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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3761—IR(ID)-133/2010(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th April 2012 in Industrial Dispute Case No. 101 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, P.H. Division, Baripada and its Workman Shri Sarat Kumar Mohapatra was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 101 OF 2010

Dated the 5th April 2012

Present :

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

Between :

The Management of Executive Engineer . . . First Party—Management
P. H. Division, Baripada.

And

Shri Sarat Kumar Mohapatra . . . Second Party—Workman
S/o. Late Bamadev Mohapatra
At Kamarpur, P. O. Soro, Dist. Balasore.

Appearances:

Shri R. K. Patra, J. E., P. H. Section, Soro . . . For the First Party—Management

Shri S. Behera, Authorised Representative . . . For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & Employment Department (presently the Labour & E. S. I. Department) in exercise of powers conferred upon them by sub-section (5) of Section 12 readwith clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') have referred the following dispute for adjudication vide their Order No. 10694—ID-133/2010-LE., dated the 20th December 2010 :—

“Whether the services of Shri Sarat Kumar Mohapatra, Workman, P. H. Division, Baripada needs to be regularised with effect from the 31st August 2009 ? If so, what should be the details ?

2. The Second Party in his claim statement has asserted that he has been working under the Executive Engineer, P. H. Division, Baripada (the First Party) since the 1st October 1992. He is an N. M. R. worker. The First Party has regularised the services of his juniors but refused to regularise him in service. Hence, the dispute.

3. In the Written Statement the First Party has contended that the Second Party has never worked as an N. M. R. workman. Being engaged through a Contractor he has been working in the Soro P. H. Sub-division since the 1st June 1997. All the N. M. Rs. who had been working prior to the 12th April 1993 have been regularised in service. There is no record showing that the Second Party had been working prior to the 12th April 1993. Thus, the Second Party being not an N. M. R. workman working prior to 12th April 1993, his service cannot be regularised.

4. There is no dispute that originally the Second Party was working in the R. W. S. & S. Section, Soro under the Executive Engineer, R. W. S. & S., Balasore. Consequent upon re-organisation of the R. W. S. & S. in 2000 the Urban Sector under the Executive Engineer, R. W. S. & S., Balasore Stood transferred to the Executive Engineer, P. H. Division, Baripada and all the staff including the Second Party working in the Urban Sector were transferred to the establishment of the Executive Engineer, P. H. Division, Baripada.

5. In terms of the reference, the following issues have been settled:—

ISSUES

(i) “Whether the services of Shri Sarat Kumar Mohapatra, Workman, P. H. Division, Baripada needs to be regularised with effect from the 31st August 2009 ?

(ii) If so, what should be the details ?”

6. The workman has examined himself as W. W. No. 1. He has examined two more witnesses. W. W. No. 2 is a Field Khalasi in the Office of the B. D. O., Soro and W. W. No. 3 is a co-villager of the Second Party. On behalf of the Management, the Junior Engineer, P. H. Section, Soro is examined as M. W. No. 1. Exts. 1 to 5 have been marked on behalf of the Second Party whereas Exts. A to F have been marked on behalf of the First Party.

FINDINGS

7. *Issue No. (i)*—The Second Party (W. W. No. 1) has stated in his affidavit evidence that he had been working as an N. M. R. Worker in Soro Section from the 1st October 1992 getting wages from the Junior Engineer, Soro. He has further stated that the First Party has given permanent appointment to some of his juniors ignoring his seniority. To prove his case he relies on one Experience Certificate which is marked Ext. 1. In the Experience Certificate it is mentioned that the Second Party had been working in the P. H. Department since October, 1992 getting his wages from the Office. The First Party raises objection on the authenticity of the Experience Certificate (Ext. 1). It is claimed that the Certificate is a created document issued by someone who had no authority to grant such a Certificate. The First Party does not deny that the Second Party has been working in the establishment of the Junior Engineer, P. H. Section, Soro. But it is claimed that he is being engaged through a contractor and he has never received wages directly from the Office.

