

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2632 CUTTACK, WEDNESDAY, DECEMBER 7, 2011 / MARGASIRA 16, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th November 2011

No. 10526–li/1(BH)-10/2008(Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st October 2011 in I. D. Case No. 01 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Senior General Manager, Rengali Hydro Electric Project, Rengali, Dist Angul and the General Secretary, Odisha Hydro Power Corporation Employees' Union in the matter of fixation of 27 number of Riggers was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2009

Dated the 1st October 2011

Present :

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

Between :

The Management of Rengali Hydro Electric .. First Party—Management
Project, Rengali, Dist. Angul.

And

Its workmen (27 Nos. of Riggers), .. Second Party—Workman
represented through General Secretary,
Odisha Hydro Power Corporation Employees' Union,
Rengali Unit, Rengali Dam Site, Dist. Angul.

Appearances :

Shri B.C. Bastia, Advocate .. For the First Party—Management

Shri R. N. Acharya, Advocate .. For the Second Party—Workmen.

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 the Labour & Employment Department vide their Order No. 229- li/1(BH)-10/2008-LE., Dt. 12-9-1999 The Schedule of reference referred to this Tribunal for adjudication runs as follows:

“ Whether the demand on entitlement of scale of pay @ Rs. 300–410 w. e. f. 1-1-1974, Rs. 840–1240 w.e.f. 1-1-1985, Rs. 975-1660 w. e. f. 1-5-1989, Rs. 3200–4900 w. e. f. 1-1-1996, Rs. 3600–6205 w.e.f. 1-4-1997 in respect of 27 Nos. of Riggers (Annex-F) working in RHEP, OHPC Ltd., Rengali is legal and or justified ? If so, what relief the 27 Nos. of Riggers are entitled to ? ”

2. From the pleadings of the parties, the evidence adduced by them and the written notes of argument the following facts are found not in dispute:

The 27 workmen (Riggers), who are represented by the Second Party Union and who are, hereinafter referred to as the 'disputant workmen', were working on Rengali Hydro-Electric Circle, the power sector of the Rengali Dam Project. The said project had its Irrigation Sector as well. Both the Sectors were under the control of the Irrigation & Power Department, Government of Odisha. In the year 1995 the First Party i.e. the Odisha Hydro Power Corporation Ltd., (hereinafter referred to as the Corporation) came into existence under the Odisha Electricity Reforms Act, 1955. After its formation all the power sectors within the State of Odisha including the power sector of Rengali Dam Project were brought under the control of the Corporation. All the employees working in the power sector of Rengali Dam Project, including the disputant workmen, came under the control of the Corporation and they have been observed under the Corporation with effect from 1-4-1997.

Also in the Irrigation Sector of Rengali Dam Project Riggers are in employment. The employees of the Irrigation Sector have a trade union in the name of Rengali-Samakoi Dam Project and Samal Barrage (Contractor) Labour Union. That Union had raised a demand for re-fixation of the pay scale of the Riggers of Rengali Dam Project from 1974 onwards. On a reference made by the State Government the same dispute was adjudicated by this Tribunal in I. D. Case No. 20 of 1988 and the Award was passed on 27-11-1995 upholding the demand to be proper and justified. As per the Award the Riggers of Rengali Dam Project were held entitled to be placed in the pay scale of Rs. 300-410 w.e.f. 1-14-1974 and Rs. 840-1240 w.e.f. 1-1-1985 instead of Rs. 215–265 and Rs. 585-645 respectively. The Award was challenged before the Hon'ble High Court but it was confirmed. Then the Management took the matter to the Hon'ble Supreme Court but became unsuccessful to disturb the Award. The matter raised before the Hon'ble Supreme Court was finally disposed of on 6-10-2005. Thereafter, the State Government implemented the Award and 226 Riggers working in the Irrigation Sector of Rengali Dam Project got the benefit of the revised pay scales.

