The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 883 CUTTACK, MONDAY, APRIL 11, 2011 / CHAITRA 21, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd April 2011

No. 3507–li/1(B)-5/2001–LE.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th January 2011 in I. D. Case No. 258 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Project Director, Animal Disease Research Institute, Phulnakhara, Cuttack and its Workman Shri Babaji Charan Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 258 OF 2008 (Previously registered as I.D. Case No. 41 of 2001 in the file of the P.O., Labour Court, Bhubaneswar)

The 11th January 2011

Present :

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

Between :

The Management of Project Director, Animal Disease Research Institute, Phulnakhara, Cuttack. . . First-party–Management

And

Shri Babaji Charan Behera, C/o Jogendra Behera, At Patharabandha, P.O. Vani Vihar, Bhubaneswar. . . Second-party–Workman

Appearances :

Shri L. B. Mohanty, Authorised Representative. . . For the First-party–Management

Shri Babaji Charan Behera . . Second-party–Workman himself

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. 14482–Ii/1 (B) 5/2001–LE., dated the 9th October 2001 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–Ii/21-32/2007-LE., dated the 4th April 2008. The schedule of reference runs as follows :–

> "Whether the termination of services of Shri Babaji Charan Behera, N.M.R. by the Project Director, A.D.R.I., Phulnakhara, Cuttack is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

2. The case of the workman as narrated in his claim statement is that from July 1994 till Dt. 30-6-1999 he had been working in the first-party Institute as an N.M.R. The first-party did not pay him wages for the period from March 1998 to June 1999. When he demanded payment of wages, the management terminated his service which is in contravention of Sections 25-F, 25-G and 25-H of the Act.

3. The first-party has pleaded in the written statement that the workman had worked from August 1994 to Dt. 31-3-1998. The workman stopped coming to work with effect from 1st April1998. Letters were issued to him asking him to report for duty but he did not respond. The management has never denied him employment. It is the workman who voluntarily abandoned the job.

It is further pleaded that the first-party being a Research Institute is not coming within the definition of 'industry' under Section 2 (j) of the Act. It is further pleaded that the Institute receives Government of India grant for *ad hoc* Research Project. All engagements made for such Projects are coterminous with the termination of the Projects. The workman was engaged in one of such Projects. The Government of India did not sanction the Project for 1999-2000 and 2000-2001. Knowing it the workman did not come to duty. It was only after there was inflow of funds he had raised the dispute before the authorities under the Act.

4. In the Rejoinder to the written statement the workman has contended that the management had never served any notice on the workman inviting him to resume for duties. The first-party has got work to engage employees. Employees junior to the workman and also new employees have been working in the Institute.

5. The following issues have been settled :–

ISSUES

(i) "Whether the termination of services of Shri Babaji Charan Behera, N.M.R. by the Project Director, A.D.R.I., Phulnakhara, Cuttack is legal and/or justified ?

(ii) If not, to what relief Shri Behera is entitled ?"

6. The workman has examined himself as W.W. No. 1 and exhibited documents marked Exts. 1 to 4. The management has examined its Project Co-ordinator as M.W. No. 1. Exts. A to J have been marked on behalf of the management.

FINDINGS

7. *Issue No. (i)*–From the pleadings of the parties it is found that the parties are not in dispute to the extent that from August 1994 to March 1998 the second-party was working under the first-party. The first-party does not claim that there was any break of employment during this period. Therefore, it is to be presumed that the workman had been engaged continuously during the said period.

8. According to the management, the second-party did not report for duty from Dt.1-4-1998 onwards even though the management had invited him to come and report for duty. To prove this plea the M.W. No. 1 has exhibited three notices marked Exts. B, C and D. But, the workman takes the stand that these notices are created documents and none of them was served on him. M.W. No. 1 has stated that the notices were sent to the workman by ordinary post. So, there is no evidence showing that the notices were duly served on the second-party. Had the notices been duly served, then it would have been believed that workman despite of such notices did not report for duty and therefore, ultimately the Tribunal could have presumed that he had abandoned the job. But, in the absence of proof that any such notices had been duly served on the workman, no reliance can be placed on the management's assertion that the workman was invited to report for duty. Thus, the plea of voluntary abandonment does not find favour of this Tribunal.

