

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2479 CUTTACK, MONDAY, NOVEMBER 14, 2011/KARTIKA 23, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st November 2011

No. 9821—li/1(BH-I)-13/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th August 2011 in Industrial Dispute Case No. 315 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1) M/s Birla Tyres, At/P.O. Chhanpur, Balasore (2) Proprietor, M/s Sony Brothers, At/P.O. Chhanpur, Balasore (3) Proprietor, M/s Rout Brothers, At/P.O. Chhanpur, Balasore and their workman Shri Nirmal Chandra Mohapatra was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 315 OF 2008

Dated the 27th August 2011

Present :

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

Between :

| | | |
|---|----|-------------------------|
| The Management of | .. | First Party—Managements |
| (1) M/s Birla Tyres | | |
| At/P.O. Chhanpur, Balasore. | | |
| (2) Proprietor, M/s Sony Brothers | | |
| At/P.O. Chhanpur, Balasore. | | |
| (3) Proprietor, M/s Rout Brothers | | |
| At/P.O. Chhanpur, Balasore. | | |
| And | | |
| Their Workman Shri Nirmal Ch. Mohapatra | .. | Second Party—Workman |
| S/o. Janardan Mohapatra, At Durgapur | | |
| P. O. Pakhar, Via Anantpur, Dist. Balasore. | | |

Appearances :

| | |
|--|--------------------------------------|
| Shri S. K. Behera, Authorised Representative . . . | For the First Party—Management No. 1 |
| Shri S. K. Jena, Authorised Representative . . . | For the First Party—Management No. 2 |
| None . . . | For the First Party—Management No. 3 |

AWARD

This is a reference under Section 10 of the Industrial Dispute Act, 1947 (for short 'the Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 10677—li-1(BH)-13/2008-LE., dated the 3rd/4th October 2008. The Schedule of reference runs as follows :—

“Whether the termination of services of Shri Nirmal Chandra Mohapatra with effect from the 14th April 1995 by the Management of M/s Birla Tyres after his absorption as a Company Casual Workman is legal and/or justified ? If not, what should be the details ?”

2. The workman's case in short is that from the 18th May 1990 he was engaged in the construction work of the plant of the first party through Shiva Erectors. After completion of the construction work the workman worked in the factory of the first party through contractor M/s Rout Borthers. In the year 1993 the Proprietor of M/s Rout Brothers introduced another Contractor Firm in the name of M/s Sony Brothers. Some of the workers of Rout Brothers started to work in the same Factory as usual but under M/s Sony Brothers. While working under M/s Sony Brothers the workman met with an accident on the 2nd July 1994. He was hospitalised till the 2nd October 1994. After his discharge from hospital he met the Contractor as well as the Personnel Officer of the Principal Employer, M/s Birla Tyres to allow him to join but he was not allowed entry inside the Factory. So, on the 5th October 1994 he sent his joining report to the Contractor as well as the Principal Employer under Certificate of Posting. When he failed to get employment despite of repeated approach made by him he wrote to the Labour Machinery from time to time. On his representation the local Labour Officer issued notice to the Contractor as well as the Principal Employer. The representative of M/s Birla Tyres and the workman attended an enquiry on the 7th January 1995. The Management of Birla Tyres did not agree to take the workman as a Company Casual though other workers who were engaged along with the workman had already been allowed to work as Company Casual. On the 3rd April 1995 the District Labour Officer directed the workman to join in work on the 7th April 1995. When he reported for duty on the 7th April 1995 the Contractor refused to allot him duty. He met the Personnel Officer of Birla Tyres who also did not allow him to work. Again he met the District Labour Officer who after discussion with the Contractor over Phone asked the Workman to join on the 11th April 1995 as a Company Casual. Accordingly, he met the Company Casual Supervisor on the 11th April 1995 who allotted him duty in Division B-1 (P+) where he worked till the 16th April 1995. On the 17th April 1995 while he was on duty the Management of Birla Tyres asked him not to work.

3. The Contractor M/s Rout Brothers has been set *ex parte*.

The other Contractor M/s Sony Brothers has filed written statement contending that the workman was engaged under the Firm from the 1st June 1994 on daily wage basis. The workman was in the habit of remaining absent from his duty. In the month of June 1994 he had worked for ten days only. In July 1994 while he was working in the Factory he met with an accident and sustained a minor injury in his right hand. After recovery he did not turn up to resume duties. After repeated request made by the Contractor he joined in Decemeber 1994 but being irregular in attending duties he had worked for ten days only. When the workman wilfully remained absent from duty without permission his name was struck off from the Roll with effect from the 14th April 1995 in accordance with the provisions of the Orissa Contract Labour (Regulation & Abolition) Rules, 1975.

4. The Principal Employer in its written statement has taken the stand that the workman was a contract labourer under the licenced Contractor M/s Rout Brothers during 1992-1993. When that Firm got abolished after completion of the work it had taken on contract the workman was engaged by another Contractor namely, M/s Sony Brothers. While the workman was working in the premises of Birla Tyres he met with an accident on the 2nd July 1994 and was injured. But it is denied that there exists employer-employee relationship between the Principal Employer and the Workman. It is also denied that the workman was engaged as a Company Casual under the Principal Employer at any point of time. Therefore, the Principal Employer takes the stand that the reference is not maintainable against it. It is also contended that the term of reference is defective in as much as the Government has wrongly assumed the workman to be a Campany Casual.

