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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th October 2011

No. 9734—li/1(BH)-34/2001-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd May 2011 in I. D. Case No. 250 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Madhu Maity, Contractor, C/o Birla Tyres and its Workman Shri Pitambar Mahallick and 3 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 250 OF 2008

(Previously registered as I.D. Case No. 23 of 2001 in the file the
Presiding Officer, Labour Court, Bhubaneswar)

The 2nd May 2011

Present :

Shri Raghubir Dash, o.s.j.s. (Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of M/s Madhu Maity,
Contractor, C/o Birla Tyres, Chhanpur,
Balasore.

.. First party—Management

The Factory Manager,
M/s Birla Tyres, Chhanpur, Balasore.

And

Shri Pitambar Mahallick, and others,
C/o Birla Tyres Workers Union,
Proof Road, Padhuanpada, Balasore.

.. Second party—Workman

Appearances :

None	.. For the First party—Management
Shri Pitambar Mahallick and 3 others.	.. For the Second party—Workman themselves.

AWARD

This is a reference under Section 10 of the Industrial Dispute Act, 1947 (for short the 'Act') made by the Government of Odisha in Labour and Employment Department vide their Order No. 11512—li/1 (BH)-34/2001-LE., Dt. 16-8-2001 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 action of the management of M/s Madhu Maity a contractor of M/s Birla Tyres, Chhanpur, Balasore in refusing employment to Shri Pitambar Mahallick Babu Vardhan, Shri Ajaya Pradhan and Shri Rabindra Pal workmen with effect from the 20th October 2000 is legal and/or justified ? If not, what relief are they entitled to ?”

2. As per the version in the claim statement, the four workmen who are represented by the second party/Union, had been working as contract labourers under the Contractor Madhu Maity (first party) in M/s Birla Tyres since 1995 and they were assigned with painting job in the Technical Department of M/s Birla Tyres. All on a sudden on 20-10-2000 they were refused employment by the contractor. On enquiry the workmen were told that since they had refused to sign on an acceptance slip accepting the long term settlement signed on 18-10-2000 between the Principal employer and five Trade Unions except the second party/Union, the Factory Manager of the Principal employer asked the contractor to refuse employment to the workmen. It is further pleaded that the job of painting in the Technical Department is a perennial job which is still being done through other contract labourers. Therefore, the refusal of employment is illegal and unjustified.

The first party/contractor has been set *ex parte* as he did not appear to take part in the proceeding despite of notice duly served on him.

3. The following issues have been framed :—

ISSUES

(1) Whether the action of the management of M/s Madhu Maity, a contractor of M/s Birla Tyres, Chhanpur, Balasore in refusing employment to Shri Pitambar Mahallick, Babu Bardhan, Ajay Pradhan and Rabindra Pal, workmen with effect from the 20th October 2000 is legal and/or justified ?

(2) If not, what relief are they entitled to ?

4. One of the workmen namely, Pitambar Mahallick is examined as W.W. No. 1. He has exhibited some documents marked Exts. 1 to 4.

5. At the outset, may it be mentioned that the Factory Manager of M/s Birla Tyres was arrayed as first party No. 2 and on being served with a notice the Principal employer filed written statement. However, on a petition filed by the Principal employer this Tribunal passed Order No. 57, Dt. 23-11-2009 upholding the Principal employer's plea that it is not a necessary party to this case. Accordingly, its name has been struck-off from the cause, title.

FINDINGS

6. *Issue Nos. 1 & 2*—The evidence of W.W No. 1 goes unchallenged. Yet, no relief can be awarded to the second party/workmen on the basis of such unchallenged testimony for the reason that nowhere in the affidavit evidence of W.W. No. 1 there is any allegation or assertion against the Contractor. In the affidavit W.W. No. 1 has categorically stated that there was no such contractor called M/s Madhu Maity in the establishment of the Principal employer. In the affidavit it is further asserted that the workmen had been working directly under the Principal employer doing the job of painting which is a regular nature of work and incidental to the process of production. It is also asserted that when the workmen refused to accept the terms and conditions of the settlement Dt. 18-10-2000, the Principal employer refused employment to them. Further assertion is that since the workmen had been working under the Principal employer from 1995 continuously the Management of Birla Tyres should have regularised them in its roll. These assertions are beyond the pleadings contained in the claim statement. Even the conciliation failure report annexed to the order of reference sent by the State Government does not reflect that during conciliation the union had raised the issue that the workmen were in fact directly employed by the Principal employer or that the contract was a mere camouflage to deprive the workmen of the benefits which the regular employees are entitled to get. Rather, it is admitted before the Conciliation Officer that the workmen were working under the Contractor Madhu Maity and the contractor refused them employment saying that there was no work with him. In the schedule of reference also the action of the Contractor by way of refusal of employment to the workmen is stated to be the dispute to be adjudicated upon by this Tribunal. The Principal employer is no more a party to this reference. Behind the back of the Principal employer the second party cannot be allowed to make assertions as against the Principal employer. The dispute that is raised in the affidavit evidence of W.W. No. 1 is beyond the scope of the reference. Since nothing has been stated on the employer-employee relationship between the workmen and the contractor and about the alleged refusal of employment by the Contractor, no relief can be granted to the workmen as against the Contractor.

7. In the absence of evidence, Issue No. 1 is answered against the second party/workmen and consequently no relief can be awarded to the workmen.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
2-5-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
2-5-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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