

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 943 CUTTACK, WEDNESDAY, APRIL 20, 2011 / CHAITRA 30, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th April 2011

No. 3629—li/1-(B)-93/2002 (Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th January 2011 in I.D. Case No. 115 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Mahanadi-Chitrotpala Irrigation Division. No. I and their workmen Shri Biswanath Rout and 03 (three) others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 115 OF 2002

The 15th January 2011

Present :

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

Between :

The management of the Executive .. First-party—Management
Engineer, Mahanadi-Chitrotpala Irrigation
Division No. I.

And

Their workmen .. Second-party—Workmen
Shri Biswanath Rout and 3 others,
General Secretary, Mahanadi-Birupa Barrage
and Chitrotpala-Ganguti Irrigation Projects,
Employees Union, Gandarpur, Cuttack.

Appearances :

Shri G. Senapati, Assistant Engineer	.. For First-party—Management
Shri C. R. Mohapatra, General Secretary	.. For 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. 12609—li/1 (B)-93/2002-LE., Dt. 16-10-2001 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of employment of Shri Biswanath Rout, Hare Krushna Dash, Muralidhar Jena and Shri Bailochan Bhuyan by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. I with effect from the 1st December 2001 is legal and/or justified ? If not, to what relief Shri Rout and 3 others are entitled ?”

3. The case of the workmen in brief is that the workman Shri Biswanath Rout was appointed on 10-2-1983 and was working as Laboratory Attendant under the Executive Engineer, Quality Control and Research Division on a monthly wage of Rs. 300 under the direct control and supervision of the Chief Engineer till May, 1990. After abolition of Mahanadi-Birupa Quality Control and Research Division, the Chief Engineer, Mahanadi Barrage Project in his Office Order, Dt. 22-3-1990 adjusted all the four workmen in lower post, i.e. N.M.R. Mate on a monthly wage of Rs. 750 and posted them under the Executive Engineer, M.C.I.I. Division No. I. Kenduapatna with an assurance to regularise their service taking their past service into account. At the time of preparation of gradation list, the Superintending Engineer, M.C.I.I., Circle, arbitrarily ignored their past service from 1983 to 31-5-1990 worked under the E.E., M.B. Quality Control & Research Division and recorded their date of first entry into Government Service with effect from 1-6-1990. Till 27-11-2001 the Provisional Gradation list of N.M.R./W.C. workers has not been finalised. On 28-11-2001 the final gradation list was prepared without inviting the suggestions and objections of the affected workers and terminated the services of N.M.R./W.C. workers arbitrarily with effect from 30-11-2001 A.N. The management has terminated the services of the workmen without complying the mandatory provisions of Sections 25-F and 25-G of the Industrial Disputes Act. So in this background, the workmen raised an industrial dispute through their Union and when the conciliation failed the matter was referred to the Government and this reference has been received from the Government and this I.D. Case has been initiated wherein the workmen has 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 workmen joined in their job in Mahanadi Barrage Quality Control & Research Division, Cuttack and their adjustment in Mahanadi- Chitrotpala Island Irrigation Circle. After completion of Mahanadi and Birupa Barrage Project work the services of workmen found surplus in the Project and their services placed in Mahanadi- Chitrotpala Island Irrigation Division No. I, Kenduapatna on adjustment with specific direction that their seniority shall be counted with effect from the date of their joining in the present management, i.e. on 1-6-1990

vide Order No. 3411, Dt. 22-5-1990 of the Chief Engineer, Mahanadi-Birupa Barrage Project. Accordingly the seniority list was prepared by the Superintending Engineer, Mahanadi-Chitrotpala Island Irrigation Circle, basing on the defunct Mahanadi Barrage Quality Control Division, Cuttack after due scrutinisation with reference to Chief Engineer, Mahanadi Birupa Barrage Project Order, Dt. 22-5-1990. If the workmen were not adjusted in M.C.I.I., Division No. I, Kendupatna with effect from 1-6-1990, they would have lost their service. The final seniority list of work-charged/N,M.R. have been communicated by the Superintending Engineer, M.C.I.I. Circle vide, Dt. 23-11-2001. Prior to communication of final seniority list the provisional seniority list were communicated to all concerned. After receipt of various objections and suggestions the final seniority list was communicated on 23-11-2001. Accordingly basing on the seniority list the services of N.M.R./work-charged who found surplus were retrenched with effect from 30-11-2001 A.N. with due compliance of the provisions of the Industrial Disputes Act and payment of Gratuity Act in accordance with Department of Water Resources Letter No, 20222, Dt. 29-5-2001. The detail particulars of notice pay, compensation, gratuity, etc. paid to the workmen have been mentioned in the written statement. 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 termination of employment of Shri Biswanath Rout, Hare Krushna Dash, Muralidhar Jena and Shri Bailochan Bhuyan by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. I, with effect from the 1st December 2001 is legal and/or justified ?
- (ii) If not, to what relief Shri Rout and 3 others are entitled ?”