5. The following issue has been settled :—

ISSUES

- (i) “Whether the termination of services of Shri Nirmal Chandra Mohapatra with effect from the 14th April 1995 by the Management of M/s Birla Tyres after his absorption as a Company Casual workman is legal and/or justified ? If not, what should be the details ?”

6. The workman has examined himself as W.W. No.1. Documents marked Exts. 1 to 12 are relied on by the workman. On behalf of the First Parties four witnesses have been examined. M. W. Nos. 1, 3 and 4 are Officers/employees of M/s Birla Tyres and M. W. No.2 is a supervisor of M/s Sony Brothers. On behalf of the First Parties documents have been marked as Exts. A. to F.

FINDINGS

7. There is no dispute between the parties that when the workman met with an accident he was employed by the Contractor M/s Sony Brothers. The dispute arose when the workman wanted to resume duties after his discharge from the Hospital. According to the pleadings in the claim statement the workman was discharged from the Hospital on the 3rd October 1994. After his discharge from the Hospital on the 3rd October 1994 he approached the contractor as well as the Personnel Officer of the Principal Employer but they did not allow him to join in his work. This implies that after his discharge he wanted to resume duty under the Contractor and that till then he

had not claimed himself to be a Company Casual, i. e. a Casual Worker directly employed under the Principal Employer. In Para. 17 of his claim statement the workman has stated that on the 3rd April 1995 the District Labour Officer, Balasore directed him to join in work on the 7th April 1995. In Para. 18 of the claim statement it is stated that on the 7th April 1995 when he went to the Counter of M/s Sony Brothers to resume duty the Contractor's Supervisor refused him to allot duty. It is further stated that on such refusal he met the District Labour Officer on the same day at his Office who had a discussion with the Contractor over Phone and then told him to join duty on the 11th April 1995 as a Company Casual. In Para. 19 of the claim statement it is stated that on the 11th April 1995 when he met with the Company Casual Supervisor he allowed him to work in Division B-1 (P+) and there he worked from the 11th April 1995 to the 13th April 1995. Thus it is found that till the alleged discussion over Phone between the District Labour Officer and the Contractor the question of the Workman's joining as a Company Casual did not arise. It is not on record as to on what basis the District Labour Officer had asked the workman to join duty on the 11th April 1995 as a Company Casual. The Management of Birla Tyres does not admit that the workman had ever worked as Company Casual. Though it is claimed that on the 11th April 1995 the workman met the Company Casual Supervisor who allowed him to work in Division B-1(P+) as a Company Casual, it is not understood where from a Supervisor got the authority to allow the workman to work as a Company Casual. The workman has further pleaded that on the 14th April 1995 while he was working in the Plant an Officer of the Principal Employer did not allow him to work for which he had approached the Personnal Officer and with his intervention he was allowed to work till the 16th April 1995 but again on the 17th April 1995 he was asked not to work any more. Thus, according to the workman he was allowed to work as a Company Casual from the 11th April 1995 to the 16th April 1995 but there is neither any pleading nor evidence that the competent authority of the Principal Employer had employed him as a Company Casual. In his deposition (Para. 15) the workman has stated that on the 7th January 1995 he himself and the representative of the Principal Employer had attended an enquiry in the Office of the Assistant Labour Officer, Balasore but nothing could be decided as the Management did not agree to allow the workman to work as a Company Casual even though other workmen who were initially engaged with him had already been allowed to work as Company Casuals. It appears, some contract labourers were employed by the Principal Employer as Company Casual and therefore, the workman after his discharge from Hospital wanted to join as Company Casual. In this reference the Tribunal is not called upon to decide as to whether the Workman's claim to be employed as a Company Casual is justified or not. The conciliation failure report annexed to the Schedule of reference does not disclose that before the Conciliation Officer the Principal Employer had admitted the Workman to be its Company Casual. But while making the reference the State Government have presupposed the workman to be a Company Casual. The workman on his part has failed to produce documentary evidence except a xerox copy of an Identity Card which is marked Ext. 12 to support his claim that he is a Company Casual. It is suggested to the workman (W.W. No. 1) during his cross-examination that the xerox copy marked Ext. 12 is a forged document and no such Identity Card was issued to him by M/s Birla Tyres. The workman has not pleaded as to when the Identity Card describing him to be a Company Casual was issued to him by the Management. He has not produced the Original Identity Card taking the plea that on the 14th April 1995 the Original Identity Card was taken back from him. It was during his cross-examination he produced the copy of the Identity Card. Till then he had not spoken anything about the issuance of such Identity Card. Therefore, no reliance can be placed on the Ext. 12. The Management has exhibited the Company Casual payment sheets for the month of April 1995

which is not there in the payment sheets. The workman has taken the plea that since his wages for April 1995 (for the period of work done by him) was not paid to him his name does not find place in Ext. F. But the initial burden lies on the workman to establish that he was a Company Casual when his service was terminated. He having failed to prove that fact it is to be held that he was not a Casual worker under the Principal Employer.

