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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th October 2011

No. 9047—li/1-(ID)-20/2011-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st July 2011 in Industrial Dispute Case No. 1 /2011 of the Presiding Officer, Labour Court, Sambalpur, to whom the industrial dispute between the Management of Executive Engineer, Main Dam Division, P.O./P.S. Burla, Dist. Sambalpur and its employees Shri Seshadev Kumbhar, H.R. Employees represented by the Joint Secretary, Hirakud Dam Employees' Union, Hirakud, Sambalpur 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 DISPUTE CASE No. 1 OF 2011

Dated the 21st July 2011

Present :

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

Between :

The Management of
The Executive Engineer,
Main Dam Division,
P.O./P.S. Burla,
Dist. Sambalpur.

.. First Party—Management

And

Shri Seshadev Kumbhar,
H.R. Employees, At Shaktinagar,
P.W.D. Colony, P.O./P.S Burla,
Dist. Sambalpur, represented by
the Joint Secretary, Hirakud Dam
Employees' Union,
Dist. Sambalpur.

.. Second Party—Workman

Appearances :

Shri S. K. Patnaik, .. For the First Party—Management
S.D.O., E.M. Subdivision
Burla.

Shri N. C. Ghosh, .. For the Second Party—Workman
Joint Secretary

AWARD

1. This award arises out of the reference made by the Government of Orissa, Labour & Employment Department 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 (14 of 1947) in Memo. No. 2408 (5), dated the 10th March 2011 to adjudicate the schedule questions :—

“Whether the action of the Executive Engineer, Main Dam Division, Burla, Dist. Sambalpur in non-enlisting Shri Seashadev Kumbhar, H.R. Workman (semi-skilled Mulia) in the list of N.M.R./D.L.R./H.R. employees for promotion to work charged establishment with reference to Order No. 9954, Dt. 10-8-2009 of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the workman is as follows :—

The second party -workman Shri Seshadev Kumbhar is working under Main Dam Division, Burla since 1992 as per the office orders of Sectional Officer-*cum*-Subdivisional Officer and the Executive Engineers under Main Dam Division, Burla and continuing as H.R. Workman (Generator Operator) without any break. The workman placed his grievances before the management to enlist his name in the seniority list but the management did not pay any heed towards him. There are 32 numbers workcharges post are lying vacant under Hirakud Dam Circle, Burla as well as other posts are also vacant in the workcharged department and other department under Hirakud Dam Circle, Burla. So, the second party workman made a prayer for an order directing the management to regularise and absorb him in as usual scale of pay as regular workcharged employee giving complete service and consequential benefits as under workcharged employees Condition of Service Instruction 1974.

The management has filed written statement and as per the written statement the claim of the second party workman is not sustainable under the law as he is not eligible to be engaged in the category of the workcharged establishment. The second party workman is not a N.M.R./D.L.R./H.R. workman engaged by the first party as claimed by him. As per Government of Orissa in Water

Resources Department in their notification No.7323-WR. Dt. 28-2-2009, 5,702 numbers of N.M.R. employment of the Department of Water Resources recruited prior to the year 1993 are to be brought over to the workcharged establishment. Since the second party workman is not a N.M.R. workman under first party, he is not entitled to get the benefits under the said order of the Government. The second party has been engaged by a Labour Contractor namely M/s K. K. Electrical & Electronics, Burla and his conditions of service is being controlled by the said Contractor. The Contractor by whom the second party has been engaged in the establishment of the first party is responsible for the service rendered by the second party. So, as per the case of the first party management, the second party workman is not entitled to get the benefits as claimed by him.

4. The rejoinder filed by the second party workman denying the case of the first party management. As per the case of the first party management, he was engaged as a H.R. workman under main Dam Division prior to the birth of M/s K. K. Electricals & Electronics, Burla. Hence the plea taken by the first party management is totally false and the workman claims that he is entitled to get he relief as per his claim.

5. Out of the pleadings of the parties, the following issues have been framed for adjudication :

ISSUES

- (i) "Whether the action of the Executive Engineer, Main Dam Division, Burla, Dist. Sambalpur in non-enlisting Shri Seshadev Kumbhar, H.R. Workman (semi-skilled Mulia) in the list of N.M.R./D.L.R./H.R. employees for promotion to workcharged establishment with reference to Order No. 9954 Dt. 10 -8-2009 of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. Both the parties have filed their respective documents in support of their case. The first party management filed documents which are marked as Ext. M. 1 to Ext. M.4 whereas the second party workman has filed documents which are marked as Ext.W.1 to Ext. W.8. All the documents are marked without objection by either party. On behalf of the first party management Sisir Kanta Patnaik, Assistant Engineer, E.M. Subdivision, under Main Dam Division, Hirakud is examined as M.W.1. On behalf of the second party workman, Seshadev Kumbhar the second party workman is examined as W.W.1 Nimai Charan Ghosh is examined as W.W.2.