6. In order to substantiate their plea, out of the four workmen, the workman Shri Muralidhar Jena and Shri Hare Krushna Dash were examined as W.W. 1 and W.W. 2 respectively and Exts. 1 and 2 are marked on their behalf. Similarly the management has examined two witnesses altogether out of which M.W. 1 is the Executive Engineer of the management whereas M.W. 2 is the Superintending Engineer, Barrage Circle, Cuttack and the management has proved the documents marked as Exts. A. and B.

FINDINGS

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

According to W.W. 1, he joined under the management on 21-3-1986 as Laboratory Attendant. Then he was transferred to Mahanadi-Chitratpala Division on 1-6-1990. He joined there in duty and on 30-11-2001 he was terminated from the service by the management without complying the mandatory provisions of the Industrial Disputes Act. The management has not counted his initial date of his joining regarding seniority. His juniors are still continuing in service under the management. In the cross-examination he has admitted that if he himself had not been engaged in the management he would have lost his job since the Quality Control Division was abolished. The W.W. 2 deposes that his date of joining was 1-11-1988 and he continued in service

from 1-11-1988 to 31-5-1990 in the office of the Quality control and Research Division, Jobra, Cuttack as N.M.R. Mate. From 1-6-1990 to 30-11-2001 he joined in the establishment of M.C.I.I. Division No. I, Kendupatna No. I, Cuttack. In the cross-examination, he has admitted that the seniority list was prepared by the Superintending Engineer, Mahanadi Barrage Circle. These two witnesses have deposed about their cases only. They have not uttered a single word regarding other workmen. The other two workmen have not been examined in this case for the reasons best known to them. The Union has also not taken any pain to examine any witness to put forth the claim of such two workmen in shape of evidence. So their claim remained un-attended. However, M.W. 1 deposes that the workmen were temporarily adjusted in Mahanadi-Chitrotpala Island Irrigation Division No I, Kendupatna under the Superintending Engineer, M.C.I.I. Circle, Gandarpur, Cuttack as N.M.R. Mate vide Order No. 3411, Dt. 22-5-1990 of the Chief Engineer, Mahanadi-Birupa Barrage Project. The xerox copy of such order has been marked as Ext. A. The seniority list of such employees was prepared and circulated by Superintending Engineer, M.C.I.I. Circle, Cuttack who was the cadre controlling authority of the N.M.R. employees and basing on such seniority list, the workmen were retrenched from service. In the cross-examination he has admitted that while preparing the seniority list of the workmen, their seniority was not considered from the date of their actual joining. M.W. 2, the Superintending Engineer, Drainage Circle, Cuttack deposes about the seniority list prepared vide Order No. 3411, Dt. 22-5-1990 of the Chief Engineer, Mahanadi-Birupa Barrage Project, Gandarpur, Cuttack with effect from the 1st June 1990, i.e. the date of joining in the present management. Perused the documents proved and marked as exhibits from both the sides.

8. The seniority list was prepared as per Dt. 1-6-1990. The management has only carried out such seniority list which was prepared by his superior authority. The seniority list was prepared after inviting objection from all concerned. At the time of preparation of such seniority list whether any objection has been raised by the workmen is not available in the case record. When the seniority list was finalised by the higher authority and the management has only carried out it, it cannot be said that such seniority list is illegal. Further the authority, i.e. the Chief Engineer, Mahanadi-Birupa Barrage Project Gandarpur, Cuttack who has prepared the seniority list has not been made a party in this case. Further more this Court is not deciding in this case regarding legality and correctness of the seniority list prepared by the Chief Engineer. According to the settled principle of law, the Court cannot go beyond the scope of reference. The reference is regarding termination of employment of the workmen. The workmen being the surplus staff were terminated from service after abolition of Mahanadi Barrage Quality Control and Research Division, Cuttack on due compensation. The workmen have not raised any objection regarding receiving of any less amount of compensation and receiving the same at the belated stage. So basing on the materials available it shows that compliance of Section 25-F of the Industrial Disputes Act was duly complied by the management while terminating the services of the workmen. There is no specific evidence available in the case record that any junior to the workmen are working under the management. So in this background basing on the materials available in the case record as discussed above, I came to the finding that the termination of employment of all the four workmen by the management with effect from the 1st December 2001 is legal and justified and the workmen are not entitled to get any relief as prayed for in this case.

9. Hence Ordered :

That the termination of employment of Shri Biswanath Rout, Hare Krushna Dash, Muralidhar Jena and Shri Bailochan Bhuyan by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. I, with effect from the 1st December 2001 is legal and justified. The workmen Shri Rout and 3 others are not entitled to get any relief as prayed for in this case.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
15-1-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
15-1-2011
Presiding Officer
Labour Court
Bhubaneswar

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