The Second Party's case is that having come to know that the Award in I. D. Case No. 20 of 1988 has been implemented by the State Government the Second Party Union approached the

Authority of the Corporation on 28-2-2007 to extend the benefit of the Award in I.D. Case No. 20 of 1988 to the disputant workmen. When the management did not accept the demand the Union approached the Labour machinery for a conciliation but it was not taken into consideration. Thereafter the Union moved the Hon'ble High Court in W.P.(C) No. 4805 of 2007 and with the intervention of the Hon'ble High Court the present reference has been made by the State Government. The Second Party contends that after implementation of the Award in the said I. D. Case the Riggers category of employees working in the Rengali Dam Project are getting higher scale of pay than what their counterparts working under the Corporation (i.e. the disputant workmen) are getting which has resulted in discrimination and disparity amongst employees of same and similar Cadre. Therefore, the Union demands for re-fixation of the pay scale of the Rigger working in the Corporation as follows:

Rs. 300–410 with effect from 1-1-1974

Rs. 840–1,240 with effect from 1-1-1985

Rs. 975–1,660 with effect from 1-5-1989

Rs. 3,200–4,900 with effect from 1-1-1996

Rs. 3,600–6,205 with effect from 1-4-1997

3. The First Party Management challenges the claim on different grounds. It is contended that the disputant workmen as well as the First Party being not parties to I. D. Case No. 20 of 1988 and the disputant workmen being not concerned workmen in relation to the dispute in the said I. D. Case. The Second Party cannot be permitted to claim implementation of the Award in favour of the disputant workmen. That apart, after the absorption of the disputant workmen in the Corporation they have been getting their pay and perks prescribed by the Corporation from time to time and having accepted the same the disputant workmen cannot claim Government pay scales which, if allowed would amount to enjoying double benefit. Further contention is that the Corporation refixes pay scales of its employees once in every five years whereas the pay scales of the Government employees are revised once in ten years. The disputant workmen are employees of the Corporation whereas the Riggers in whose favour the Award in I. D. Case No. 20 of 1988 has been made are State Government employees. Therefore, the disputant workmen cannot be placed in the same footing as their counterparts working under the State Government. Further contention is that the disputant workmen having been absorbed in the Corporation put-forth several demands including revision of their pay scales and consequently on 20-12-2003 there was a bipartite settlement in which all anomalies in their pay scale were removed and it was agreed to by the parties to the settlement *inter alia* that the disputes directly or indirectly connected with the re-fitment and redeployment of Riggers are settled once for all. So, when that settlement is in force the disputant workmen cannot be permitted to raise any dispute pertaining to their pay scales. Further more, it is contended that the employees employed in one organisation can not claim equality in their pay scales *vis-a-vis* their counterparts in other organisation.

4. The following issues has been settled :-

ISSUES

- (1) “ Whether the demand on entitlement of scale of pay @ Rs. 310–410 w. e. f. 1-1-1974, Rs. 840–1240 w. e. f. 1-1-1,985, Rs. 975–1660 w. e. f. 1-5-1989, Rs. 3,200–4,900 w. e. f. 1-1 1996, Rs. 3,600–2,605 w. e. f. 1-1-1997 in respect of 27 Nos. of Riggers (Annexure-F) working in RHEP, OHPC Ltd., Rengali is legal and/or justified ? If so, what the relief of the 27 Nos. of Riggers are entitled to ? ”

5. Each side has adduced oral as well as documentary evidence. On behalf of the Second Party W.W.No. 1 who is the General Secretary of the Second Party Union has been examined and documents have been marked as Ext. 1 to 17. On behalf of the First Party M.W. No. 1, who is the Deputy Manager (HR) posted at Rengali Hydro-Electrical Project has been examined and Exts. A to G have been marked.