9. There is controversy as to from which date the service of the workman was terminated. In the Schedule of reference the date of termination is not mentioned. In this regard the documents exhibited may be taken into consideration. Ext. H is the xerox copy of the Muster Roll for the period from 3/95 to 8/98 and Ext. J is the xerox copy of the Bills for payment of wages to the Attendants (Animal) working in the first-party Institute which covers the period 10/98 to 3/99. It is claimed by the management that the documents marked Ext. H as well as Ext. J are copies of its Muster Rolls. In all the sheets consisting parts of Ext. H the name of the workman finds place. Ext. J has been produced to show that the name of the workman did not appear in the Muster Roll during the period 10/98 to 3/99. It is intended to falsify the stand taken by the workman that he was continued till 30-6-1999. But, as it appears Exts. H and J have been obtained from different registers. Ext. J relates to the Attendants (Animal) working in the first-party Institute. It is not the case of the first-party that the workman had ever worked as Attendant (Animal). Though the management takes the stand that the workman had worked till 31-3-1998 and thereafter did not report for duties, in Ext. H, the Muster Roll, for the month of 8/98 the workman is shown to have worked during the entire month of August, 1998. This creates a grave doubt over the management's plea that the workman had been last engaged on Dt. 31-3-1998. According to the workman, he had worked till 30-6-1999 but Ext. H (for the month of 8/98) shows that he had worked till 31-8-1998. The workman is not in possession of any document to prove the actual period of engagement. The management produced the Muster Roll for the period from 3/95 to 8/98. Since the workman claims that he had worked till 30-6-1999, the management ought to have produced the Muster Roll up to 6/99. On Dt. 5-10-2010 the management produced the Muster Roll and on the same day filed a Memo stating that the rest documents were not available. It is not believable that whereas Muster Roll for the period from 3/95 to 8/98 was available, Muster Roll for the later period i.e., 9/98 to 6/99 was not available. So, the management's plea that the workman abandoned the job with effect from 31st March1998 is not believable. It is not proved as to till what date he was continued but certainly he had worked till 31-3-1998. Be that as it may, for the application of Section 25-F of the Act, the admission of the management is sufficient.

10. Though the management has pleaded that the workman had been engaged in a Project, it is not the case of the management that on the completion of the Project the workman's employment automatically terminated. It is pleaded that all engagements made for such projects are co-terminous with the termination of the Project. But, it is not pleaded that the workman had been engaged in a particular Project. Of course documents exhibited by the workman reflect that he was engaged in the Project "Systematic Control of Live stock Diseases of National Importance". Ext. 3 reflects that the said Project was to terminate with effect from 31st March1999. Ext. 3 is in the form of a notice served on the workman wherein it is mentioned that his services would stand terminated on the expiry of the contract on 31-3-1997. In the same notice it is further mentioned that if the Government of India agreed to continue the Project during the 9th Plan, the workman's case would be again considered. Ext. 4 (Ext. 4 and Ext. F are copy of same document) is another notice wherein it is stated that since the period of the Project was going to terminate with effect from 31st March1999 all engagements under the Project would terminate with the termination of the Project. These documents reflect that the term of the said Project was extended from time to time till 31-3-1999.

The service of the workman got terminated before the expiry of the term extended vide Ext. 4/Ext. F. So, even on the basis of the documents it is clear that the workman's service was terminated even though the Project work was still in progress. The pleadings of the first-party make it clear that work was available and the workman would have been given employment had he not abandoned the job with effect from 1st April 1998. The plea of abandonment of job is found not acceptable. Therefore, the unavoidable conclusion is that the service of the workman was terminated by the management most probably on refusal of employment. Since work was still available as on the date the workman's service was terminated the termination of his service is not in accordance with Section 25-F of the Act.

11. From Exts. 1 to 4 and Ext. E it is ascertained that at the end of each of the financial years 1996-97, 1997-98 and 1998-99 the management had issued notice in advance to the effect that the term of the Project was going to terminate on the last date of each of the financial years and therefore, the services of the casual daily labourers/contractual labourers etc. would terminated along with the termination of the Project. The term of the Project was being extended from year to year and the term of employment of the workman was also being extended from time to time. The management has not made it clear as to when the said Project work was finally brought to an end. It is also not pleaded if on the completion of the Project any other Projects were not available and the workmen who were engaged in the aforesaid Project were not continued in other Projects.

