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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th January 2011

No. 705-li/1(B)-79/1996(Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th November 2010 in I. D. Case No. 148 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of O.S.E.B. (Now GRIDCO), Bhubaneswar and its Workman Shri Susanta Kumar Behera, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 148 OF 2008
(Previously registered as I.D. CASE No. 92 of 1997
in the file of the Presiding Officer,
Labour Court, Bhubaneswar.)

Dated the 12th November 2010

Present :

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

Between :

The Management of O.S.E.B. .. First Party—Management
(Now GRIDCO),
Bhubaneswar.

And

Shri Susanta Kumar Behera, .. Second Party—Workman
C/o. Shri Sibaram Behera,
Plot No. F/6, BJB Nagar,
Bhubaneswar.

Appearances :

Shri B.C. Bastia, Advocate .. For the First Party—Management
Shri R.C. Satpathy, Authorised .. For the Second Party—Workman.
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.11610- li/1(B)-79/96-LE., Dt. 12-9-1997 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., Dtd. 04-04-2008. The Schedule of reference runs as follows:-

“ Whether the termination of services of Shri Susanta Kumar Behera with effect from 1st April 1992 by the Management of O.S.E.B.(Now GRIDCO), Bhubaneswar is legal and /or justified ? If not, to what benefit Shri Behera is entitled ?”

2. In the claim statement the Second Party -Workman has pleaded that he was a Workman under the first party-management during the period from 3-12-1988 to 31-03-1992. During the said period the Management had asked him to work initially in the construction of the Transmission Line in various places of the State and then he was directed to work under the Executive Engineer (Electrical), Liaison Office of the Management at New Delhi. The said Executive Engineer refused him employment with effect from 1st April 1992 without any rhyme and reason. The Statutory requirements as per Section 25-F of the Act were not fulfilled. Repeated requests made by the Workman for his re-engagement were not headed to. Hence, he was bound to arise the dispute.

3. In the written statement the Management through the Liaison Officer has taken the stand that the Workman was engaged by the Liaison Officer, New Delhi on daily wage basis during the period from 1-4-1991 to 28-2-1992 as and when required. He was never engaged anywhere else except in the Liaison Office at Delhi. He was neither engaged against any permanent vacancy nor was he appointed through due recruitment procedure. When there was no work in the Liaison Office his engagement was not felt necessary and therefore, he was not engaged after 29-2-1992. Since the cause of action arose at New Delhi, the Workman ought to have raised the dispute in New Delhi. Since no cause of action arose within the territorial jurisdiction of the Tribunal in Orissa, this Tribunal has no jurisdiction to adjudicate the matter under reference.

4. The Company Secretary, GRIDCO, Bhubaneswar who is also arrayed as the First Party has submitted a memo adopting the Written Statement of the Liaison Officer, GRIDCO, New Delhi.

5. The following three issues have been settled :-

ISSUES

- (i) “ Whether the termination of services of Shri Susanta Kumar Behera with effect from 1st April 1992 by the Management of OSEB(Now GRIDCO), Bhubaneswar is legal and /or justified. ?
- (ii) If not, to what benefit Shri Behera is entitled.
- (iii) Whether the Court of the Presiding Officer, Labour Court, Bhubaneswar has the territorial jurisdiction to try the present case, i.e. I.D. Case No. 92 of 1997 ?”

6. The workman has examined himself as W.W.No.1 and one Shri Krushna Chandra Mohapatra, who was the then Chairman of the first party, as W.W.No. 2 he has not exhibited any documents. On the other hand, the first party did not adduce any evidence.

FINDINGS

7. *Issue Nos. (i) and (iii) :-* Though the workman claims that his services were terminated w.e.f. 1st April 1992 the First Party Claims that the services of the Workman were terminated w.e.f. 1-3-1992 when the workman claims that he has been engaged by the first party from 3-12-1988 to 31-3-1992, the first party admits to the extent that the workman was engaged between 1-4-1991 and 28-2-1992. When the workman claims that initially he was engaged to work in the construction of Transmission Line in various places of the State of Orissa, the first party denies this assertion. There is no documentary evidence showing the actual period of engagement of the second party. On facts admitted by the first party it is to be held that the Workman had been engaged in the Liaison Office, New Delhi from 1-4-1991 to 28-2-1992 and thereafter his services were terminated without following the due procedure prescribed U/s. 25-F of the Act. In the absence of evidence that the second party had not worked continuously during the said period, it is to be presumed that his engagement was continuous and that he had completed 240 days of work during the period of that engagement. Therefore, his disengagement being in contravention of Section 25-F of the Act is illegal.