8. M/s Sony Brothers admits that the workman was employed by the Firm and that when he remained absent from duties since the 22nd December 1994 and did not report for duty despite of notice duly served on him his name was struck off the Roll presuming that he had abandoned his service. In this regard, the Contractor has exhibited one notice dated the 17th March 1995 (Ext. A) which is said to have been sent to the workman under Certificate of Posting (Ext. A/1) and another notice dated the 13th April 1995 (Ext. B) also said to have been sent to the workman under Certificate of Posting (Ext. B/1) giving intimation to the workman that his name had been struck off the Roll. It may be a fact that the Firm had sent notices marked Exts. A and B to the workman, but in the absence of further materials it is difficult to hold that the workman had received the notices. That apart, if the materials placed by the workman are taken into consideration it would be very difficult to believe that the workman was not interested in the job and that despite of the notice marked Ext. A served on him he did not report for duty. The workman claims that after his discharge from the service he reported for duty on the 3rd October 1994 but when the Contractor did not allow him to resume duties he sent his joining report to the Principal Employer as well as the Contractor. Ext. 2 is his joining report which is said to have been sent under Certificate of Posting. Ext. 2/1 is the postal certificate dated the 5th October 1994. Thereafter, on 2nd December 1994 the workman made a complaint to the A. L. C. and a copy thereof was sent to the Principal Employer so also the Contractor under Certificate of Posting. Ext. 3 is a copy of that complaint. Enclosure of Ext. 3 is a copy of the postal certificate dated the 2nd December 1994 showing that a copy of Ext. 3 was also sent to the Contractor and the Principal Employer. Ext. 5 is a copy of the letter sent by the A. L. O., Balasore addressed to the Contractor asking the Contractor to attend his office on the 7th January 1995. Ext. 5 further reflects that a copy of the workman's complaint was enclosed with that letter.

9. When the workman claims that after the accident he was not allowed to resume duties till the 11th April 1995, the Contractor claims that after his recovery the workman did not report for duty after repeated request made by the Contractor and ultimately he resumed duties in December 1994. The date of alleged resumption of duty of the workman is not specifically pleaded. It is further claimed that the workman was very much irregular in his duty and that in December 1994 he had worked for ten days only. The Contractor has not placed documents to prove that it had issued written notice to the workman to resume duties and that when the workman remained unauthorisedly absent during December 1994 the Contractor had taken any action against him. The Contractor has exhibited salary sheets of its workmen for the month of December 1994 to show that the workman had received wages for ten days in the month of December 1994 but the workman denies to have put his signature in the salary sheet. The Salary Sheet is marked as Ext. D. It is a xerox copy. When the workman disputed his signature the Management ought to have produced the original of the salary sheet and even it should have prayed for examination of the workman's signature by a Handwriting Expert. Even the conciliation failure report does not reflect that during conciliation the Contractor took the plea that when the workman absented from duty with effect from the 22nd December 1994 his name was struck off the Roll. Thus the Contractor's plea that the workman joined in December 1994 and absented himself from duty with effect from the 22nd December 1994 is not accepted.

10. On the pleadings of M/s Sony Brothers it is to be held that the Workman's service was terminated by the Contractor on the ground that he had absented from duty despite of notice asking him to resume duties. But it is not proved that the workman having resumed duty in December 1994 later on absented from duty. On the other hand the Workman's plea that when he reported for duty the Contractor refused him employment is found proved. Such refusal is illegal as well as unjustified.

11. The workman is not entitled to any relief from M/s Rout Brothers and M/s Birla Tyres. Since the workman was refused employment without just ground M/s Sony Brothers is held liable to take him back in its employment. While working under M/s Sony Brothers the workman met with an accident. It appears, when the workman demanded for compensation the management took a vindictive attitude. On the claim of the workman, workman's compensation Case No. 39 of 1995 was registered. As per order of the Commissioner under the Workman's Compensation Act the management was directed to pay a sum of Rs. 46,461. Be that as it may instead of being sympathetic towards the workman his employer refused employment to him. The workman immediately raised a dispute before the labour machinery. When he did not get any relief he had to move the Hon'ble High Court. Ultimately, on the order of the Hon'ble High Court passed in W. P. (C) No. 15836 of 2007 the Labour machinery rose to the occasion and ultimately the reference was made in the year 2008. The workman is no way responsible for the delay. The workman has remained out of employment for a very long period. He is a local man. He was aged about 30 when he was kept out of employment. It is hard to believe that during the last fifteen years the workman sat idle without doing any work for his livelihood. Under such circumstances, this Tribunal considers it just and appropriate to direct reinstatement of the workman with payment of 25% of the back wages. The workman may, if so advised raise a fresh dispute as to whether he is entitled to be a Company Casual under M/s Birla Tyres.

The reference is answered accordingly. The first party employer is to implement the Award within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
27-8-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
27-8-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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