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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th November 2011

No. 10573—li/1(B)-35/2007(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2011 in Industrial Dispute Case No. 8 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Executive Engineer, Rural Works Division, Jagatsinghpur and their workman Shri Pratap Tarenia and 10 other workers was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 08 OF 2008

Dated the 30th June 2011

Present :

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

Between :

The Management of . . . First Party—Management
Executive Engineer, Rural Works Division,
Jagatsinghpur.

And

Their workman Shri Pratap Tarenia and 10 others . . . Second Party—Workmen
C/o. Shri Shyamsundar Tarenia, Village Garei,
Post Lathanga, Via Rahama, Dist. Jagatsinghpur.

Appearances:

Shri Gora Chand Kanungo, Advocate	..	For the First Party—Management
Shri Anugraha Narayan Samantaray, Advocate	..	For the Second Party—Workmen

AWARD

The Government of Odisha in the Labour & Employment Department, in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) for short the Act have referred the following dispute for adjudication vide their Order No. 1287—li/1(B)-35/2007-LE., dated the 2nd February 2008. The Schedule of reference runs as follows:—

“Whether the termination of services of (1) Shri Pratap Tarenia, (2) Paradip Kumar Sahoo, (3) Shri Srikanta Kumar Panda, (4) Ranjit Kumar Sahoo, (5) Shri Sushanta Kumar Mohapatra, (6) Shri Ramesh Chandra Hati (7) Shri Prakash Chandra Pradhan, (8) Shri Fani Bhusan Pani, (9) Shri Upendra Kumar Choudhury, (10) Shri Prafulla Kumar Tarenia, (11) Shri Bibhuti Bhusan Das with effect from the 1st April 2006 by the Executive Engineer, “Rural Works” Division, Jagatsinghpur is legal and/or justified ? If not, what relief the above 11 Nos. of workers are entitled to ?”

2. The claim statement reflects that the 11 (eleven) persons, whose alleged illegal termination is the subject matter of reference and who are hereinafter referred to as the ‘workmen’ were working in the Rural Works Subdivisions of Tirtol and Kujanga which are under the Executive Engineer, Rural Works Division, Jagatsinghpur. They were all engaged on D. L. R. basis. The following chart will show the respective date of their first engagement and the post in which they were engaged :

Sl. No.	Name of the Workmen	Date of engagement	Post
1.	Shri Pratap Kumar Tarenia	.. 05-02-1994	Khalasi
2.	Shri Srikanta Ku. Panda	.. 11-12-1995	Watchman/Roller Helper
3.	Shri Ranjit Ku. Sahoo	.. 01-02-1996	Watchman
4.	Shri Pradip Ku. Sahoo	.. 01-12-1994	Clerk
5.	Shri Sushanta Ku. Mohapatra	.. 05-02-1996	Watchman
6.	Shri Ramesh Ch. Hati	.. 01-08-1994	Clerk
7.	Shri Prakash Ch. Pradhan	.. 01-05-1996	Work Sarkar
8.	Shri Prafulla Ku. Tarenia	.. 01-08-1996	Work Sarkar
9.	Shri Upendra Ku. Choudhury	.. 01-07-1996	Work Sarkar
10.	Shri Fani Bhusan Pani	.. 01-05-1998	Roller Helper
11.	Shri Bibhuti Bhusan Das	.. 01-05-1998	Watchman

It is further stated in the claim statement that the employer did not pay their wages for about 18 months. When the workmen claimed their back wages, the management refused employment to them with effect from the 1st April 2006. No notice/notice pay was given to the workmen nor any compensation was paid to them. Even persons junior to the workmen particularly Shri Manoranjan Parida, Shri Biranchi Narayan Sahoo and Smt. Susama Choudhury are still allowed to continue under the First Party. Therefore the retrenchment of the workmen is illegal and unjustified. Stating that all of them are not in gainful employment, the workmen have claimed for their reinstatement with full back wages including their unpaid wages for a period of 18 months immediately preceding the alleged retrenchment.

