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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th November 2011

No. 9957— IR(ID)-98/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th October 2011 in I. D. Case No. 11 of 2010 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of Berhampur Co-operative Central Bank Ltd., Berhampur and their workman represented through the Berhampur Co-operative Central Bank Employees Union, Berhampur, Dist. Ganjam was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 11 OF 2010

Dated the 24th October 2011

Present :

Shri D.C. Mishra, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Management of . . . First Party—Management
Secretary, Berhampur Co-operative Central
Bank Ltd., Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

Versus

Their Workman . . . Second Party—Workman
Represented through The General Secretary,
Berhampur Co-operative Central Bank
Employees Union, Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

Under Sections : 10 & 12 of the Industrial Disputes Act, 1947.

Appearances :

Shri Surendra Padhy, Branch Manager (A. & E.) of : For the First Party–Management
B.C.C. Bank, Berhampur.

Shri Niranjana Mishra, President : For the Second Party–Workman
of All Orissa Bank Employees Associations,
Berhampur.

Date of Argument 13-10-2011

Date of Award 24-10-2011

AWARD

The matter arises out of a reference made by the State Government in the Labour & Employment Department, Orissa, Bhubaneswar under Section 12(5), read with Section 10(1) of the I.D. Act, 1947 vide memo No. 7450(5)–LE., Dt. 4-9-2010 for adjudication of the following disputes:

“ Whether the demand of Berhampur Co-operative Central Bank Employees Union, Berhampur for implementation of 6th Pay Committee Report on Revision of Pay Scale to the Bank Employees at par with the State Government Employees with effect from the 1st January 2006 is legal and/or justified ? If so, what should be the details ?”.

2. The case of the second party (Workman) runs thus:

That after publication and implementation of 6th Pay Commission Report for Government Employees on Revision of Pay Scale, the second party (Workman) being the employees of the first party approached the first party vide charter of demand, Dt. 14-1-2009 for implementing the 6th Pay Commission Report for them with effect from the 1st @ January 2006. It is averred that, the 6th Pay Commission Report is also applicable to the workmen of the first party i.e., for the second party members. According to the workman the management examined the charter of demands of the second party and communicated to the second party Union vide letter, Dt. 1-6-2009 that they have resolved on 29-4-2009 to implement Demand No. 1 with regard to revision of salary of the employees in tune with the 6th Pay Commission Report. It is also pleaded that the management moved the Registrar of Co-operative Society, Orissa in the matter (Vide Ext. 2) and being the competent authority under O. C. S. Act, 1962, the R. C. S. (O) gave Order Nos. 14812, Dt.12-6-2009 (Ext. 3) and No. 15444, Dt. 23-6-2009 (Ext. 8) for implementing the 6th Pay Commission Report, but the first party did not give effect to its commitment or to the Order of the R.C.S.(O). So the second party served a strike notice to the management (first party) on 13-7-2009 and in response the management intimated to the Union not to resort to strike as because the management had already decided to implement the demand and a sum of Rs. 2,06,50,598 (Rupees two crores six lakhs fifty thousand five hundred ninty-eight) only had been allotted to the balance sheet for payment.

It is specifically pleaded that, inspite of all the above facts, the management did not fulfill the demands of the second party and on 17-4-2009 made a Resolution (Ext. 4) to implement the 6th Pay Commission Report from 1-4-2009. Since the management did not implement the 6th Pay Commission Report fully i.e., from the 1st January 2006, the Union i.e., the second party approached

the District Labour Officer, Berhampur for settlement. The District Labour Officer repeatedly tried for conciliation and settlement between the parties but the management never attended the conciliation for which the conciliation failed and gave rise to this dispute. It is also averred that on 23-8-2010, the management gave a written assurance (Ext. 6) to the second party to implement the 6th Pay Commission Report fully and to pay the arrear within one month but in vain. .

3. The first party-management has contested the case by filing W.S. According to the first party, the management in its Letter No. 785, Dt. 13-5-2009 had sought approval from R.C.S.(O) to implement the benefits of 6th Pay Commission Report to the workman and after due consideration the R.C.S.(O) issued Orders/Letter Nos. 14812, Dt. 12-6-2009 and No. 15444, Dt. 23-6-2009 to the first party to take appropriate decision in the matter subject to fulfillment of the required conditions mentioned in those letters, and accordingly the management examined the matter in details and passed resolution for extending the benefits of 6th Pay Commission Report to the second party with effect from 1st April 2009. In the above premises, the first party has pleaded that, it has taken the decision rightly for which the case of the second party is not maintainable and it should be dismissed with costs.

4. In order to substantiate the case, Shri Basudeb Choudhury, ex-Branch Manager of C.C. Bank, Berhampur, and the Present Chairman of the Bank Employees Union has been examined as the workman witness No. 1.

Documents marked Exts. 1 to Exts. 8 have been proved from workman side. Ext. 1 is the charter of demands of the second party submitted to the first party. Ext. 2 is the request letter of the Management to the R.C.S.(O) to grant permission for implementation of 6th Pay Commission Report. Ext. 3 is the Letter No. 14812, Dt. 12-6-2009 of the R.C.S.(O) granting permission to the first party as applicable. Ext. 4 is the Resolution Dt. 17-9-2009 of the first party implementing the 6th Pay Commission Report with effect from 1st January 2009. Ext. 5 is the strike notice Dt.13-7-2009 of the first party and Ext. 6 is the copy of the minutes of the meeting held between the first party and the second party on 23-8-2010. Ext.7 is Page No. 36 of O.C.S. Act and Ext. 8 is the copy of letter No. 15444, Dt.. 23-6-2009 of O.C.S.(O) addressed to the Chief Executives of all district C.C. Banks.

