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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 25th May 2012

No. 4171—IR-(ID)-29/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th April 2012 in Industrial Dispute Case No. 31/2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Bhubaneswar Municipal Corporation, Bhubaneswar and their Workmen Shri A. Raju and five others were referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 31 OF 2011

Dated the 24th April 2012

Present :

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

Between :

The Management of
M/s Bhubaneswar Municipal
Corporation, Bhubaneswar. . . First-party—Management

And

Its Workmen . . . Second-party—Workmen
(1) Shri A. Raju, (2) Krushna Mohan
Mohanty, (3) Dillip Kumar Acharya,
(4) Krutibas Das, (5) Rabindra Kumar
Barik and (6) Hakim Khan.

C/o S. K. Nijamuddin,
Plot No. 168, Bayababa Road,
Unit-IX, Bhubaneswar.

Appearances :

Sumita Sarkar, Establishment Officer . . . For the First-party—Management
Shri A. Raju, one of the second-party workman . . . For the Second-party—Workmen

AWARD

The Government of Odisha in the Labour & Employment Department (presently, the Labour & E.S.I. Department), in exercise of their powers conferred upon them by sub-section (5) of Section 12 read with 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. 3923—ID-29/2011-LE., dated the 21st April 2011 :—

"Whether the termination of services of Shri A. Raju, Krushna Mohan Mohanty, Dillip Kumar Acharya, Krutibas Das, Rabindra Kumar Barik and Hakim Khan, Ward Attendants with effect from the 1st February 2002 by the Management of Bhubaneswar Municipal Corporation, Bhubaneswar is legal and/or justified ? If not, to what relief the workmen are entitled ?"

2. All the six second-party members have filed a joint claim statement wherein they have claimed to have worked in the establishment of the first-party on D.L.R. basis from 1-8-1997 to 31-1-2002 continuously but their services were terminated with effect from the 1st February 2002 without complying with the provisions of Section 25-F and 25-G of the Act. It is further asserted that after their disengagement, the first-party has engaged new workers through Contractors/Service providers to work in their place.

3. In the written statement the first-party has contended that services of the second-party members were terminated with effect from the 20th August 1998 and not from 31-1-2002 as claimed by them. It is further contended that all of them were engaged with effect from the 1st August 1997 till the date of their retrenchment and only Shri A. Raju and Hakim Khan had completed 240 days of work during the period of their employment. Further case of the first-party is that pursuant to Letter No. 25213, dated the 1st August 1998 of the H. & U.D. Department of Government of Odisha all the D.L.Rs. who were engaged after 19-5-1997 were disengaged with effect from the 20th August 1998. The management cannot re-engage the second-party members without approval of the State Government.

4. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) Whether the employer-employee relationship ceased with effect from the 20th August 1998 ?
- (ii) Whether the services of the second-party workmen were terminated by the management with effect from the 1st February 2002 and if so, whether the same is legal and/or justified ?
- (iii) Relief(s), if any ?

5. On behalf of the second-party, Shri A. Raju, one of the second-party members, is examined as W.W. No. 1. On behalf of the first-party one Junior Assistant is examined as M.W. No. 1. No other witness is examined in this case. On behalf of the second-party, documents have been marked as Exts. 1 to 8. On the other hand, Exts. A and B have been marked on behalf of the first-party.

FINDINGS

6. *Issue Nos. (i) and (ii)*—The materials to be taken into consideration are linked with both the issues. Hence, both the issues are taken up together.

According to the first-party, pursuant to the H. & U. D. Department's letter No. 25213, dated the 1st August 1998 of the Government of Odisha, all the daily wagers who were engaged after 19-5-1997 were terminated. Ext. B is a copy of the said letter of the H. & U. D. Department addressed to the Executive Officers of the first-party directing disengagement of as many as 356 daily wagers who were given irregular appointment during 1997-1998 and from 1-4-1998 to 30-6-1998. Annexure-II to the written statement is a copy of Order No. 13757, dated the 20th August 1998 containing names of all the 356 workers who were retrenched by the first-party. Annexure-II contains the names of the second-party members. From this Annexure it can be found that the second-party members were retrenched with effect from the 20th August 1998. Therefore, the contention of the first-party gets support from this documentary evidence.