3. In the written statement the First Party has contended that since the Management has never engaged any of the aforementioned 11 persons at any point of time the question of refusal of employment does not arise. It is specifically stated that some certificates which are relied on by the workmen are manufactured documents. Thus the Management denies the existence of employer employee relationship between the parties.

4. The following issue has been settled:—

ISSUE

- (i) “Whether the termination of services of (1) Shri Pratap Tarenia, (2) Pradip Kumar Sahoo, (3) Shri Srikanta Kumar Panda, (4) Ranjit Kumar Sahoo, (5) Shri Sushanta Kumar Mohapatra, (6) Shri Ramesh Chandra Hati, (7) Shri Prakash Chandra Pradhan, (8) Shri Fani Bhusan Pani, (9) Shri Upendra Kumar Choudhury, (10) Shri Prafulla Kumar Tarenia, (11) Shri Bibhuti Bhusan Das with effect from the 1st April 2006 by the Executive Engineer, Rural Works Division, Jagatsinghpur is legal and/or justified ? If not, to what relief the above 11 Nos. of workers are entitled ?”

5. Nine out of the 11 workmen have been examined as W. W. Nos. 1 to 9. Shri Pradip Kumar Sahoo and Shri Susanta Kumar Mohapatra are the two workmen who have not been examined.

FINDINGS

6. *Issue No. (i)*—Though the Management has taken the stand that none of the 11 workmen were ever engaged under the First Party at any point of time, but while adducing evidence M. W. Nos. 1 and 2 have specifically mentioned the names of Pratap Kumar Tarenia, Pradip Kumar Sahoo, Ranjit Kumar Sahoo, Srikanta Kumar Panda and Sushanta Kumar Mohapatra denying that these five persons were ever engaged under the First Party. They have not stated anything about the remaining six workmen namely, Ramesh Ch. Hati, Prakash Chandra Pradhan, Prafulla Kumar Tarenia, Upendra Kumar Choudhury, Fani Bhusan Pani and Bibhuti Bhusan Das. So, it is to be presumed that the Management has admitted these six persons to have worked under the First Party as claimed in the claim statement. Considering the nature of evidence adduced by M. W. Nos. 1 and 2, this Tribunal comes to a conclusion that these six persons were engaged under the First Party for some periods and the contention taken in the written statement that they were never engaged by the First Party at any point of time is found to be unacceptable.

7. As regards the remaining five workmen whose employment under the First Party has been denied by M. W. Nos. 1 and 2 the evidence available on record may be examined carefully.

Shri Pratap Kumar Tarenia is said to have worked in Tirtol Subdivision Office from the 5th February 1994 till the date of alleged termination. Though he claims to have worked for such a long period he has failed to place evidence before this Tribunal. He has relied on two certificates marked Exts. 3 and 4 which the Management has claimed in the written statement to be manufactured documents. Both are xerox copies. The persons who have issued the certificates have not been examined. The certificates do not appear to have been issued officially. Ext. 5 is also a xerox copy of a purported official communication dated the 15th May 1998 showing that Pratap Kumar Tarenia was engaged as a D. L. R. This document is also not duly proved by the Second Party. It is not produced from the proper custody.

To prove the fact of employment of Shri Srikanta Kumar Panda under the First party, reliance is placed on Ext. 12 containing six sheets. These are also xerox copies. Two of the sheets are certificates purportedly issued by the Assistant Engineer, Rural Works Subdivision, Tirtol certifying that Shri Srikanta Kumar Panda who is working as a D. L. R. is well known to the Assistant Engineer. The persons who have issued the certificates have not been examined to prove the certificates. The other sheets do not clearly show that said Srikanta Kumar Panda was under the employment of the First Party.

Ranjit Kumar Sahoo relies on Ext. 8 which is a xerox copy of a certificate purportedly issued by the Assistant Engineer, Rural Works Subdivision, Tirtol stating therein that Shri Sahoo who is working as a D. L. R. Night Watchman is well known to him.

So far Pradip Kumar Sahoo and Susanta Kumar Mohapatra are concerned, no document is there throwing any light on the existence of employer-employee relationship between the notice.

