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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th March 2011

No. 3170-II/1(B)-115/1991(Pt.)-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st January 2011 in I. D. Case No. 34 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of State Seed Testing Laboratory, Bhubaneswar and its Workman Smt. Sashi Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 34 OF 2008 (Previously registered as I.D. Case No.4 of 1992 in the file of the Presiding Officer, Labour Court, Bhubaneswar)

The 1st January 2011

Present :

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

Between :

The management of State Seed Testing Laboratory, Bhubaneswar. . . First-party-Management

And

Smt. Sashi Das, . . Second-party-Workman
C/o Shri Babar Das,
At Samantarapur,
Bhubaneswar, Dist. Puri

Appearances :

Shri T. K. Behera, Assistant . . For the First-party-Management
Agricultural Officer.

Smt. Sashi Das . . For the Second-party-Workman
herself.

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 751-li/1 (B) 115/1991-LE., dated the 16th January 1992 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 action of the Management of State Seed Testing Laboratory, Samantarapur, Bhubaneswar in refusing employment to Smt. Sashi Das, Casual Worker with effect from dated the 25th May 1990 is legal and/or justified ? If not, to what relief she is entitled to ?"

2. The case of the second-party workman as made out in her claim statement is that in the year 1977 she joined as a daily-rated labourer to work under the first-party and was continuously engaged as such for a period of thirteen years and thereafter her services were terminated with effect from 25-5-1990 without compliance of Section 25-F of the Act. Challenging the said termination she raised an industrial dispute. During conciliation the management agreed to reinstate her with effect from 17-7-1990 but subsequently the management did not reinstate her. It is specifically pleaded that the management terminated her service being vindictive for the reason that she had raised protest against the management's filling-up of a regular post of Peon ignoring her regularisation in the said post.

3. In the Written Statement the management has taken the stand, *inter alia*, that it being a Research Institute cannot be said to be an 'industry' as defined in the Act. With regard to the employment of the second-party, the management has taken the stand that she was first engaged with effect from 30-5-1986 with a consolidated remuneration. She was not being engaged through-out the entire month. Depending on necessity of work which, in turn, depended on flow of seed samples received in the Institute she used to be engaged for cleaning the Laboratory. There was no regular post of a Sweeper. Therefore, her regularisation in service did not arise. There was an interview to fill-up the post of Peon for which the second-party was an applicant. But, she could not qualify for the post because of want of requisite qualification. After the peon post was filled-up, she refused to work on receiving consolidated remuneration of Rs. 150 per month. So, the management engaged one outsider on consolidated remuneration. Even during conciliation proceeding the management had invited her to resume duties on receiving consolidated remuneration but she did not respond.

4. Basing on the statements of the respective parties, the following issues have been settled :-

ISSUES

- (i) Whether the action of the management of State Seed Testing Laboratory, Samantarapur, Bhubaneswar in refusing employment to Smt. Sashi Das, Casual Worker with effect from 25-5-1990 is legal and/or justified ?
- (ii) If not, to what relief she is entitled ?
- (iii) Whether the first-party is an 'industry' ?

5. The workmen has examined herself as W.W. No. 1. Some documents have been exhibited on her behalf. Similarly, the management has examined its Assistant Agricultural Officer as M.W. No.1 and has exhibited two documents.

FINDINGS

6. *Issue No. (i)*—Though the workman claims that she joined in the year 1977 to work under the first-party, she has failed to substantiate the same. On the prayer of the second-party this Tribunal had passed orders for production of documents and in compliance thereof the management had

produced Muster Rolls for the period from December, 1981 to November, 1990 which were duly verified by the workman. During argument it is submitted on behalf of the workman that though the documents produced by the management were verified nothing could be found showing that the workman was under the employment of the first-party prior to Dt. 30-5-1986. Ext. B is a statement indicating the number of days the second-party had been engaged during the period between 1986 and 1990. From Ext. B it is found that the workman had been engaged almost continuously during the said period. On the basis of Ext. B it can also be held that the workman had completed one year of continuous service preceding the alleged termination of her service. It is not claimed by the management that there was compliance of Section 25-F of the Act. Therefore, if it is found to be a case of refusal of employment then the same is illegal for not having been effected in terms of Section 25-F of the Act.

