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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th August 2011

No. 7620—li/1(BH-1)-6/2007-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd April 2011 in I. D. Case No. 7 of 2007 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Rairangpur Electrical Division, Rairangpur, Dist. Mayurbhanj and its Workmen represented through the Secretary, O.S.E.B. Workers' Union, Union Office, Thermal Colony, Balasore was referred to for adjudication is hereby published as in the Schedule below:

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 7 OF 2007

The 2nd April 2011

Present :

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

Between :

The Management of
the Executive Engineer,
Rairangpur Electrical Division,
Rairangpur, Dist. Mayurbhanj.

... First party—Management

And

Its Workmen namely

.. Second party—Workmen

1. Geda Majhi, s/o Bhada Majhi
2. Parmeswar Mohanta, s/o Krushna Ch. Mohanta

3. Nanda Kishore Mohanta, s/o Dukhuram Mohanta
4. Nakul Sahu. s/o Purna Ch. Sahu
5. Bhagirathi Marandi, s/o Kuanr Marandi
6. Bosen Hembram, s/o Sankar Hembram
7. Faguram Tudu, s/o Bidar Tudu
8. Ganeswar Tudu, s/o Kashrya Tudu
9. Karan Soren, s/o Barial Soren
10. Dhana Murmu, s/o Ananta Murmu
11. Sundar Marandi, s/o Geda Marandi
12. Rajkishor Bindhani, s/o Anand Bindhani
13. Shyam Cj. Marandi, s/o Jada Marandi
14. Gobinda Hembram, s/o Mirja Hembrum
15. Sibasankar Bindhani, s/o Ball Bindhani
16. Danduram Hembram,s/o Sakila Hembram
17. Dhuma Soren, s/o Jaguram Soren
18. Basudev Marandi, s/o Kunar Marandi
19. Dukhia Hembram , s/o Laxman Hembram
20. Somay Majhi, s/o Kaluram Majhi
21. Dashrath Majhi, s/o Kaluram Majhi
22. Budhan Murmu, s/o Jatray Murmu
23. Sundar Mohan Baskey, s/o Suria Baskey
24. Biswanath Soren, s/o Chatray Soren
25. Raghunath Hembram s/o Suria Hembram
26. Singray Besra, s/o Mara Chand Besra
27. Laxman Soren, s/o Chhatray Soren
28. Muchi Ram Murmu s/o Kuanar Murmu
29. Barun Ku. Mohanta, s/o Nityananda Mohanta
30. Bikram Hembram, s/o Durga Hembram
31. Sami Majhi, s/o Kaluram Majhi
32. Rajendra Murmu, s/o Durga Murmu
33. Nuaram Besra, s/o Sauna Beswa

34. Champei Tudu, s/o Samai Tudu
35. Manoranjan See, s/o Sindhu See
36. Kuna Hembram, s/o Panchanan Hembram
37. Kasiram Majhi, s/o Ganeswar Majhi
38. Basan Hembram, s/o Salapa Hembram
39. Shri Bhudeb Mohanta, s/o Khirod Ch. Mohanta
40. Samai Soren , s/o Ganjan Soren
41. Hikim Marandi, s/o Dandu Marandi
42. Manoranjan Mohanta, s/o Upendra Nath Mohanta
43. Binodbihari Mohanta, s/o Gopinath Mohanta
44. Birendra Nath Nayik, s/o Kirani Nayik
45. Durjadhan Nayik, s/o Chaitan Nayik
46. Kali Ch. Mohanta, s/o Lalmohan Mohanta
47. Purandar Mohanta, s/o Maheswar Mohanta
48. Jagannath Patra, s/o Purna Ch. Patra
49. Rajkishore Mohanta, s/o Gopinath Mohanta
50. Harmohan Mohanta, s/o Gobardhan Mohanta
51. Rajendra Mohanta, s/o Gopinath Mohanta
52. Sanatana Nayik, s/o Binod Nayik
53. Dambarudhar Nayik, s/o Sanatan Nayik
54. Parameswar Mohanta (B), s/o Haradhan Mohanta
55. Dinesh Kumar Mohanta, s/o Bhagirathi Mohanta
56. Rama Chandra Nayik, s/o Susasan Nayik
57. Narendra Mohanta, s/o Lalmohan Mohanta represented through the Secretary,
O.S.E.B. Workers' Union, Union Office, Thermal Colony, Balasore.

Appearances :

Gayatri Pradhan, Assistant Manager (Legal) . . . For the First party—Management

G. K. Mohapatra, General, Secretary and . . . For the Second party—Workmen
S. Behera, Organiser Secretary
Representative of the Union.