8. Oral evidence is adduced by the second Party to establish that he was engaged by the first party w.e.f. 3rd December 1988 and was continued till 31-3-1992. Burden is on the Workman to prove that he had worked with the first party w.e.f. 3rd December 1988. Instead of relying only on the oral evidence the Workman should have taken pain to bring documentary evidence on record. Since he claims that he was engaged as a N.M.R. Worker it is understandable that he did not have documents like appointment order, pay slip and, the like, but he could have made a prayer to the Court to ask the first party to produce documents/registers showing that besides his engagement in Delhi, he was also engaged within the State of Orissa. He does not seem to have taken such a step. Therefore, this Tribunal declines to raise an adverse inference against the first party for having refrained from adducing evidence. No doubt, the then Chairman of the first party has come forward to depose in favour of the second party and has stated that the workman was working at Mancheswar Grid Sub-station since 1988 but he (W.W. No. 2) appears to be an interested witness. He has further stated in his affidavit evidence that the Workman was a sincere worker and for that he had recommended his name to the Liaison Cell, New Delhi to engage him in that Office as an Attendant/Peon. He has further stated that he had advised the Company Secretary of the Management to reinstate the Workman in service and to close the industrial dispute for the greater interest of the Organisation. His interestedness leads him to even say that the workman remained unemployed and had no gainful employment anywhere since 1-4-1991 till date. Though in the affidavit evidence he has stated that the Workman had been working in the Grid Sub-station since 1988, in his cross-examination he expresses his inability to say the period of workman's engagement in Mancheswar Grid. His false claim can be ascertained from the fact that the Workman was a minor aged about 12 or 13 in the year 1988 calculated on the basis of workman's own affidavit evidence that on 27-1-2010 he was aged

about 30 and his sworn testimony in this Court on 31-3-2010 that he was then aged about 35. The Workman has pleaded in his claim statement that initially he was asked to work "in the construction of the Transmission Line in various places of the State". No wherein the claim statement he has stated to have worked in Mancheswer Grid Sub-station. In his affidavit evidence the Workman has not stated as to where from he was getting his wages but in his cross-examination he has stated that he was receiving his wages from the Liaison Office, New Delhi. Therefore, in the absence of documentary evidence this Tribunal does not find it safe to rely on the oral testimony of the witnesses to record a finding that the workman has been engaged anywhere in Orissa prior to his engagement in the Liaison Office, New Delhi.

9. On materials available on record, this Tribunal arrives at a conclusion that the Workman was engaged in the first party's Liaison Office at New Delhi from, 1-4-1991 to 28-2-1992 and he was not engaged anywhere in Orissa prior to 1-4-1991. Admittedly, the Liaison Office, New Delhi refused employment to the Workman. Therefore, it is the First Party's case that the dispute could have been raised only in New Delhi. It is argued that the cause of action having arisen within the territory of the State of New Delhi, this Tribunal has no territorial jurisdiction to entertain the reference. In support of the contention the learned counsel for the first party has placed reliance on the Judgement in *Hindustan Samachar Vrs. State of Orissa and others*, reported in (83) 1979(38) FLR 103 (Orissa High Court). The Workman in the reported case was working as Probationary Journalist under the Management of Hindustan Samachar which had its Head Office at New Delhi but having Branch Offices in different parts of the country including one in the State of Orissa. It was contended by the management that as it was an All India News Agency having its Headquarters at New Delhi and that it had representatives in different places, there was no other Offices to exercise control over its employees in any other State. It was further contended that the conditions of services of the workman were directly controlled by the Management at its Head Office and that the cause of action of the alleged illegal termination arose at New Delhi. With this contention it was argued that the Government of Orissa was not the appropriate Government within the meaning of Section 2(a) of the Act to refer the dispute for adjudication. This submission was not accepted by their Lordships holding as follows:-

" On the materials placed before us, we hold that the petitioner has a branch office at Cuttack which was in charge of an editor, that the opposite party No. 4 was being paid his salary through the Cuttack Office, that the editor-in-charge of the Cuttack Office was exercising some control over him and that the order of termination of service was served on the opposite party No. 4 through Cuttack office while he was employed at Bhubaneswar. The fact that the final administrative control was vested in the head office at Delhi and that the order of termination of service was made by the head office will not make Delhi the place where the dispute arose. The nexus should be between the dispute and the territory of the State and the dispute arose within the limits of the Government of Orissa consequent upon the termination of the services of the opposite party No. 4. The Government of Orissa, is therefore, the appropriate Government to refer the dispute under Section 10 of the Act for adjudication by the Labour Court."