FINDINGS

6. As revealed from the claim statement the Second Party has raised the demand for re-fixation of the pay scale of the disputant workmen solely on the basis of the Award passed in I. D. Case No. 20 of 1988. It is neither specifically claimed nor proved that the Award passed in I.D. case No. 20 of 1988 is binding on the parties to the present I. D. Case under any of the provisions laid down in Section 18 of the Act. However, the plea that if the pay scales of the disputant workmen are not re-fixed in accordance with the Award in I. D. case No. 20 of 1988 the disputant workmen would suffer from disparity needs careful consideration. In this regard the relevant factors may be taken note of. Riggers were working both in Irrigation Sector and Power Sector of Rengali Dam Project. It is not disputed that both the Sector were under the Irrigation & Power Department of the State Government of Odisha and the employees of both the Sectors were under the work-charged establishment of the said Project. Long before the Corporation came into existence the Rengali-Samakoi Dam Project & Samal Barrage (Contractor) Labour Union, which was the Union of the employees working in the Irrigation Sector of Rengali Dam Project raised an industrial dispute which is the subject matter of adjudication in I.D. Case No. 20 of 1988. The dispute was finally disposed of in the year 2005. In the meanwhile the Corporation was formed and the services of the disputant workmen who were working in the Power Sector of the Rengali Dam Project were brought under the control of the Corporation w. e. f. 1-4-1997. Till 31-3-1997 they were working in the Power Sector of the Rengali Dam Project which was under the State Government. The disputant workmen and their counterparts working in the Irrigation Sector of the Dam Project were under work-charged establishment of the Dam Project which was under the Irrigation and Power Department of the State Government. The Riggers working in both the Sectors of the Dam Project were placed under the same pay scale till 31-3-1997. Though not specifically pleaded, this fact is admitted by M. W. No. 1 in his cross-examination. It is not the case of the First Party that the nature of work of the Riggers working in the Power Sector is different from that of their counterparts in the Irrigation Sector. No

doubt like the demand raised in I. D. Case No. 20 of 1988 no dispute was raised on behalf of the disputant workmen for bringing them under the appropriate pay scale w.e.f. 1974. But, had they been continuing to work under the State Government till the Award in I. D. Case No. 20 of 1988 was implemented by the State Government the disputant workmen would have got the benefit under that Award, otherwise there would have been disparity of pay scale amongst the employees of the same cadre working in the same Project but in different Sectors. Under such facts and circumstances, the disputant workmen should not be allowed to get wages less than their counterparts for the period from 1-1-1974 till their absorption in the Corporation.

7. No doubt, after their absorption in the Corporation the disputant workmen have been getting their pay and perks as prescribed by the Corporation from time to time and they have exhibited the terms of various pay revisions made ever since their absorption. There is also force in the contention raised by the First Party that after their absorption they have become the regular employees of the Corporation and therefore, they cannot claim Government pay scales after their absorption but till their absorption the disputant workmen ought to be given wages/salaries at par with their counterparts. It is argued that in terms of the bipartite settlement marked Ext. A the Second Party which is a party to the settlement cannot be permitted to raise the present dispute. Ext. A reflects that Riggers, whether designated as Rigger/Jr. Art. B (Rigger), transferred from the State Government and absorbed in RHEP, Rengali used to raise dispute for their fitment in NE-4 grade and that taking relevant fact into consideration it was agreed between the parties to the settlement that the Riggers who have been fitted in the rationalised scale of Pay of Rs. 2,700–4,724 in the NE-2 grade should be refitted in NE-4 grade having the pay scale of Rs. 3,430–6,205 with effect from 1-4-1997. It was further agreed between the parties that the disputant directly or indirectly connected with the re-fitment and redeployments of Riggers were settled once for all. It appears, the terms of settlement in Ext. A do not contemplate that on behalf of the disputant workmen it was agreed that no demand for re-fixation of their pay scale for the period prior to their absorption in the Corporation would be raised consequent upon the bipartite settlement, more so when there is no mention in the settlement about the Award which was already made in I. D. Case No. 20 of 1988.