7. While the second-party claims that she was refused employment with effect from 25-5-1990, the first-party takes the stand that the workman did not agree to work under the first-party on receiving monthly consolidated remuneration of Rs. 150. M.W. No.1 has also admitted in his deposition that after 25-5-1990 another person was engaged to work in place of the second-party. Thus, there is no dispute that the employment of the second-party came to an end with effect from 25-5-1990. The copy of the conciliation failure report annexed to the order of reference made by the Government out of which this I.D. Case arises reveals that on Dt. 6-6-1990 the workman sent a petition to the Conciliation Officer-*cum*-Assistant Labour Officer, Bhubaneswar alleging that the management illegally refused employment to her. The second-party had been in continuous engagement for more than three years. Soon after the disruption of employment she raised an industrial dispute. Therefore, it is difficult to believe that she had voluntarily abandoned the job. Since the plea of voluntary abandonment has been taken by the management it could have adduced reliable evidence to prove that plea. No person who was working in the establishment of the first-party at the relevant time has been examined as a witness. Though it is claimed that the workman refused to work and absented from duty with effect from 25-5-1990, the management has not shown to have taken any action against her. In *M.G. Patel Vrs. Mastanbaug Consumers' Co-op. W & R Stores Ltd.* and another, reported in 1997 Lab. I.C. 2537 (Bombay High Court), it is observed that the burden lies on the employer to establish and prove that the employee had abandoned the service. It is further observed that even in the case of abandonment of service the employer has to give notice to the employee calling upon him to resume his duty. It is further observed that if the employee does not turn-up despite such notice the employer should hold enquiry on that ground and then pass appropriate order of termination. The management has not shown to have served any such notice on the workman. This is necessary even if the workman is a casual worker. Otherwise the management would not be able to prove the intention of the workman that she had voluntarily abandoned the job. In the facts and circumstances of this case, the plea taken by the management is found to be not believable and the plea taken by the workman that she was denied employment is found to be acceptable.

In the result, I hold it to be a case of refusal of employment which is in contravention of the provisions of Section 25-F of the Act for which it is illegal.

8. *Issue No. (iii)*—According to the first-party, it is not an 'industry' as defined under the Act. In the Written Statement it is stated that the first-party Laboratory is owned and managed by the Government of Orissa. It is primarily created to carry-out testing of various seeds received from different sources like O.S.S.C., OSSCA., O.U.A.T. and Quality Control Inspectors within the State. It is not involved in any production oriented activities. It is further pleaded in the Written Statement that in I.D. Case No. 48 of 1986 the Labour Court, Bhubaneswar has recorded a finding that the first-party being a Scientific Research Institute is not an 'industry' as defined in the Act. In his evidence M.W. No. 1 has stated that the first-party is not an 'industry' in as much as it undertakes only testing work in a scientific manner to test seeds sent by farmers of the State and that the testing is done free of cost. Basing on the above mentioned pleadings and evidence a decision has to be arrived at.

Even if the Labour Court, Bhubaneswar has held in I. D. Case No. 48 of 1986 that the first-party Laboratory is not an 'industry' that finding is not binding on this Tribunal. Therefore, it is not necessary to make any further discussion on that assertion. As to whether a Research Institute is an industry, it is observed in Bangalore Water Supply & Sewerage Board Vrs. A. Rajappa (1978 (I) LLJ 349) that Research Institutes although run without profit motive, are industries. In Physical Research Laboratory Vrs. K. G. Sharma (1977 (II) LLJ 625) the Hon'ble Supreme Court have held the Physical Research Laboratory to be not an 'industry'. In that case the Hon'ble Supreme Court have observed, *inter alia*, that the object with which the research activity is undertaken by the said Research Laboratory is to obtain knowledge for the benefit of the Department of Space and not to render services to others. But, in the case at hand the fact situation is otherwise. It is on record that the first-party Laboratory tests seeds on the requisition of farmers within the State, though free of cost. It is not shown by the first-party that it discharges governmental functions. It appears, the first-party renders services calculated to satisfy human wants in the field of agriculture and therefore, in my considered view it cannot be excluded from the definition of the term 'industry' appearing in the Act.

The Issue is answered accordingly.

9. *Issue No.(ii)*—It is admitted by M.W. No. 1 that from Dt. 25-5-1990 the engagement of the second-party got disrupted and thereafter another person was engaged to work in her place. Therefore, it is to be held that the second-party was refused employment even though the work which she used to perform was still available. It is also stated by M.W. No. 1 that one Gunia Bhoi who was engaged on consolidated remuneration is still continued to discharge the same work which the second-party used to perform. It is also not disputed that during pendency of this case the management has given employment to the second-party with effect from 18-3-1993 on daily wage basis. It is clarified that consequent upon an order passed by the Hon'ble Court in Misc. Case No. 7060 of 1993 arising out of O.J.C. No. 7599 of 1993, the first-party has re-engaged the second-party. It is clarified by M.W. No. 1 that from Dt. 18-3-1993 to January, 2003 the second-party had been working continuously with one day's break on completion of every 89 days of work and thereafter she and another workman have been in employment each being engaged on every alternate day. It is not understood as to why another person has been introduced to work alongwith the second-party on alternate day. Be that as it may, in the facts and circumstances narrated above, the second-party is found entitled to be continued in employment on daily wage basis without any artificial break even if that may lead to the disengagement of the other person with whom she has been working on alternate days. The second-party is found not entitled to any back wages. But, for all other purposes she shall be deemed to have been in continuous employment since Dt. 30-5-1986. It is further clarified that on account of changing circumstances in further if the management genuinely finds it to be essential to terminate the services of the second-party, then it may do so in accordance with the provisions of the Act.

Accordingly, the second-party be re-employed within two months of publication of this Award in the Official *Gazette*.

The reference is disposed accordingly.

Dictated and corrected by me.

R. DASH
1-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

R. DASH
1-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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