Their Lordship have referred to the Judgement of the Hon'ble Supreme Court in *Workman of Shri Ranga Vilas Motors(P) Ltd, Vrs. Shri Ranga Vilas Motors (P) Ltd.*, 1967(14) FLR 332 and few other Judgements. In all these Judgements the Management had their respective Head Offices in one State with branches spread over different States and the respective industrial dispute was raised in the State where the branch office in which the workman was employed was located. But, in the present case though the Workman was attached to the first party's Liaison Office at New Delhi, the industrial disputes has been raised in the State of Orissa where the Head Office of the first party-Management is located. Therefore, in my considered view the facts in the Judgment relied on by the First Party are distinguishable. No where in the reported case their Lordships have observed that in cases where a workman attached to a branch office cannot raise the dispute in the State where the Head Office is located. In the case at hand it is to be presumed that the Head Office having administrative control over its Liaison Office at New Delhi had, infact, effected the retrenchment of the second party. Thus the cause of action had partly arisen within the State of Orissa and therefore, in this case the Government of Orissa can be deemed to be the appropriate Government to refer the dispute to the Labour Court for adjudication.

In the result, both the issues are answered in favour of the workman.

10. *Issue No. (ii)* :- The Workman claims for his reinstatement with full back wages. In the claim Statement the Workman has not clarified as to what was the nature of his employment. But, the Management has pleaded that he was engaged on casual basis. So, it is to be presumed that he was not a regular employees of the first party.

In *Jagbir Singh Vrs. Haryana State Agriculture Marketing Co.*, 2009 AIR (S.C.W.) 4824, the Hon'ble Supreme Court have observed that in the recent past the 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 of an employee in contervention to the prescribed procedure and that compensation, instead of reinstatement, meets the ends of justice,. In *General Manager, Haryana Roadways Vrs. Rudhan Singh*, 2005 SCC(L&S) 716, it is observed that factors like method of selection and appointment, nature of appointment, any special qualification required for the job, length of service etc. are to be taken into consideration while granting relief to the workman whose service is found to have been terminated illegally. In *U.P. State Brassware Corporation Ltd., Vrs. Uday Narain Pandey*, AIR 2006(S.C.) 586, it is observed that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it.

In the case at hand, the Workman did not face any recruitment or procedure of selection. There was no advertisement of the vacancy. It is clearly stated by W.W. No. 2 that he had recommended his name to the liaison Cell New Delhi to engaged the workman as an Attendant/ Peon. So he was engaged in the Liaison Office merely on the recommendation of the then Chairman of the first Party Corporation. His appointment was either temporary or *ad-hoc* in nature. He had put in just one year of service before he was terminated. All these factors operate against grant of the relief of reinstatement with back wages. On behalf of the Workman, the judgement of our Hon'ble High Court in Writ Appeal No. 42 relied of 2006 (Bijay Kumar Sahoo

Vrs. Central Electricity Supply Corporation and two others) has been relied on. The xerox copy of the certified copy of the Judgment is placed before this Tribunal. In the said Judgment their Lordships have observed that once the order of termination is held to be void *ab initio* the normal relief is reinstatement with full back wages. But in view of the decisions of the Hon'ble Supreme Court which do not appear to have been referred to in the Writ Appeal, this Tribunal, with due deference, is of the considered view that the issue under consideration should be decided in the light of the observations made by the Hon'ble Supreme Court.

In his affidavit evidence sworn on 27-01-2010 the workman has claimed to be aged about 30. On 31-3-2010 when he appeared before this Tribunal to face the cross-examination he claimed to be aged about 35. If he was 30 as on 27-1-2010, then he was aged about 12 as on the date of his retrenchment. Similarly if he was aged about 35 as on 31-3-2010, then he was 17 by the time his service were terminated. Thus it is a clear case of violation of all the norms of appointment in a Corporation like GRIDCO, the first party. Even assuming that he was 17 or 18 at the time of retrenchment, it is not understood as to how the then Chairman of the first party has come forward to depose on oath that the Workman had been working with the first party since 1988 when he must have been less than 15 years of age. It is quite possible that the second party during his minority was engaged as a domestic servant but was shown to be a workman in the Liaison Office, New Delhi. Be that as it may, since the termination of service of the workman is held to be illegal and having considered all the facts and circumstances of the case this Tribunal awards a sum of Rs. 25,000 (Rupees Twenty-five thousand) only to be paid by the first party as compensation to the second party which should be paid within a period of three months of the date of publication of the Award in the Official Gazette.

The reference is disposed of accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
12-11-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
12-11-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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

