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**LABOUR & EMPLOYMENT DEPARTMENT**

NOTIFICATION

The 26th November 2011

No. 10664—li/1(B)-169/1998(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2011 in I. D. Case No. 186/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Konark Jute Ltd., Dhanmandal and its Workmen represented through Dhanmandal Shramik Sangha, Dhanmandal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 186 OF 2008

(Previously registered as I. D. Case No. 24 of 1999 in the file of the Presiding Officer, Labour Court, Bhubaneswar)

Dated the 28th June 2011

*Present :*

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

*Between :*

The General Manager,  
M/s Konark Jute Ltd.,  
At/P.O. Dhanmandal,  
Dist. Jajpur.

.. First-party—Management

And

Its Workmen represented  
through the Secretary,  
Dhanmandal Shramik Sangha,  
At/P.O. Dhanmandal,  
Dist. Jajpur.

.. Second-party—Workmen

*Appearances :*

Shri P. K. Lenka, Advocate	. . .	For the First-party—Management
Shri Trilochan Lenka, Advocate	. . .	For the Second-party—Workman

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in Labour & Employment Department vide their Order No. 2723—li-1(B)-169/1998-LE., dated the 24th February 1999 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., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the demand of General Secretary, Dhanmandal Shramik Sangha, Dhanmandal for regularisation of services of the Badli Security Guards Shri Bamadev Rout, Daulat Khan, Shri Prafulla Ku. Baral and Shri Upendranath Rout is legal and/or justified ? If not, what relief they are entitled to ?"

2. In this case, the second-party/Union has espoused the cause of the four 'Badli' workmen of the first-party/Industry. The stand taken in the claim statement is that there were 41 posts of Security Guards under the Security Department of the first-party. At the time of engagement of the four 'Badli' workmen as 'Badli' Security Guards, there were only 33 regular Security Guards on the roll of the first-party. Before their engagement, the 'Badli' Security Guards had faced an interview conducted by the management and they were also imparted training as per the procedure applicable for the appointment of regular Security Guards. The 'Badli' Security Guards have been working continuously performing the same duties as the regular Security Guards. Their duty chart is prepared by the management along with that of the regular Security Guards. Like their counterparts, the 'Badli' Security Guards are also engaged to work overtime. Though the 'Badli' workmen are usually engaged in the place of those regular employees who remain absent from duties temporarily, the 'Badli' Security Guards were never engaged against such temporary vacancies of regular Security Guards. Instead, they have been engaged regularly against regular vacancies. Though regular posts have been lying vacant, the services of the 'Badli' Security Guards were not regularised. Thereby they have been deprived of facilities like leave, weekly off days, annual leave with wages, etc., besides being engaged on daily wage basis. Several approaches made by the 'Badli' Security Guards have fallen to the deaf ear of the management with an intention to exploit them. Hence, the Union has raised the dispute by addressing a letter to the local Labour Authority on 23-11-1996.

3. In the written statement, the management has contended that the 'Badli' Security Guards have never worked against regular vacant posts. They have been engaged to work against vacancies arising out of temporary absence/leave of regular Security Guards. Initially there were 31 sanctioned posts of Security Guards but gradually it was reduced to 24, as in the meanwhile seven regular Security Guards have availed the Voluntary Retirement Scheme and their posts have been abolished in terms of the Voluntary Retirement Scheme. The 'Badli' Security Guards were neither selected through any recruitment process nor were they imparted with any training. There is a lot of difference between the nature of job performed by the regular Security Guards on one hand and the 'Badli' Security Guards on the other. As there is no vacancy and since the 'Badli' Security Guards have not been recruited by following the prescribed recruitment procedure, they are merely working for a long period as temporary workmen does not confer any right on them for regularisation. That apart,

due to continuous loss, the Mill was declared a sick industry and was referred to the B.I.F.R. and presently its winding up proceeding is under process before the Hon'ble High Court of Odisha. Considering the financial condition of the Mill, the regularisation of the 'Badli' Security Guards would put a heavy financial burden on the management.

4. The following issues have been settled :—

#### ISSUES

- (i) "Whether the demand of General Secretary, Dhanmandal Shramik Sangha, Dhanmandal for regularisation of services of the Badli Security Guards Shri Bamadev Rout, Daulat Khan, Shri Prafulla Kumar Baral and Shri Upendranath Rout is legal and/or justified ?
- (ii) If not, what relief they are entitled to ?"

5. One of the 'Badli' Security Guards is examined as W.W. No. 1. The second-party has not examined any other witness. The management has examined two witnesses and has exhibited Ext. A series.

#### FINDINGS

6. *Issue No. (i)*—The affidavit evidence of W.W. No. 1 contains almost all the pleadings, the Union has taken in its claim statement. During cross-examination, he has stated that now there are 38 Security Guards working in the establishment of the first-party, out of whom only 25 are regular. Though he claims that an interview was held for the appointment of the four workmen and appointment letters were issued to them, he has admitted that he has not produced the interview call letter as well as the appointment letter to be exhibited in this case. He admits that the Mill is a sick industry and it is in the process of being sold away.