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.7161- li/1(BH)-6/07-LE. dated the 1st June 2007. The Schedule of reference runs as follows:

“ Whether the termination of services of Sri Danduram Hembram and 56 others represented through the Secretary, O.S.E.B. Workers’ Union, Union Office, Thermal Colony, Balasore as per the Annexure-B by the Executive Engineer, Rairangpur Electrical Division, Rairangpur is legal and /or justified ? If not, to what relief the workers are entitled ?”

2. In this reference challenge is as to the legality of termination of services of 57 persons, who are represented by the second party/Union and who are hereinafter referred to as the ‘disputant workmen’. According to the claim statement, the disputant workmen were engaged as N.M.Rs. under the first party/Management. They were engaged in the construction of line and sub-stations and maintenance of sub-station lines within Rairangpur Electrical Division. Though they were working on regular basis, the Management refused employment to them without notice/notice pay and retrenchment compensation. Persons junior to them were allowed to continue and some outsiders were engaged in their place.

In the claim statement there is no mention as to when the disputant workmen were first engaged by the Management and the date(s) on which they were terminated. Also in the conciliation failure report, there is no mention as to the period during which the disputant workmen were under the employment of the first party. However, there is an annexure to the conciliation failure report which has been sent by the State Government along with the Schedule of reference which contains the names of the 57 disputant workmen with their age, village name, the post they had held, the date of commencement of employment and the date of retrenchment. From that list, it is found that most of the disputant workmen had allegedly entered into employment under the first party in 1999 and the rest in 2000.

3. In the written statement, the first party has denied that there exists employer-workmen relationship between the Management and the disputant workmen. According to the Management, neither the disputant workmen were ever employed by the Management nor were they terminated. It is further pleaded that during the period, the disputant workmen claimed to have been in employment the first party establishment was under the control of the Orissa State Electricity Board (for short ‘ the ‘O.S.E.B.’). After implementation of the Orissa Electricity Reform Act, 1995, the Management of the first party establishment came to the control of NESCO. As to the manner in which N.M.Rs./ Casual workers are engaged under the first party, it is pleaded that N.M.Rs./Casual workers are engaged by respective Divisions as and when required. Those workers who are engaged for more than a year are taken to Muster Roll and a list of such workers is maintained in the concerned Division. In 1982 and 1995, such lists were prepared and duly notified. Names of the disputant

workmen did not find place in the lists but neither the disputant workmen nor the union had ever challenged the correctness of the lists and no claim was made to include their names.

4. Following issue has been framed for adjudication:

I S S U E

- (i) “ Whether the termination of services of Shri Danduram Hembram and 56 others represented through the Secretary, O.S.E.B. Workers Union, Union Office, Thermal Colony, Balasore as per Annexure-B by the Executive Engineer, Rairangpur Electrical Division, Rairangpur is legal and/or justified ? If not, to what relief the workers are entitled ?”

5. Six witnesses have been examined from the side of the second party. W.W.Nos. 1,2 and 3 are from amongst the disputant workmen. W.W. Nos. 4 and 5 have claimed to have had worked with the disputant workmen under the First party/Management. W.W. No.6 is the General Secretary of the Second party/Union. On behalf of the management its present Executive Engineer has been examined as M.W. No. 1.

F I N D I N G S

6. In view of the fact that the first party has been denying that the disputant workmen were ever engaged in its establishment, it is required to be thrashed out at the threshold as to whether the evidence available on record is sufficient to record a finding that the disputant workmen were under the employment of the first party. On 24-12-2008 the second party filed a petition to direct the first party to produce the seniority list of daily-rated workmen from 1992 to 2003, Muster Roll/Payment Vouchers of daily-rated workers from 1992 to 2003, Circular No. 24855, Dt. 29-9-1983 and Circular No. 4411, Dt. 27-5-1996. The Management filed objection to that petition stating therein that no seniority list in respect of daily-rated workers was maintained, that since the disputant workmen were never employed under the first party payment vouchers and Muster Roll in respect of those workmen are not available with the first party and that the two circulars had become infructuous after the Orissa Electricity Reform Act, 1955 came into operation. With regard to the circulars the Management took further plea that copies of those circulars were not available with the first party. While disposing of the said petition this Tribunal vide Order, dated 18-3-2009 observed that the documents sought to be called for were very much relevant for an effective adjudication of the dispute but since the Management pleaded their non-availability no order could be passed for their production. It is true that initially the establishment of the first party was under the control of O.S.E.B. and subsequently it came under the control of GRIDCO. As stated by M.W.No.1, in the year 2003 GRIDCO was privatised and the present Management NESCO came into existence. But, it cannot be believed that due to change of the Management the records/documents pertaining to the period of the erstwhile Management would not be available

