

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 936 CUTTACK, WEDNESDAY, APRIL 20, 2011 / CHAITRA 30, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd April 2011

No. 3517-li/1(B)-61/2001-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th January 2011 in I. D. Case No. 102 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Puri Electrical Division, Puri and its workman Shri Gadadhar Biswal and 65 others represented through O.S.E.B. Shramik Mahasangha, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 102 OF 2002

The 19th January 2011

Present :

Shri S. K. Dash,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of Executive Engineer, . . . First-party-Management
Puri Electrical Division, Puri,

And

Its Workmen Shri Gadadhar Biswal, . . . Second-party-Workmen
and 65 others represented through O.S.E.B.
Shramik Mahasangha, Bhubaneswar.

Appearances :

Shri R. C. Swain, Executive Engineer . . . For the First-party-Management

Shri R. C. Satapathy . . . For the Second-party-Workmen

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 10412–li/1 (B)-61/2001-LE., dated the 3rd September 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of Puri Electrical Division, Puri in refusing employment to Shri Gadadhar Biswal and 65 others as per list enclosed herewith is legal and/or justified ? If not, to what relief they are entitled ?”

3. The case of the workmen in brief is that the workmen as per list enclosed to the reference were working under the management till 1995 as N.M.R. workers. Thereafter, the management refused employment to them without following the mandatory provisions of Sections 25-F and 25-N of the Industrial Disputes Act and they were instructed to work under the contractor for the same work. No disciplinary proceeding was initiated against them and they have completed more than 240 days of continuous service in the establishment of the management, before such refusal of employment. Some juniors namely, Narendra Swain, Mahendra Patra, Shyam Sundar Nayak, Jogendra Nayak and Lingaraja Mohapatra are still continuing in service. So in this background the workmen have raised an industrial dispute before the labour authority and when the conciliation failed the matter was referred to the Government and this reference has been received and this I.D. Case has been initiated wherein the workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management the Puri Electrical Division being one of the Division of erstwhile Orissa State Electricity Board (in short O.S.E.B.) now under the control of Central Electricity Supply Company Orissa Limited (in short CESCO) due to reorganisation of O.S.E.B. and reform process in power sector in exercise of the powers conferred on it by the Orissa Electricity Reform Act, 1995. For smooth functioning of its business, staffs and workers of different category were appointed and posted in the Puri Electrical Division level as per the norms and guidelines of erstwhile O.S.E.B. Apart from the permanent staffs and workers, some temporary and casual workers were engaged at Section Level or Division Level as per the need to meet the emergency requirement like construction of lines and maintenance of lines, substations, etc. The casual workers were engaged purely on temporary basis for a short period to complete the emergency nature of work as and when arises and they were disengaged immediately after the work was over or by efflux of time for which they were engaged. For that no formal appointment orders were issued to them. They were never recruited under the recruitment procedure or employment nor such casual workers were engaged against any sanction post or vacant post. No notice is issued for their disengagement and they are not required to give any notice to the management if they want to leave the job. Whenever any casual worker is found absent in the work spot the work was managed by engaging another worker in his place. The workmen had never performed continuous job for 240 days and their engagement was purely casual and temporary in nature and casual in nature. Out of the 66 workmen, only 7 numbers of workmen were engaged as N.M.R. under the management. Regarding experience certificate of the workmen, those were issued unofficially by the concerned officers on personal capacity without any issue number or date as per official procedure. So the certificates cannot be taken into consideration. Regarding continuous employment of some workers namely, Narendra Swain, Mahendra Patra, Shyam Sundar Nayak, Lingaraj Mohapatra and Jogendra Nayak, it is stated by the management that they have completed 400 days as on 1-9-1981 or as on 1-10-1986 and were eligible to appear the interview of Trade Test

conducted by the management and have also qualified in the said Trade Test. Therefore, in view of the Circular No. 4261 (120), Dt. 20-2-1982 and No. 11043(130), Dt. 23-5-1987 they were allowed to continue in service as Helper. The CESCO is a registered company under the Companies Act and is being Governed by Rules and Regulations prescribed by Orissa Electricity Regulating Commission from time to time and the Company has its own Board of Directors and Members and running its business by purchasing power from other Generating Companies/GRIDCO. The scope of engaging N.M.R. workers or casual labourers has been totally banned and the job are being carried out through the registered contractors by means of negotiable terms and conditions accepted to both. Like other Divisions, the management is one of the Division is purely under the control of SESCO. Hence the management cannot take independent decisions in the matter of appointment of any casual or contract labourers unless it is decided by the Company. So in this background the management has prayed for answering the reference in negative.

