute was registered as I. D. Case No. 15 of 2002 and the parties thereto had filed their respective claim statement and written statements and thereafter when the case was ready for hearing, the Government in the Labour & Employment Department vide their Order No. 1121, dated 6-2-2006 had again sent a reference in supersession of the earlier reference in

I. D. Case No. 15 of 2002. In the later order of the Government this Tribunal was asked to adjudicate the following dispute :-

“Whether the disengagement of 1139 workers (list enclosed) working in M/s. OSWAL Chemicals and Fertilizers Ltd. Musadia, Paradeep is legal and justified ? If not, to what relief the said workmen are entitled ?”

The subsequent reference sent in supersession of the earlier reference was registered as I. D. Case No. 2 of 2006 and keeping in view the specific orders of the Hon'ble Court passed in W. P. (C) No. 5893 of 2008 for early disposal of I. D. Case No. 15 of 2002 and in absence of any clarification from the Government in the matter, this Tribunal vide its order dated 1-9-2009 passed orders to close the proceeding in I. D. Case No. 15 of 2002 in view of supersession of the same by a fresh reference registered as I. D. Case No. 2 of 2006 and the parties were directed to proceed in I. D. Case No. 2 of 2006. When the matter stood thus, the management challenged the Order No. 1121, dated 6-2-2006 of the Government in superseding the earlier reference in W. P. (C) No. 3562 of 2009 and the Hon'ble Court after hearing the parties directed this Tribunal to determine the point of maintainability first before entering into the merit of the dispute.

4. In this connection, the learned counsel appearing for the first party-managements strenuously urged that under the settled principle of law the Government has no power to supercede or cancel an order of reference once made to the Industrial Court for adjudication. He goes on to argue that the nature and status of workmen has been changed in the fresh reference which ultimately brings a complete change in the nature of dispute, inasmuch as while the earlier reference in I. D. Case No. 15 of 2002 was concerning to the absorption of contract labourers in M/s. OSWAL, the other reference sent by the Government in supersession of the earlier one relates to the legality and justifiability of disengagement of 1139 workers working in M/s. OSWAL, Learned Counsel for the management referring to the Hon'ble Apex Court's decision reported in AIR 1958 S. C. Page 1018 (*State of Bihar Vrs. Ganguli*) and the decision of our own Hon'ble High Court reported in 2004 (Supp.) OLR-809 (*OCL India Limited & another Vrs. State of Orissa and others*) laid his submission that the reference in I. D. Case No. 2 of 2006 is not maintainable.

Per contra, it was submitted by the learned counsel for the workmen with reference to the Apex Court's decision rendered in the case of *State of Maharashtra Vrs. K. E. Union* (AIR 1975 SC 635) that subsequent order issued during pendency of the earlier reference either modifying/adding or altering is not illegal and the same is well within the powers of the appropriate Government. It was further argued that even if this Tribunal holds that the reference in I. D. Case No. 2 of 2006 is not maintainable, still this Tribunal is competent enough to recall the orders passed in I. D. Case No. 15 of 2002 and to afford an opportunity to the second party to establish their claim in the said dispute in view of the categorical observation of the Hon'ble Apex Court in the *State of Bihar Vrs. Ganguli's* case (supra).

5. A perusal of both the references in I. D. Case No. 15 of 2002 and I. D. Case No. 2 of 2006 (quoted in para-2) would reveal that the reference in I. D. Case No. 15 of 2002 is the out-come of the failure of conciliation that had taken place in between the managements and the workmen and that too after the subjective satisfaction of the State Government ; whereas In I. D. Case No. 2 of 2006 no such conciliation appears to have taken place. The nature of dispute in both the references being not equal/similar, it can not be construed that by way of issuing a subsequent notification the Government either modified or added something to the earlier reference in I. D. Case No. 15 of

2002. Rather, the notification in I. D. Case No. 2 of 2006 was intended to bring out a total change of the nature of dispute. In such state of affair, the decision cited by the learned counsel for the workmen in the case of State of Maharashtra Vrs. K. E. Union (Supra) is not at all applicable, as by the notification dated 6-2-2006 the-----dispute has completely referred a new dispute ignoring the contractors indisputably under whom the workmen were working.

6. The decision rendered in the case of State of Bihar Vrs. Ganguli, reported in AIR 1958 S. C. Page-634 is found to be the appropriate case law governing the field, which our own Hon'ble High Court have also applied in a similar case between OCL India Limited and another and State of Orissa and another, reported in 2004 (Supp.) OLR-809. The dispute involved in the present reference being not similar and it completely changes the nature of the dispute for which conciliation was held, I am inclined to hold that the reference in the present I. D. Case No. 2 of 2006 is not at all maintainable.

7. Adverting to the other point with regard to the prayer of the workmen to recall the orders, dated 1-9-2006 passed in I. D. Case No. 15 of 2002, I allow the same keeping in view the observations of the Hon'ble Apex Court in Para-22 of Ganguli's case (Supra) and further the fact that the disputes referred in I. D. Case No. 15 2002 has not yet been adjudicated.

In view of the orders, as aforesaid, parties to take appropriate step in the earlier reference i.e. I. D. Case No. 15 of 2002 and office to endorse the extract of the orders in the said case.

8. Since on the point of maintainability the present reference is disposed of, an Award is passed accordingly.

Dictated and corrected by me.

P. C. MISHRA
17-11-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
17-11-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

K. C. BASKE
Under-Secretary to Government