to the present Management. The Management herein has, in a very careless manner, raised objection to the petition for production of documents. The disputant workmen wanted production of the seniority list but the Management took the stand that no seniority list was ever prepared. But, in the written statement the First Party has clearly pleaded that in 1982 and 1995 lists of N.M.Rs./Casual workers were prepared and duly notified. It has not produced those lists in order to show that the names of the disputant workmen were not there in the lists. With regard to the prayer for production of Muster Roll/Payment Vouchers, the Management raised objection on the ground that since the disputant workmen were never employed under the First Party Payment Vouchers and Muster Roll related to them were not available. The Second Party wanted Muster Roll and Payment Vouchers for the period from 1992–2003. They had not stated in their petition that the Muster Roll and Payment Vouchers must relate to the disputant workmen. In the written statement the First Party has taken the plea that names of such N.M.Rs./Casual workers who were engaged for more than a year were taken to the Muster Roll. Therefore, it is clear that the Management used to maintain Muster Roll. Therefore, instead of raising such objection the Management ought to have produced all the Muster Rolls for the relevant period in order to show that the names of the disputant workmen were not there in the Muster Rolls. Two Circulars issued in 1983 and 1996 were called for and the Management simply took the plea that after the Orissa Electricity Reform Act came into force those Circulars became infructuous. Instead of taking such a plea the Management ought to have produced those Circulars. Of course, in their petition to call for the Circulars the Second Party has not stated as to how those are relevant for the reference. Since the list annexed to the conciliation failure report reveals that the disputant workmen were not in employment prior to 1999, it is difficult to give a definite opinion that these Circulars are relevant for the purpose of this reference. However, since the Management is supposed to be in possession of the documents it ought to have produced the same. Thus, it is found that the Management took an evasive stand so as to avoid production of the documents that the Second Party wanted to be produced. Following are the observations of the Hon'ble Supreme Court in *R.M. Yellati Vrs. Assistant Executive Engineer*, (2006) 1 SCC 106 quoted in *Director, Fisheries Terminal Division Vrs. Bhikubhai Meghajibhai Chavda*, reported in AIR 2010(S.C.) 1236:

“ However, applying general principles and on reading the aforesaid judgements, we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.”

As in the case of Director, Fisheries Terminal Division (*Supra*) in the present case also evidence has been adduced on behalf of the disputant workmen that they had worked for more than 240 days as N.M.Rs. under the First Party. They called upon this Tribunal to ask the Management to cause production of records including Muster Rolls/Payment vouchers. Due to evasive reply the Tribunal could not give any direction for production of those documents. Since the Second Party by adducing evidence claims that the disputant workmen had worked for more than one year, the burden of proof shifted to the First Party to prove that the disputant workmen were never employed under it. It is obvious that since the disputant workmen claim that they were working as N.M.Rs. they had no document to prove that they were employed by the First Party. If at all the First Party was confident that the disputant workmen were never employed in the establishment, then they could have proved it by way of exhibiting records/registers of the relevant period in order to discharge the burden of proof. In my considered view this is a fit case in which adverse inference ought to be drawn against the First Party/Management.

7. Of course, the Second Party has not taken a consistent stand as to the period of employment under the First Party. W.W. Nos. 1 to 3 have stated in their respective affidavit evidence that they had worked under the First Party from 1996 to 1-5-2003. But, in the list annexed the conciliation failure report it is mentioned that the disputant workmen had entered into employment either in 1999 or 2000. W.W. No. 1 and W.W. No. 3 have exhibited documents marked Exts. 1 and 2 respectively. Those are experience certificates purportedly issued by the then S.D.O., (Electrical), Rairangpur. In Ext. 1 it is mentioned that W. W. No. 1 had been working under the First Party since 1997. This does not tally either with the affidavit evidence of W.W. No. 1 or with the relevant entry in the annexure to the conciliation failure report. Similarly, Ext. 2 also does not strictly tally either with the affidavit evidence or with the aforesaid list. It is found that xerox copy of experience certificates of some other disputant workmen have been filed by the Second party but those are not marked as exhibits. Some of these unexhibited experience certificates also bear similar features as mentioned above in respect of experience certificates marked Exts. 1 and 2. The experience certificates do not appear to have been issued on proper verification of official records and therefore, no evidentiary value should be attached to them.