M.W. No. 1 has mentioned in his affidavit evidence that the 'Badli' Security Guards lack the required qualification, skill, suitability and reliability for their regularisation in service. In order to show that the nature of the job entrusted to them is different from the regular guards, he has stated that the 'Badli' Security Guards are not entrusted with responsible and confidential jobs. He has further stated that presently there is no vacancy of regular posts for Security Guards. During cross-examination, he has stated that there were 37 regular Security Guards in the year 1988 and gradually by the end of 2001, the strength got reduced to 24. He denies the suggestion that the 'Badli' Security Guards are being engaged in duty regularly even when none of the regular Security Guards are absent or on leave. He admits that the 'Badli' Security Guards are posted at all such places where the regular Guards are usually posted. However, he explains that the 'Badli' Security Guards are not engaged in some specific duties such as round duty, intelligence report collection duty, cash duty and duty of security of high Officials. During cross-examination, he has further stated that the 'Badli' Security Guards were never asked to show their qualification and that no test was conducted to assess their skill, suitability and reliability. He admits that against none of the 'Badli' Security Guards, any disciplinary proceeding has ever been initiated.

M.W. No. 2 also says that the 'Badli' Security Guards are engaged against vacancies arising out of absentism of regular Security Guards. He has stated that as on Dt. 31-12-1992, the approved strength of Security Guards was 31 and that in the year 2001, there were 26 Security Guards in the Mill. He has further stated that in between 2001—2007, 13 Security Guards have retired under the Voluntary Retirement Scheme and that after acceptance of their voluntary retirement, the vacant posts have been treated as abolished. He has further stated that presently there is no vacancy of any post of regular Security Guards. During cross-examination, he has stated that the 'Badli' Security

Guards used to get employment throughout the year and they used to perform over time duty as well. He has further stated that presently there are 17 regular Security Guards on the Roll and that the 'Badli' Security Guards represented by the Union have been regularly performing duties till date.

Ext. A series are the statements furnished by the management showing the number of days, the four 'Badli' Security Guards have attended duties in each month during the entire period of employment of each of them. These statements indicate very clearly that the four 'Badli' Security Guards are being engaged in duty almost throughout the year over the entire span of their respective period of employment. Almost invariably they have worked for 24 days and above in each month which proves that they do get work on each working day. Besides that, they are also engaged overtime as admitted by M.W. No. 2. Therefore, it is difficult to believe that the 'Badli' Security Guards are given duty only against temporary vacancies arising out of absence/leave of the regular Security Guards. Rather, the evidence on record indicates that they are deployed in watch and ward duties perennially. It is also found that the nature of duty entrusted to the 'Badli' Security Guards is almost same as the regular Security Guards. Though, as claimed by M.W. No. 1, they are not engaged in some specific duties, it is only because they are being not regular employees of the first-party, the management does not repose confidence in allotting such specific duties to them. But the fact that they have been employed by the management for a very long period without there being any disciplinary action initiated against the 'Badli' Security Guards establishes that they do not lack in any skill and ability to perform the watch and ward duty.

7. 'Watch and Ward' is not a work of temporary nature. It is required round the clock. In the case of the four 'Badli' Security Guards, it is found that the management has sufficient work for them to engage them almost on everyday. For all these reasons, the second-party can be said to have made out a very strong case for regularisation of the services of the 'Badli' Security Guards. In *Sone Valley Portland Cement Company and its workmen and others*, reported in 1962(I) LLJ 218 (S.C.), the Industrial Tribunal's Order for regularisation of some of the temporary workers were held to be justified on the ground that the work performed by those temporary workers were part of the manufacturing process which went on all the time and that there was sufficient work for at least 50% of those temporary workers to be made permanent. Similar fact situation being found available in the case on hand, the Union can be said to have successfully raised a case of making the services of the 'Badli' Security Guards regular. However, the management has relied on another decision of the Hon'ble Supreme Court reported in 2011(II) LLJ 295 (S.C.) (*Union of India and others Vrs. Vartak Labour Union*) wherein their Lordships have observed as follows :

"We are of the opinion that the respondent Union's claim for regularisation of its members merely because they have been working for B.R.O. for a considerable period of time cannot be granted in the light of several decisions of this Court, wherein it has been consistently held that casual employment terminates when the same is discontinued and merely because a temporary or casual worker has been engaged beyond the period of his employment, he would not be entitled to be absorbed in regular service or made permanent, if the original appointment was not in terms of the process envisaged by the relevant rules."

Relying on the afore-cited decision, it is argued on behalf of the management that the first-party being a Public Sector Undertaking and the 'Badli' Security Guards having not been appointed in terms of the Recruitment Rules of the management, their services cannot be regularised even though they have been being employed by the first-party for a very long period. This submission is quite forceful and the afore-cited decision is considered to be applicable to the case on hand. In the

case of Secretary, State of Karnataka and others *Vrs.* Uma Devi and others, reported in 2006(109) FLR 826 (S.C.), the Hon'ble Supreme Court have observed as follows :

"When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on proper selection as recognised by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post."

Though the second-party has taken the stand that the 'Badli' Security Guards were recruited by the first-party in the same recruitment process as followed in the case of recruitment of regular Security Guards, the same plea is found not proved. It is not shown that the Security Guards who are represented by the second-party/Union were recruited in the same process as the regular Security Guards. Therefore, the first-party being a Public Sector Undertaking, this Tribunal cannot direct regularisation of the services of the 'Badli' Security Guards represented by the second-party/Union.

8. *Issue No. (ii)*—In view of the discussions made above, no relief can be awarded in favour of the workmen represented by the second-party/Union.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
28-6-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
28-6-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor

T. K. PANDA

Under-Secretary to Government