FINDINGS

7. *Issue No.—(i)* : It is an admitted fact that the second party workman was engaged as H.R. workman (Generator Operator) with effect from Dt. 1-5-1992 in the E.M. Section under Main Dam Division, Burla and working continuously without any break, W.W.2 is an employee of Hirakud Dam Circle Working as Gr. II work Sarkar under Hydrology Subdivision as well as the ex General Secretary of Hirakud Dam Development Organisation, Burla and also was working as Joint Secretary of Hirakud Dam Employees Union.

It is alleged from M.W.1 that the second party is not a N.M.R./D.L.R./H.R. workman engaged by the first party as claimed by him. As per Government of Orissa in Water Resources Department in their Notification No. 7323-WR, Dt. 28-5-2009, 5702 numbers of N.M.R. employees of the Department of Water Resources recruited prior to the year 1993 are to be brought to the work charged establishment. He further stated that since the second party is not a N.M.R. workman under the first party, he is not entitled to get the benefits under the said order of the Government. The second party has been engaged by a Labour Supply Contractor, namely M/s K. K. Electricals & Electronics, Burla and his condition of service is being controlled by the contractor. The hand receipt voucher, Dt. 1-9-1992 submitted by the second party is a forged one as stated by M.W.1. The M.W.1 relied on the documents which are marked as Ext.M.1, the xerox copy of payment schedule. Ext.M.1/a is the signature of the workman in Ext.M.1. Ext.M.2 is the order, Dt. 16-6-2011 of K. K. Electricals & Electronics, addressed to the S.D.O., E.M. Subdivision, Burla, Ext.M.2/a is the signature of K.K. Majhi, K. K. Electricals & Electronics. Ext.M.3 is the payment Schedule of Labourers for the month of April 2011. Ext. M.3/a is the signature of the contractor K.K. Majhi. Ext. M.4 is the Financial Rule Form No. 18 towards receipt of payment regarding supply of labourers.

8. As per the evidence of W.W.1 and W.W.2 Seshadev Kumbhar the second party workman was engaged as H.R. (Hand Receipt) workman in the post of Generator Operator with effect from 1-5-1992 in the Electrical Maintenance Section under Main Dam Division and continuously/regularly working till today. He was working more than 240 days in a year. He is getting Rs. 3,354 as salary per month through the Junior Engineer. Further it is alleged from their evidence that K.K. Electricals & Electronics was not in existence when the workman started his work since 1992. The second party workman claims that being a high skilled worker he is working till today since 1992. The junior workers are engaged in the work charged cadre but the management ignored this poor worker Seshadev Kumbhar.

9. Let us scrutinise the documents filed by both the parties. Ext. M.1 is the payment schedule of labourers for the month of May 2011 which discloses that Seshadev Kumbhar the high skilled worker has drawn his wages of Rs. 3,354 but paid by K. K. Electricals & Electronics, Electrical Contractor, Burla Ext.M.2 also discloses the same fact. However the management being failed to show any documents of the earlier maintenance of K. K. Electricals & Electronics, Electrical Contractor under whom the second party workman was working. On the other hand the second party workman relied on some documents which are marked as Ext. W.1 xerox copy of H.S.C. Certificate, Ext.M.2 is the xerox copy of I.T.I Certificate. Ext.W.3 is the xerox copy of voucher, Ext.W. 4 is the xerox copy of explanation called for by the management. Ext. W. 5 is the xerox copy of duty chart. Ext.W.6 is the xerox copy of circulars. Ext.W. 7 is the xerox copy of circulars with list. Ext.W. 8 is the xerox copy of circulars with list. It appears from the documents that the attendance register of the workman and other workers are being maintained by the Junior Engineer, Electrical Maintenance Section-I, Burla. As per Ext.W.6, Notification No. 7323-WR. Dt. 28-2-2009 "after careful consideration, the Government have been pleased to decide to bring over 5702 numbers of N.M.R. employees of Department of the Water Resources (recruited prior to 1993) to work charged establishment with immediate effect." The service condition of all employees shall be regulated as per the provisions laid down in work charged employees (Appointment and Condition of Service) Instruction, 1974 as amended from time to time. Admittedly, the second party workman Shri Seshadev Kumbhar being