12. In the written statement the management takes the stand that the Institute receives Government of India grants for *ad hoc* Research Projects which are purely temporary in nature. It appears, the Institute's research work mainly depends on Research Projects for which it receives funds from the Government of India. It is neither pleaded nor proved that for a particular Project a set of workman is engaged and on the completion of the Project work the same set of workmen cease to work under the first-party. It is quite possible that the workmen engaged in a particular Project are continued in a new Project if the earlier Project work is completed. Therefore, this case cannot be brought under the purview of Section 2 (oo) (bb) of the Act.

13. It is contended that the first-party being a Research Institute it is not an 'industry' as defined in the Act. In Physical Research Laboratory *Vrs*. K. G. Sharma, reported in 1997 (II) LLJ Page-625 (S.C.), it was under consideration as to whether the Physical Research Laboratory was an 'industry'. Hon'ble Supreme Court have nowhere observed in the said Judgment that all Research Institutes are to be excluded from the definition of the term 'industry' under the Act. While upholding that Physical Research Laboratory is not an 'industry', the Hon'ble Supreme Court have made the following observations :

> "The material on record further discloses that PRL is conducting research not for the benefit or use of others. Though the results of the research work done by it are occasionally published they have never been sold. There is no material to show that the knowledge so acquired by PRL is marketable or has any commercial value. It has not been pointed out how the knowledge acquired by PRL or the results of the research occasionally published by it will be useful to persons other than those engaged in such type of study. The material discloses that the object with which the research activity is undertaken by PRL is to obtain knowledge for the benefit of the Department of Space. Its object is not to render services to others nor in fact it does so except in an indirect manner.
>
> It is nobody's case that PRL is engaged in an activity which can be called business, trade or manufacture. Neither from the nature of its organisation nor from the nature and character of the activity carried on by it, it can be said to be an 'undertaking' analogous to business or trade. It is not engaged in a commercial, industrial activity and it cannot be described as an economic venture or a commercial enterprise as it is not its object to produce and distribute services which would satisfy wants and needs of the consumer community. It is more an institution discharging Governmental functions and a domestic enterprise than a commercial

enterprise. We are, therefore, of the opinion that PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks the element which would make it an organisation carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs, as ordinarily understood."

In the case at hand, the first-party has not explained the nature of research work it is engaged in. There is no denial that the research work carried on by the Institute is connected with production, supply or distribution of materials, goods or services which are intended for satisfying human wants and needs, that it is conducting research for the benefit or use of others and that the knowledge acquired by the Institute from such research work is marketable and has commercial value.

It cannot be said that all Research Institutes are not 'industries' as per the definition in the Act. In the absence of any clarification, it is to be held that the first-party is an 'industry'. Therefore, the termination of service under challenge is illegal, being in contravention of Section 25-F of the Act.

14. *Issue No. (ii)*– The workman had worked continuously for about four years. He has been refused employment without any justification. It is not pleaded nor proved that presently the Institute is functioning without any N.M.R./D.L.R./Contractual Employee. If the first-party is still having such employees, then reinstatement of the second-party is the most appropriate relief. So far back wages is concerned, the relief of full back wages would be inappropriate inasmuch as the Institute may not be compelled to pay for the period during which the workman had not worked. In this regard, I am supported by the observations made in U.P. State Brassware Corporation Ltd. *Vrs.* Uday Narayan Pandey, AIR 2006 (S.C.) 586. It is observed by the Hon'ble Supreme Court that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it. In Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board, AIR 2009 (S.C.) 3004, it is observed that Award of reinstatement with full back wages particularly in respect of daily wagers is not proper.

The second-party was an unskilled workman. He was aged about 28 at the time of his retrenchment. So, though he takes the plea that after termination of his employment he was not gainfully employed elsewhere it cannot be believed that a young unskilled workman will go without work.

15. Taking the facts and circumstances into consideration, this Tribunal directs the first-party to reinstate the second-party as an N.M.R. within a period of two months of the date of publication of the Award in the official *Gazette* subject to the observation that if the Institute has been running without the services of any N.M.R./D.L.R./ Contractual employees, then instead of reinstatement the workman be paid a compensation of Rs. 1,00,000 (Rupees one lakh) only in lieu of reinstatement.

The reference is answered accordingly.

Dictated and corrected by me.

R. DASH
11-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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

Printed and published by the Director, Printing, Stationery and Publication, Orissa, Cuttack-10
Ex. Gaz-99-193+11