5. In view of the above pleadings of the parties, the following issues are settled :–

ISSUES

- (i) “Whether the action of the management of Puri Electrical Division, Puri in refusing employment to Shri Gadadhar Biswal and 65 others as per list enclosed herewith is legal and/or justified ?
- (ii) If not, to what relief they are entitled ?”

6. In order to substantiate their plea, out of 66 workmen, 4 workmen have examined themselves as W.Ws. 1 to 4. W.W. 5 is the retired Assistant Manager Electrical, Salepur Electrical Division. W.W. 6 and W.W. 7 are the retired Linemen. The workmen have proved document marked as Exts. 1 to 10. Similarly the management has examined 3 witnesses altogether out of whom, M.W. 1 is the retired Assistant Engineer. M.W. 2 is the Deputy Manager, SESCO and M.W. 3 is the retired Subdivisional Officer. The management has not proved any document in support of his case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

Initially Award was passed in this case on 30-12-2008 with a finding that the workmen are not entitled to get any relief in this case. But such Award was set aside by the Hon’ble Court vide Order No. 13, Dt. 22-4-2010 passed in W.P. (C) No.3272 of 2009 with a direction for production of documents by the management but the required documents were not produced by the management in this case.

8. According to W.W. 1 he was working as N.M.R. under the management from 1974 to 31-3-1995. He had worked continuously for more than 240 days in 12 calendar months preceding to the date of termination of his service. The provisions of Section 25-F of the Industrial Disputes Act has not been followed by the management. The management has only put a single suggestion denying about continuous service to which the W.W. 1 has replied in negative. W. W. 2 deposes that he was working as N.M.R. from 1972 to 1-4-1995. He has also worked for more than 240 days during the period of 12 months preceding to the date of his termination from service. He was getting Rs. 25 per day at the time of his refusal of employment by the management. The provisions of Section 25-F of the Industrial Disputes Act has not been followed by the management at the time of refusal of employment. In the cross-examination the management has put a single question and the witness has stated that the management had not given any letter of appointment and any letter of termination of his service to him. W. W. 3 deposes that he was working as N.M.R. from 1978 to

31-3-1995 continuously and completed 240 days of service during the period of 12 months preceding to the date of termination of his service. The other workmen of this case were also working as N.M.R. continuously in different Sections of the management before their services were terminated with effect from the 1st April 1995. In the cross-examination this witness (W.W. 3) has deposed that the management had not given him any written order of appointment or any written order of termination of his service. He specifically stated that he was getting his wages by putting signature in the N.M.R. Muster Rolls maintained by the management. W.W. 4 deposes that he was working as N.M.R. from 1980 to 1995 under the management and his service was terminated on 1-4-1995. He also deposes that no appointment order was given to him. At the time of termination of his service he was getting salary of Rs. 650 per month. After their termination, the management appointed some new persons in their place and subsequently their services have been regularised. There was an advertisement published in the daily newspaper 'The Samaj', Dt. 11-4-2003 vide Ext. 5 regarding vacancies in the management. New persons are also being engaged in CESU. Exts. 6 and 7 are the xerox copies of letters regarding reinstatement in service as N.M.R. and reinstatement in service as N.M.R. to one Ajaya Kumar Mallick and one Brajabandhu Sahoo. Ext. 8 is the xerox copy of letter regarding rights of N.M.R. workers for reinstatement who abandoned the employment voluntarily and Ext. 9 is the xerox copy of letter regarding guidelines to take action against missing/absconding of N.M.R. employee, Exts. 2 to 2/k are the xerox copies of some certificates of the workmen issued by the management in respect of their services. W.W. 5, retired Assistant Manager, Electrical, Salepur Electrical Division deposes that no appointment order was issued to the N.M.R. workers. The N.M.R. workers were paid their salary monthly and at the time of payment their signatures were obtained on the revenue stamp. The seniority list and other particulars regarding the N.M.R. workers were maintained in the Division Office. W.W. 6 deposes that he was getting salary at the end of every month while he was working as N.M.R. No pay slip was given to the N.M.R. workers at the time of payment of their salary. He was putting his signature on the revenue stamp affixed on a specific prescribed form at the time of receipt of his salary. W.W. 7 also deposes that he was getting salary at the end of the month. Strangely enough the cross-examination of W.Ws. 5 to 7 was declined by the management for the reasons best knowing to him.