engaged since 1992, has been working till today as Generator Operator as H.R. workman without any break/dislocation. As per the letter of Engineer-in-Chief, Water Resources bearing No. 8992, Dt. 20-7-2009 bringing over the N.M.R. employees engaged prior to Dt. 12-4-1993 to work charged establishment and one of the point is "only NMRs joined before Dt. 12-4-1993 and continuing till date will be eligible". As per this letter the Superintending Engineer, Hirakud Dam Circle, Burla is to issue necessary orders to bring over the N.M.R. employees to W/C establishment after details scrutiny of the name, date of birth, date of engagement etc. and also service conditions of brought over W/C employees will be regulated as per the provision laid down in Orissa work charged employees (Appointment and Conditions of Service) Instructions, 1974. "The further point also discloses as per the said letter that considering the actual workload of the division under your control, if any distribution among the existing and brought over W/C employees is necessary, the S.E., Hirakud Dam Circle should come up with a proposal with sufficient justification for obtaining approval at this end. Ext.W. 7 discloses that the workman under the supervision and direct control of Junior Engineer, E.M. Section No.I, Burla is drawing his wages along with the other workman, and he is a high skilled labourer. As per Ext. W. 8 the persons are working since 1992 and are engaged in arduous and hazardous work at the Dam but their names have not been included in the list of N.M.Rs. As per this letter some employees are also being engaged through contractor on contract basis since 1992 and the list of such employees in subdivisionwise should be furnished to regularise their service, Ext. W. 8 also shows that Seshadev Kumbhar the second party workman is working in E.M. subdivision, Burla.

10. The representative of the management submitted that the workman being engaged by the labour contractor since 1992 is not entitled to get the benefit as per his claim. The representative the workman submitted that he has been working under the direct control of Junior Engineer of concerned department and he being the skilled worker works to the satisfaction of the management without any dislocation. Admittedly the second party workman engaged in the year 1992. As per the Government of Orissa in Water Resources Department in their Notification No. 7323/WR, Dt. 28-2-2009, 5702 numbers of N.M.R. employees of the Department of Water Resources recruited prior to te year 1993 are to be brought to the work charged establishment. It is an admitted fact that Seshadev Kumbhar was engaged as H.R. workman in the post of Generetor Operator with effect from Dt.1-5-1992 in the Electrical Maintenance Section under Main Dam Division. Admittedly the second party workman was not a D.L.R. engaged by the first party management. The second party workman was treated as a Nominal Muster Roll worker/Employee by the Main Dam Division of Hirakud Dam Circle, which is clear from the letters of Junior Engineer, EM Section-I, Assistant Engineer and Executive Engineer Main Dam Division, Burla. As per the reference "whether the action of the Executive Engineer, Main Dam Division, Burla, Dist. Sambalpur in non-enlisting Shri Seshadev Kumbhar, H.R. workman semi-skilled Mulia in the list of N.M.R./D.L.R. and H.R. employee for promotion to work charged establishment with reference to Order No. 9954, Dt. 10-8-2009 of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar is legal and/or justified ? Admittedly the second party workman has been working since 1992 till today and he is a skilled worker. He apprised before the management for several times to engage him as a N.M.R. and D.L.R. but the management did not pay any heed towards him. The management has not shown any other ground in depriving the second party workman from getting his genuine benefits who is working since long under the supervision of the management, although there are many posts lying vacant in the same

department. So, in the facts and circumstances, the name of the second party workman should be enlisted in the N.M.R./D.L.R. list and he should get the opportunity being a skilled and hard worker. Accordingly issue No. i is answered.

11. *Issue No. (ii)*—In view of such facts and circumstances, the workman is entitled to get the benefit. Hence the following award.

AWARD

The reference is answered on contest but without any cost. The action of the Executive Engineer, Main Dam Division, Burla, Dist. Sambalpur in non-enlisting Shri Seshadev Kumbhar, H.R. workman (semi-skilled Mulia) in the list of N.M.R./D.L.R./H.R. employees for promotion to work charged establishment with reference to Order No. 9954, Dt. 10-8-2009 of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar is not legal nor justified. So the management is directed to enlist Shri Seshadev Kumbhar, H.R. workman, semi-skilled Mulia in the list of N.M.R./D.L.R./H.R. employees for promotion to work charged establishment with reference to Order No. 9954, Dt. 10-8-2009 of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar.

Dictated and corrected by me.

S. MAHAPATRA
21-7-2011
Presiding Officer
Labour Court
Sambalpur

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21-7-2011
Presiding Officer
Labour Court
Sambalpur

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