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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th July 2011

No. 5746—li/1(B)-59/1993-(P)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd December 2010 in Industrial Dispute Case No. 64/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Indersons Construction Ltd., Bhubaneswar and Shri Suresh Ram and seven others represented through ISCONS Employees' Union, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 64 OF 2008 (Previously registered as
Industrial Dispute Case No. 61 of 1995 in the file
of the P.O., Labour Court, Bhubaneswar)
Dated the 2nd December 2010

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s Indersons
Constructions Ltd., Bhubaneswar.

.. First Party—Management

And

Shri Suresh Ram & 7 others,
represented through ISCONS
Employees' Union,
Bhubaneswar.

.. Second Party—Workmen

Appearances :

Shri B. M. Patnaik, . . For the First Party—Management
Advocate.

Shri N. K. Mohanty, . . For the Second Party—Workmen
Authorised representative.

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 2099-LE., Dt. 8-2-1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138-li-21-32/2007-LE., Dt. 4-4-2008. The Schedule of reference runs as follows :—

“Whether the termination of services of eight workmen(as per list enclosed to the order of reference) from the dates mentioned against each by the management of Indersons Construction Ltd., Bhubaneswar is legal and/or justified ? If not, to what relief they are entitled ?”

2. The second party union represents the eight workmen whose termination of services is the subject matter of the present reference. The following is the Chart showing the date of joining and date of termination of service of each of the eight workmen.

Sl. No.	Name of the employees	Date of joining	Date of termination
(1)	(2)	(3)	(4)
1	Shri Suresh Ram, Jr. Welder	1-4-1987	28-7-1992
2	Sk. Daud Mohammad, Helper	1987	28-7-1992
3	Shri Pramod Samal, Store Helper	10-1-1987	28-7-1992
4	Shri Gadadhar Swain, Welder	10-1-1987	28-7-1992
5	Shri Purna Ch. Bartia, Asst. Mechanic.	1-2-1982	15-6-1992
6	Shri Parsuram Mallick, Storekeeper	26-11-1977	31-7-1992
7	Sk. Mamtaz Mohammad, Welder	15-6-1984	17-1-1992
8	Shri Brahmananda Maharana, Jr. Welder.	30-6-1990	28-7-1992

According to the second party, though the workmen had completed more than one year of continuous service the management terminated their services without complying with the statutory provisions of the Act to bring about a valid termination. It is claimed that since their termination of service is illegal and unjust, the workmen are entitled to reinstatement with back wages.

3. The first party -management does not dispute that the above-named workmen were under its employment with effect from the respective date of joining as mentioned in the Chart. Its specific plea is that the management had never terminated their services and that the workmen had voluntarily left their job for better prospect. According to the management, the date of termination as mentioned in the aforesaid Chart is the date of voluntary abandonment of job by the respective workman.

The management further pleads that after the year 1995 the first party under a Scheme has given voluntary retirement to all its workers and presently it has only two employees. Its further plea is that the management is virtually doing no business since 1996.

4. The following issues have been framed in this case :

ISSUES

- (i) "Whether the termination of services of eight workmen (as per list enclosed to the order of reference) from the dates mentioned against each by the management of Indersons Construction Ltd., Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief they are entitled to ?"

5. On behalf of the second party five witnesses have been examined. W.W. No.1 is the General Secretary of the second party union, W.W. No. 2 to 5 are four of the workmen of this case. The first party has examined M.W. No.1, who is its Managing Director.