9. To counter-act the plea of the workmen, M.W. 1 deposes that some N.M.R. workers were working under his supervision. He does not remember if the workmen had worked continuously for more than 240 days. Their formal attendance was being taken and they were being paid wages in the N.M.R. Form. In the cross-examination this witness deposes that the Division Office was maintaining the seniority list of N.M.R. workers. All the payment registers were also being maintained by the Division Office. No appointment order was issued in favour of the N.M.R. workers. No wage slip was issued in favour of N.M.R. workers at the time of payment of their salary. M.W. 2 deposes that he was taking attendance of the N.M.R. workers everyday in the prescribed form and was sending the said form to the Division Office at the end of the month for drawal of their salary. He does not remember as to if any of them had completed 240 days of continuous employment. In the cross-examination he admits that he was supervising the work of N.M.R. workers. After recruitment he was intimating to the Division Office the numbers of workers and the days for which they worked in the prescribed form. The Division Office was maintaining their seniority list. He also deposes that he does not know if the present 66 workmen were working as N.M.R. workers or casual workers. M.W. 3 deposes that due to lapse of time he does not remember as to how the N.M.R. workers were being recruited. In the cross-examination he deposes that he cannot say anything about the 66 workmen of the present case. Perused the documents marked as exhibits on behalf of the workmen. The management has not proved any documents in this case.

10. Basing on the evidence available in the case record, it has been argued by the representative of the workmen that the appointment letter and pay slips are normally not issued to the employees in the present type of case. There is no letter of termination also. The workmen had initially prayed to this Court to direct the management to produce some documents such as list of N.M.R. workers and wage registers for the period from 1974 to 31-3-1995 of the management, wage slip of N.M.R. workers from 1974 to 31-3-1995, appointment letters of the N.M.R. workers and E.P.F. slip of each N.M.R. workers of the management. In spite of direction of this Court, the management has not produced any such document. In view of such circumstances, normally averse inference should have been drawn against the management as argued. However the Hon'ble Court has directed the management for production of such documents before this Court, but the management has not produced any such document as called for. Rather the management has filed certain documents in this Court which are the xerox copies of the Fixed Charged Register for the period from 1977 to 1990. Nothing has been explained about non-production of the required documents as called for. The workmen on verifying the documents filed has also submitted that those documents which are called for are not produced by the management. On verification of the same I also found that the documents produced by the management are not the actual documents as called for. No specific reason has been given by the management for non-production of the documents as called for. On the other hand, it has been argued by the management that it was for the workmen to prove that they had worked continuously for 240 days or more in a year preceding to the date of termination of service. Their statement cannot be regarded as sufficient in support of such claim. Non-production of documents by the employer itself is not a ground to accept the bald statement of the workmen by drawing an adverse inference against the employer. But according to the settled principle of law as reported in AIR 2010, S.C. 1236 that the workmen would have difficulty in having access to all official documents, muster roll, etc. in connection with his service. When the workman claimed and deposed that he worked for 240 days, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. But in the instant case the management has not discharged his duty properly in respect of such 240 days of service. Though the management admits specifically in his written statement about some of the workmen as per list mentioned in the written statement were working under the management have not completed the requisite period of service and others were not worked at all, the evidence adduced by the management are contrary to it and some of the W.Ws. were not cross-examined as mentioned earlier. So in the instant case basing on the materials available, non-production of materials, documents as called for by the workman will attract to draw the adverse inference against the management when specifically the representative of the workmen has taken the plea of suppression of such material documents by them. Accordingly adverse inference has been drawn against the management for non-production of such documents. Furthermore on careful consideration of all materials available in the case record, it can safely be concluded that all the workmen have completed 240 days of service in 12 calendar months preceding to the date of their termination from service as has been mentioned in the separate sheet attached to the reference. The management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act which is a precondition one. So such refusal of employment is neither legal nor justified in the eye of law. So on careful consideration of all the materials available in the case record as discussed above I came to the finding that the action of the management in refusing employment to all 66 workmen as per list enclosed with the reference is neither legal nor justified and they are entitled to be reinstated in service after due identification by the representing Union as per the list attached to the reference.

11. Regarding back wages, as per settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the authority reported in 2004 (Supp.) OLR 694 that when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. But on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting full back wages, a lump sum amount of Rs. 25,000 to each workman as compensation will meet the ends of justice in the instant case.

12. Hence Ordered :

That the action of the management of Puri Electrical Division, Puri in refusing employment to Shri Gadadhar Biswal and 65 others as per list enclosed to the reference is illegal and unjustified. All 66 (sixty-six) workmen are entitled to be reinstated in service after due identification by the representating Union as per list attached to the reference with a lump sum amount of Rs.25,000 (Rupees twenty-five thousand) only as compensation in lieu of back wages to each workman. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
19-1-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
19-1-2011
Presiding Officer
Labour Court
Bhubaneswar

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