M.W. No. 1 has adduced evidence denying that the disputant workmen were ever engaged by the First Party. But, from his cross-examination it can be said that he has no direct knowledge about the fact of their employment. He is unable to say whether N.M. Rs. were engaged after 1995 as there is no record to that effect. It appears, he did not verify any records relating to the engagement of N.M.Rs. Therefore, his denial evidence is not based on any contemporary records/ registers maintained by the First Party. Though heavy onus lies on the Management to disprove that the disputant workman were never engaged by the First Party, the First Party has not shown to have taken sincere efforts to find out the relevant records/registers at least for the period from 1999 to 2003 to take the stand that the disputant workmen were never employed by the First Party. Added to that, it has evaded production of relevant documents/records for inspection of this Tribunal. Therefore taking an adverse inference against the First Party this Tribunal holds that the disputant workmen were employed in the establishment of the First Party.

8. As already indicated earlier, the Second Party has not taken a consistent plea on the duration of employment of the disputant workmen. In the Schedule of reference there is mention about the list which is annexed to the conciliation failure report. From that list it is found that each of the disputant workmen had claimed to have had worked for more than one year. The Management has not adduced evidence to prove otherwise. This Tribunal already decided to take adverse inference against the Management. Therefore, it is held that the disputant workmen were engaged by the First Party for more than one year. It is claimed that on 1-5-2003 their services were terminated by way of refusal of employment. It is not a case in which Management takes the plea that Section 25-F of the Act was complied with. It is clear that the termination of service of the disputant workmen was not in accordance with Section 25-F of the Act. Therefore, the same is found to be illegal.

9. The Second Party claims for reinstatement of the disputant workmen with full back wages. Admittedly, they were N.M.Rs./daily wagers. In *Jagbir Singh Vrs. Haryana State Agricultural Marketing Board*, AIR 2009(S.C.) 3004, it is observed by the Hon'ble Supreme Court that the award of reinstatement with full back wages, particularly when the workmen are daily wagers, is improper and instead of reinstatement and back wages compensation should be awarded. Therein the Hon'ble Supreme Court have distinguished between a daily-wager who does not hold a post and a permanent employee. In *Ashok Kumar Sharma Vrs. Oberoi Flight Services*, AIR 2010(S.C.) 502, their Lordship referring to so many decisions of the Hon'ble Supreme Court have observed that in recent past there has been a shift in the legal position and in long line of cases, Hon'ble Court have consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination is in contravention of the prescribed procedure. Since the disputant workmen were N.M.Rs. and since there is no strong evidence showing the duration of their employment and they are found to have been employed by the First Party merely by raising an adverse inference on non-production of documents by the First Party, it is considered just and appropriate to award compensation to each of the 57 disputant workmen @ Rs. 20,000 (Rupees twenty thousand) only. Accordingly, the First Party is directed to pay compensation @ Rs. 20,000 (Rupees twenty thousand) only to each of the 57 disputant workmen within a period of three months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
02-04-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
02-04-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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

**JOB RECEIVED REGISTER
OF
BINDING SECTION IV & VII
W. E. F.- 01-10-2011 To ----
O. G . P. (P.P. UNIT)
MADUPATNA,
CUTTACK-10.**

**JOB DESPATCH REGISTER
OF
BINDING SECTION IV & VII
W.E.F.- 01-10-2011 To ----
O.G .P. (P.P. UNIT)
MADUPATNA, CUTTACK-10.**

**PRODUCTION REGISTER
OF
SINGLE WEL BOUND MACHINE
BINDING SECTION-IV & VII
W. E. F.- 01-10-2011 To --
O.G.P. (P.P. UNIT)
MADUPATNA, CUTTACK-10.**

**MISALLIANCE REGISTER
OF
BINDING SECTION-IV & VII
W.E.F.- 01-10-2011 To -
O.G.P. (P.P. UNIT)
MADUPATNA, CUTTACK-10.**

**RECEIVING REGISTER
OF (C.C. TAX)
BINDING SECTION-IV & VII
W.E.F.- 01-10-2011 To-
O.G.P. (P.P. UNIT)
MADUPATNA, CUTTACK-10.**

**JOB RECEIVING &
DESPATCH REGISTER
OF (I.G.R.)
BINDING SECTION-IV & VII
W.E.F.- 01-10-2011 To-
O.G.P. (P.P. UNIT)
MADUPATNA, CUTTACK-10.**

**RECEIVING & DESPATCH
REGISTER OF (F. S. & C. W.)**

BINDING SECTION- IV & VII

W. E. F.- 01-10-2011 To ---

O.G . P. (P.P. UNIT)

MADHUPATNA, CUTTACK-10

**RECEIVING & DESPATCH
REGISTER OF (F. S. & C. W.)**

BINDING SECTION- IV & VII

W. E. F.- 01-10-2011 To ---

O.G . P. (P.P. UNIT)

MADHUPATNA, CUTTACK-10