FINDINGS

6. *Issue No. (i)*—Admittedly, the services of the workmen were terminated with effect from the dates mentioned in Column (5) of the Chart furnished above. Since the first party takes the plea that the workmen voluntarily abandoned their job, it is to be thrashed out as to how far that contention is acceptable. The workmen witnesses have alleged that the workmen were denied employment without terminating their services in accordance with Section 25-F of the Act. But, M.W. No. 1 has stated that the workmen voluntarily left their job without assigning any reason. The termination of services of six of the workmen occurred in the month of July, 1992, one of them occurred in June, 1992 and that of another workman occurred in January, 1992. The Union raised the dispute by submitting a complaint petition on 31-7-1992 before the District Labour Officer, Puri. This is forthcoming from the conciliation failure report which is annexed to the Schedule of reference. The workmen have raised the dispute soon after the termination of their services. Therefore, it is hardly believable that they voluntarily abandoned their job. Once the plea of abandonment of job is disbelieved, it is to be held that the management has terminated the service of the workman. It is not claimed that Section 25-F of the Act was complied with. In the absence of such compliance the retrenchment by way of refusal of employment becomes illegal. There is no pleading in the written statement that the workmen were daily wagers but in his affidavit evidence M.W. No. 1 has stated that the workmen were never appointed on monthly wage basis. At the time of argument, it is submitted on behalf of the management that the workmen being daily wagers are not entitled to the

benefits of Section 25-F of the Act. But, there is no evidence showing the nature of employment and the terms and conditions of employment of the workmen. There is also no pleading to that effect. Under such circumstances, such a plea cannot be taken into consideration. In the absence of specific denial in the written statement it is to be presumed that the first party has admitted that the workmen represented by the second party had been engaged continuously from the date of their joining till the date of their respective termination. That apart even assuming that the workmen were daily wagers, the benefit of Section 25-F of the Act cannot be denied to them in as much as, each of them has completed more than one year of continuous service under the first party-management. Reliance has been placed by the first party on a decision reported in 2008 (117) FLR 312 (Patna High Court) (*Between Sanjay Kumar Tiwari Vrs. State of Bihar*), wherein it is observed that a casual worker employed on daily wage basis is covered by Clause (oo) of Section 2 (bb) of the Act and termination of employment of such a worker does not attract the provisions of Section 25-F of the Act. In the case at hand, the management has not established that the workmen were casual workers engaged on daily wage basis. Therefore, the cited judgment may not be applicable to the present case. That apart, in *K. Rajendran Vrs. Director (Personnel Project & Equipment Corporation of India Ltd., New Delhi*, reported in 1992 Lab. I.C.909 (Madras High Court) the petitioner therein was appointed on daily wage basis for a period of 44 days. He continued to work on similar terms for about three years. On the date of his termination the post of messenger to which he was engaged to work as such was available and the nature of duties performed by him continued to exist. In such a factual background Hon'ble Madras High Court held that nothing in sub-clause (bb) of Section 2(oo) enables an unscrupulous employer to terminate the services of the workers on the ground of non-renewal of their contract even when the work for which they were employed subsists. It is further observed that the exception as contained in sub-section (bb) will have to be strictly considered and Clause-(bb) should be made applicable only to such cases where the work ceases with the employment or the post itself ceases to exist. In the case at hand, it is not the case of the management that due to cessation of work the daily wage employees were disengaged from employment. Therefore, the contention raised by the first party in this regard is not tenable.

In view of the observation made above, it is to be held that the action of the first party in terminating the services of the workmen is illegal and without any justification.

7. *Issue No. (ii)*—It is pleaded by the first party but not controverted by the second party that in 1997 the management closed its business and retrenched all its employees. The workmen have neither pleaded nor proved that they were not gainfully employed during the relevant period. It is observed in *Ashok Kumar Sharma Vrs. Oberoi Flight Services*, reported in AIR 2010(S.C.) 502 that the relief of reinstatement with full back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Considering the facts and circumstances of this case, this Tribunal holds that the workmen cannot be reinstated in as much as all other employees of the first party have been

retrenched in the year 1997. The management also cannot be asked to pay them full back wages as there is no evidence that the workmen were not gainfully employed during the relevant period. However, the management should pay 25% of the back wages from the respective date of termination of service of the workmen, besides retrenchment benefit which they would have been entitled had they been retrenched along with the majority of the workmen retrenched in or around 1997. The first party is directed to implement the Award within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated & Corrected by me.

RAGHUBIR DASH
2-12-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
2-12-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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