5. The first party has not adduced any oral evidence but has filed copies of Letter Nos. 14812, Dt. 12-6-2009 and No. 15444, Dt. 23-6-2009 and the copy of Resolution, Dt. 29-4-2009 of the management.

6. In view of the rival pleadings of the parties the following issues have been framed in this case for adjudication—

ISSUES

- (i) “ Whether the demand of Berhampur Co-operative Central Bank Employees Union, Berhampur for implementation of 6th Pay Committee Report on revision of Pay Scale to the Bank Employees at par with the State Government Employees with effect from the 1st January 2006 is legal and/or justified ?
- (ii) If so, what should be the details ? ”

7. *Issue No.(i)*— W. W. No. 1 has deposed that their association (second party) moved the management vide charter of demands (Ext.1) to give them financial benefits with effect from 1st January 2006 as per 6th Pay Commission Report recommended for Government Employees and accordingly the management (first party) sought for approval from the Registrar of Co-operative Society(O) vide Ext. 2, who was the competent authority to give such approval. The specific evidence of W. W. No. 1 is that, in the enclosure of Ext. 2 i. e., the proceedings of the meeting of the management committee, Dt. 29-4-2009, the management has very clearly admitted that the concerned Bank was earning profit consecutively for more than 3(three) years and there was capital adequacy of minimum level of 7% and the Bank was fulfilling all the required conditions stipulated by NABARD and R.C.S.(O) for which recommendation was made by the management for full implementation of the 6th Pay Commission Report in favour of the second party members. The W.W. No. 1 has further deposed that, although recommendation was made by the management(vide Ext. 2) for full implementation of the 6th Pay Commission Report, but subsequently the revision of pay of the second party was implemented from 1-4-2009 vide Resolution, Dt.17-9-2009 (Ext.4). Thus W.W. No. 1 claim that Exts-2 and Ext. 4 are contrary to each other and in view of specific admission of the first party in Ext. 2 about profit earning for 3(Three) consecutive years capital adequacy and fulfillment of the required conditions of NABARD, the management can not take a contrary decision vide Resolution, Dt. 17-9-2009 (Ext. 4).

In Ext. 2 the management has reported to the R.C.S.(O) regarding profit of the Bank and other required conditions imposed by NABARD, but it is for the years 2006 to 2010. Since the second party members are demanding revision of pay with effect from 1st January 2006, therefore the profit/loss and other statement for proceedings 3(three) years to 1-1-2006 must be taken into consideration, but such statement is not available in record. Also the Audit Report of the last preceding 3(three) years to 1-1-2006 has not been furnished by the second party members to justify that the Bank had the capacity to pay the compensation (arrear pay). As per Clause-4(II) and (III) of Letter No. 15444, dated 23-6-2009(Ext. 8), profitability and capacity of the Bank to pay are the *sine qua* none to allow additional financial liability to the Staffs. There is no documentary evidence about profitability of the Bank for preceding last 3(three) years i.e. for the years 2003 to 2006 and there is no Audit Report to assess the capacity of the Bank to pay financial compensation with effect from 1st January 2006. Also, the second party has not led any cogent evidence in this regard. As per direction of the R.C.S. (O) vide Letter Nos. 14812, Dt. 12-6-2009 (Ext. 3) and No. 15444, Dt. 23-6-2009 (Ext. 8), the management of the first party after due enquiry allowed the second party members, the benefits of the 6th Pay Commission Report with effect from 1st April 2009, basing on the report given in Ext. 2 for the years 2006 to 2010. In the above circumstances, the plea of the second party “ that in view of admission of the first party in Ext. 2 about profitability and capacity of the Bank to pay, the subsequent Resolution (Ext. 4) to implement the Revision of Pay Scale from 1-4-2009” is illegal has no force at all and it falls to ground . Basing on the Financial Position for the years 2006 to 2008 as given in Ext. 2, benefits of pay revision from 1st January -2009 can not be granted. Though the management has not led oral evidence in this case but in the W. S. it has mentioned that after due consideration about profit aspect of the Bank and its capability to pay the management has taken the decision vide Ext. 4

for implementation of 6th Pay Commission Report from 1st April 2009. In the above premises it is held that, the management has rightly implemented the 6th Pay Commission Report w.e.f. 1st April 2009 and it is legal and justified.

Accordingly this issue is answered in favour of the first party and against the second party.

8. *Nssue No. (ii)* – In view of the discussion made above in issue No. (i) the second party is not entitled to get revision Pay Scale as per 6th Pay Commission Report for Government Employees with effect from 1st January 2006. Hence this issue is answered in favour of the first party and against the second party.

Hence Order :

This reference, I. D. Case is dismissed on contest against the second party but in the circumstances without costs. The second party is not entitled to get any relief in this case. Non-implementation of the 6th Pay Commission Report for the B. C. C. Bank employees (second party) with effect from 1st January 2006 is not illegal. The B. C. C. Bank Employees are not entitled to get salary as per 6th Pay Commission Report with effect from 1st January 2006 for which subsequent pay fixation or payment of arrear from 1st January 2006 to 31-3-2009 does not arise.

Dictated and corrected by me.

D. C. MISHRA
24-10-2011
Presiding Officer
Labour Court
Jeypore, Koraput

D. C. MISHRA
24-10-2011
Presiding Officer
Labour Court
Jeypore, Koraput

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