The xerox copies of certificates relied on by the Second Party to prove the employer-employee relationship between the First Party on one hand and Pratap Tarenia, Srikanta Panda and Ranjit Kumar Sahoo on the other are not to be relied on more so when the First Party denies that they were ever employed in any of the establishments of the First Party. In *M/s Bareilly Electricity Supply Co. Ltd. Vrs. Workmen 1971 (II)LLJ-407 (S. C.)*, it has been observed that the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. It is further observed that it can not justify the Tribunal in basing its award on copies of documents when the originals which are in existence are not produced and proved by one of the methods either by affidavit or by witnesses who have executed them, if they are alive and can be produced. In the case at hand the Second Party members could have insisted for production of the originals of the xerox copy of the documents they have relied on from the proper custody. They could have examined the persons who issued the certificates so that the First Party could have got an opportunity to cross-examine

them as to the basis on which the certificates were issued. Since the First Party denies the employer-employee relationship in respect of these five workmen, xerox copy of the documents referred to are not to be relied on.

8. Accordingly, it is concluded that the Second Party members namely Pratap Tarenia, Srikanta Kumar Panda, Ranjit Kumar Sahoo, Pradip Kumar Sahoo and Susanta Kumar Mohapatra were not under the employment of the First Party whereas the remaining workmen namely, Ramesh Ch. Hati, Prakash Cgandra Pradhan, Prafulla Kumar Tarenia, Upendra Kumar Choudhury, Fani Bhusan Pani and Bibhuti Bhusan Das were employed by the First Party on D. L. R. basis. They claim that their services were terminated with effect from the 1st April 2006. The Management in its written statement has not explained anything on the alleged retrenchment perhaps for the reason that in the written statement the fact of their employment under the First Party has been bluntly denied. They are held to be the workmen who had worked under the First Party till the 1st April 2006. Because the evidence adduced by the Management is totally silent on the fact of their employment or non-employment. In the absence of pleadings and evidence as to the actual period of their respective engagement, it is to be presumed that they were continuously in the employment of the First Party till termination of their services as claimed by them in their claim statement. Since the period of their employment extends to 8 to 12 years, it is to be held that their services have been terminated in contravention of the provisions of Section 25-F of the Act. Hence, their retrenchment is illegal.

9. Now, the relief part may be taken into consideration. The Second Party members, named above were engaged under the First Party on D. L. R. basis. They have claimed for their reinstatement with back wages and other service benefits. In their claim statement they have pleaded that since the date of their disengagement they are not gainfully employed elsewhere. In *Jagbir Singh Vrs. Haryana State Agriculture Marketing Board*, AIR 2009 (S. C.) 3004, Hon'ble Supreme Court have observed that the award of reinstatement with full back wages, particularly to a daily-wager is not proper and that compensation in lieu of reinstatement and back wages should be awarded. It is also observed that recently in a long line of cases Hon'ble Supreme 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 is in contravention to the prescribed procedure. From the reported case it is also found that while deciding as to what should be the appropriate relief, the Tribunal should take note of factors like nature of appointment, the period of appointment, the availability of job, etc.

10. In the case at hand, the respective period of work rendered by Shri Ramesh Ch. Hati, Prakash Chandra Pradhan, Prafulla Kumar Tarenia, Upendra Kumar Choudhury, Fani Bhusan Pani and Bibhuti Bhusan Das extends from 8 to 12 years. They are all manual workers. It is not believable that for such a long period they have been sitting idle without earning their livelihood by way of manual work. Considering all these facts and circumstances, this Tribunal arrives at a

conclusion that instead of reinstatement and paid compensation of Rs. 1,00,000 (rupees one lakh) only each. The other five workmen namely Pratap Tarenia, Srikanta Kumar Panda, Ranjit Kumar Sahoo, Pradip Kumar Sahoo and Susanta Kumar Mohapatra are found not entitled to any relief.

The First Party to pay the compensation awarded in favour of the above Second Party members within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
30-6-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
30-6-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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