7. The second-party members claim that they had worked continuously from 1-8-1997 to 31-1-2002. W.W. No. 1 denies the suggestion that the services of the second-party members along with other D.L.Rs. working in the establishment of the first-party were disengaged with effect from the 20th August 1998. However, in Para. 1 of his affidavit evidence it is stated that the second-party members had been working as D.L.Rs. for the period from 1-8-1997 to 1-8-1998 and thereafter, as C.L.Rs. for the period from 1-8-1998 to 1-2-2002. This part of his statement indirectly supports the first-party's contention that in August, 1998 the services of the D.L.Rs. including the second-party members were terminated by the first-party. The statement further indicates that after their disengagement as D.L.Rs. all of them were engaged as C.L.Rs.

M.W. No. 1 in his cross-examination has stated that after disengagement of the D.L.Rs. vide Annexure-II to the written statement the first-party had engaged some of the retrenched workmen as contractual labourers. He has also stated that the contractual labourers are not engaged through any contractor but they are engaged directly by the first-party on contract basis. He has further stated that those who have been so engaged on contract basis have been working regularly in the establishment of the first-party.

The second-party has relied on Ext. 8 and its enclosures. Ext. 8 and its enclosures have been obtained by the second-party on making an application under the Right to Information Act. These documents reflect that out of the six second-party members, A. Raju and Hakim Khan have worked as Ward Attendants in the months of August and September, 2000 and thereafter in March, 2001 and February, 2002 and were paid wages against such work. The enclosures to Ext. 8 are copies of the Nominal Muster Rolls and C.L.R. Bills in prescribed form. These documents further reflect that the above named two workmen have worked as Ward Attendants in Ward No. 9 and have been paid wages on the recommendation of the Sanitary Inspector of Ward No. 9 of the first-party Corporation. Basing on these documents it can be concluded that A. Raju and Hakim Khan were engaged sporadically in between August, 2000 and February, 2002 and that during this

period they had completed 92 days of work. The second-party have failed to bring any other materials on record to support their contention that they had been working in the establishment of the first-party till 1-2-2002 without any break. The management, on the other hand, has placed documents showing that the second-party members who were working on D.L.R. basis were retrenched with effect from the 20th August 1998. It appears, subsequent to their retrenchment in the year 1998 two of the second-party members, namely, A. Raju and Hakim Khan were engaged by the first-party on contractual basis as and when required. Ext. 8 and its enclosures which are relied on by the second-party members disprove the second-party's own stand that all the six workmen were retrenched with effect from the 1st February 2002. Because, the Nominal Muster Roll and the Hand Receipt for the month of February, 2002 which are enclosures of Ext. 8 reflect that Shri A. Raju and Hakim Khan had worked throughout the month of February, 2002. Therefore, these two workmen cannot be said to have been retrenched with effect from the 1st February 2002.

8. So far the rest of the second-party members are concerned, there is even no iota of evidence that after their retrenchment in 1998 they were ever engaged even on contractual basis.

9. In the result, it cannot be a case of second-party members having been retrenched with effect from the 1st February 2002. Their retrenchment with effect from the 20th August 1998 is not the subject matter of the reference. Therefore, its legality cannot be decided in this reference. On the other hand, it is found not proved that the second-party members were retrenched with effect from the 1st February 2002. Therefore, this Tribunal is not in a position to opine as to whether the retrenchment which is the subject matter of reference is in contravention of Section 25-F and 25-G of the Act. For the self-same reason it is also not possible to record a finding as to whether there has been violation of Section 25-H of the Act.

Both the issues are, therefore, answered against the second-party.

10. *Issue No. (iii)*—In view of the findings on Issue Nos. (i) and (ii), the second-party are not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
24-4-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
24-4-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government