8. Though it is not specifically stated in the pleadings of the parties, it appears from the materials placed before the Tribunal that the Management challenges the demand of the Second Party on the ground that since the Second Party is not an N. M. R. Worker working in the establishment prior to the 12th April 1993 he is not entitled to be regularised in service. Save and except the Experience Certificate which is marked Ext. 1 there is no other material showing that the Second Party is an N. M. R. Worker working prior to the 12th April 1993. Ext. 1 is said to be an engagement certificate issued on the 30th August 1997 by the then Junior Engineer, R. W. S. & S. Section, Soro. In the Certificate there is no specific mention that the Second Party has been working as an N. M. R. Worker. However, it is mentioned in the Certificate that he has been working since October 1992. This Certificate is challenged on the ground that it is not issued on the basis of any official record and that being not granted by any Authority authorised to grant such certificate, it is unreliable. The recital in the certificate does not reflect that it has been granted upon verification of official records. The person who has granted it is not examined as a witness. So the contents of the certificate could not be subjected to the test of cross-examination. There is no other authentic document to corroborate the facts stated in the certificate. The onus being on the workman, he ought to have brought such authentic documents on record. So it is not safe to rely on a document like Ext. 1. There is no other reliable material to conclude that the Second Party has been in employment since October, 1992. According to the Management, all the N. M. Rs. who had been working prior to the 12th April 1993 have been regularised in service. The Workman having not clearly pleaded as to on what basis he claims regularisation of service and having based his claim solely on the ground that his juniors have been regularised in service, in the absence of evidence that he had been working as an N. M. R. prior to the 12th April 1993, he cannot be said to be entitled to regularisation in service, more so when he has failed to adduce evidence as to who are the other workmen junior to him whose services have been regularised by the First Party.

9. Now, let it be examined as to whether the Second Party is working as an N. M. R. The Second Party has obtained information from the Office of the First Party under the Right to Information Act. The said information is marked Ext. 3 wherein it is stated that the Second Party was not working on N. M. R. basis. Even the Experience Certificate on which great reliance has been placed by the Second Party there is no specific mention that the Second Party had been working

on N. M. R. basis. Ext. C is a letter of the First Party issued on the 31st July 2000 with which a list of N. M. R. and H. R. personnel has been enclosed. That list is marked as Ext. C/1. The list does not include the name of the Second Party. In Ext. D readwith its enclosure marked Ext. D/1 it is stated that the Second Party is one of the 'N. C. Labourer's engaged in different sections under the P. H. Subdivision, Balasore. The Second Party has failed to bring on record any material showing that as an N. M. R. Worker he receives wages from any of the establishments of the First Party. It is not in dispute that the Second Party is still working in the establishment of the Junior Engineer, P. H. Section, Soro. But according to the Management he is always being paid through a Contractor. M. W. No. 1 is the Junior Engineer, P. H. Section, Soro. He says that the Second Party has been working in the P. H. Section, Soro as a 'Non-continuous labourer' (N. C. Labourer) through various contractors. He has further stated that payment is always made to the concerned Contractor which is reflected in the M. B. Book and that since the payment is not directly made to the Second Party his name is not reflected in the M. B. Book or in any other record maintained in the Office. Since the Workman is still working under the First Party he could have furnished materials showing that he has been getting wages directly from the Junior Engineer, P. H. Section, Soro to disprove the Management's plea that he has been getting wages through contractor.

10. Thus, the Workman has failed to prove that he has been working on N. M. R. basis prior to the 12th April 1993. Therefore, even though it is admitted by the Management that all the N. M. Rs. working prior to the 12th April 1993 have been regularised in service the Second Party cannot be said to be entitled to be regularised on the basis that his juniors/contemporaries have been regularised in service.

Issue No. (i) is answered accordingly.

11. *Issue No. (ii)*—In view of the findings on Issue No. (i), the Second Party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

05-04-2012

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

05-04-2012

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

M. R. CHOUDHURY

Under-Secretary to Government