8. It is argued on behalf of the Management that the reference is barred by the principle of *res judicata* inasmuch as the Hon'ble High Court have observed in W. P.(C) No. 2981 of 2008 that the Second Party Union being not a party to I.D. Case No. 20 of 1988 the workman represented by the Union cannot take the benefit of the said Award. The order passed by the Hon'ble High Court in the said W.P.(C) is marked as Ext. F. On a perusal of the order of the Hon'ble Court it becomes quite clear that the Hon'ble Court have not disposed on merit the prayer of the Union for a direction to the Corporation to implement the Award in I.D. Case No. 20 of 1988. While disposing of the Writ Petition Hon'ble High Court have observed that a representation made by the Second Party Union before the Corporation claiming benefits under the Award in I. D. Case No. 20 of 1988 was pending. Therefore, the Hon'ble High Court observed that the Management should dispose of that representation as early as possible. That apart, in another Writ Petition [W.P. (C) No. 4805 of 2007] the Hon'ble High Court have passed orders

(Ext. 7) which transpires that while disposing of the said Writ Petition Hon'ble High Court directed the District Labour Officer, Talcher to dispose of the application of the Second Party Union with regard to the same demand which is the subject matter of this reference. It is submitted by the Second Party that consequent upon such direction of the Hon'ble High Court, the District Labour Officer, Talcher took up the conciliation proceeding and, on failure thereof, submitted a report which has given rise to the present reference. Therefore, the plea on *res judicata* is not found acceptable.

9. Further submission made on behalf of the First Party is that the claim for benefit of pay revision being for the period from 1-4-1974 to 31-3-1997 is not applicable as against the First Party inasmuch as the disputant workmen were not in employment of the Corporation and there was no master-servant relationship between the Management and the disputant workmen during the relevant period. This plea is not taken in the written statement filed by the First Party. During argument this plea has been taken. As it is not in the pleading no issue has been framed to that effect. However, both sides have placed reliance on Notification No. 5200, Dtd. 1-4-1996 of the Department of Energy, Government of Odisha (Ext. 16) containing the transfer scheme related to the transfer of the Power Sectors to the Corporation under the Odisha Electricity Reforms Act, 1995. Learned Counsel for the Management relies on sub-rule (3) of Rule 3 of the said scheme while Learned Counsel for the Second Party relies on Rule 6 of the said Notification. Rule 3 relates to transfer of assets to the State whereas Rule 6 relates to transfer of personnel. Rule 3 nowhere contemplates that the Corporation shall not be liable for any such entitlement of the employees who are subject to the transfer which they should have been entitled to claim from the predecessor of the Corporation. On behalf of the Second Party reliance is placed on Rule 6(8)(a) of the Scheme which runs as follows:-

“ (8) (a) The transfer of personnel shall be subject to the condition that the terms and conditions of the services applicable to them on the effective date shall not in any way be less favourable to them than those applicable to them immediately before such date and all benefits of their respective services rendered before the effective date shall be recognised and taken into account while fixing the condition of services under the Transferee, except as otherwise provided under these rules.”

The above mentioned sub-rule does not appear to have covered the liability which is the subject matter of the present reference.

Since the First Party has not specifically pleaded on absence of its liability and no relevant provisions in the Notification (Ext. 16) has been cited by it in support of its claim on such absence of liability, this Tribunal holds that the First Party being the present employer of the disputant workmen is liable to meet the claim of the disputant workmen for the period from 1-1-1974 till their absorption under the Corporation.

10. As regards the demand of the Second Party for re-fixation of pay scale w.e.f. 1-4-1997, it is to be stated that there is neither pleading nor evidence as to why the pay fixed by the Corporation w.e.f. 1-4-1997 under its own rules should be interfered with. The disputant workmen have been absorbed in the Corporation w.e.f. 1-4-1997. After their absorption they are subjected to the Rules

and Regulations of the Corporation. On the basis of the Award passed in I. D. Case No. 20 of 1988 their pay scale w.e.f. the date of their absorption cannot be revised. Therefore, this part of the demand made by them is not justified. Accordingly, it is held that the disputant workmen are entitled to be placed in the same pay scale as the State Government has fixed from time to time starting from 1-1-1974 till 31-3-1997 for the post of Riggers working in the Irrigation Sector of Rengali Dam Project. Their demand for re-fixation of pay scale with effect from 1-4-1997 is held to be unjust and thus not permissible. The disputant workmen are entitled to get the differential wages computed in accordance with the observations made above. The First Party to implement the Award within a period of two months of the date of its publication in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
1-10-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
1-10-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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