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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 25th May 2012

No. 4176—IR-(ID)-85/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th May 2012 in Industrial Disputes Case No. 47 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Seema Engineering Works (a Sub-contractor of M/s MICCO, C/o Jindal Stainless Ltd., Kalinga Nagar), Danagadi, Jajpur and their Workmen Shri Pradipta Kumar Das and 5 others was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 47 OF 2010

Dated the 10th May 2012

Present :

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

Between :

- (1) M/s Jindal Stainless Ltd.,
(Deleted vide Order No. 11,
dated 27-7-2011). First Party—Managements
- (2) M/s MICCO (Contractor of
M/s Jindal Stainless
Limited).
- (3) M/s Seema Engineering Works,
(Sub-contractor of M/s MICCO)
C/o Jindal Stainless Ltd.,
all are of Village Kalinganagar,
P.O. Danagadi, Jajpur.

And

Shri Pradipta Kumar Das and 5 others, . . . Second Party—Workmen
 At/P.O. Pataranga,
 P.S. Korei,
 Dist. Jajpur.

Appearances :

(1) None	. . .	For First Party—Management No. 1
(2) Shri Sarat Kumar Samal Authorised Representative.	. . .	For First Party—Management No. 2
(3) None	. . .	For First Party—Management No. 3
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Shri Pradipta Kumar Das	. . .	One of the Second Party —Workmen.

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, 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. 6786—ID-85/2010-LE., dated the 16th August 2010.

“Whether the action of the management of M/s Seema Engineering Works (sub-contractor of M/s MICCO, Main Contractor), C/o M/s Jindal Stainless Ltd., Kalinganagar Industrial Complex, Jajpur Road, in terminating the services of (1) Shri Pradipta Kumar Das, Grinder, (2) Shri Sanjay Bhuyan, Helper, (3) Shri Bimbadhar Mahanta, Welder, (4) Shri Parameswar Sahoo, Helper, (5) Shri Ramesh Sahoo, Helper and (6) Shri Bijay Kumar Prusty, Welder with effect from the 4th August 2009 is legal and/or justified ? If not, what relief they are entitled to ?”

2. Out of the six workmen whose retrenchment is the subject matter of reference, five have appeared before this Tribunal and filed a joint statement of claim contending that they had been engaged by M/s Seema Engineering Works, a sub-contractor of M/s Jindal Stainless Ltd.'s Contractor namely, M/s MICCO, Kalinganagar Industrial Complex, on different dates during the period July 2007 and October 2007, and they had been continuously working till 4-8-2009 when the sub-contractor M/s Seema Engineering Works refused them employment without complying with the statutory provisions contained in Section 25-N of the Act. It is further alleged that after refusal of employment the sub-contractor engaged new workmen to work in the place of the second party members. It is claimed by these workmen that they have got no alternative employment ever since their services were terminated by the sub-contractor.

3. The sub-contractor who allegedly employed the second party members has not appeared to take part in this proceeding. M/s MICCO, the contractor of M/s Jindal Stainless Ltd. is arrayed as first party No.2 who has filed written statement in answer to the claim statement filed by the second

party members. The principal employer M/s Jindal Stainless Ltd. was arrayed as first party No.1 but vide order No.11, dated 27-7-2011 its name has been deleted from the cause title on the ground that there is no industrial dispute between the second party members and the principal employer.

4. M/s MICCO, the principal employer's contractor has contested the workman's claim on the ground, *inter alia*, that being no way concerned with the engagement and disengagement of the second party members. It is not a necessary party. However, it has admitted that the second party members were working as contract labourers under the sub-contractor M/s Seema Engineering Works. However, it is contended that none of the second party members had completed 240 days of work while working under the sub-contractor. It is also claimed that terms of the contract between the contractor and the sub-contractor has expired on 1-10-2000.

5. The following issues have been framed :—

ISSUES

- (i) Whether the action of the management of M/s Seema Engineering Works (Sub-contractor of M/s MICCO, Main Contractor), C/o M/s Jindal Stainless Ltd., Kalinganagar Industrial Complex, Jajpur Road, in terminating the services of (1) Shri Pradipta Kumar Das, Grinder, (2) Shri Sanjay Bhuyan, Helper, (3) Shri Bimbadhar Mahanta, Welder, (4) Shri Parameswar Sahoo, Helper, (5) Shri Ramesh Sahoo, Helper and (6) Shri Bijay Kumar Prusty, Welder with effect from the 4th August 2009 is legal and/or justified ?
- (ii) Whether the management of M/s MICCO is a necessary party ?
- (iii) Whether the management of M/s MICCO is liable for the action taken by the management No.3 ?
- (iv) To what relief they are entitled to ?

6. On behalf of the second party, three witnesses have been examined. All of them are the members of the second party. The first party No.2 has examined M.W. No.1 as its sole witness. Documents have been marked from both sides. Exts.1 to 10 have been marked on behalf of the second party and Exts.A to G on behalf of the first party No.2.

FINDINGS

7. *Issue Nos. (ii) & (iii)*—In the claim statement the workmen have clearly stated that they had been working under M/s Seema Engineering Works who was engaged as a sub-contractor by M/s MICCO, a contractor of the principal employer M/s Jindal Stainless Ltd. The workmen have not claimed any relief from the contractor. It is not pleaded that the contractor in terms of any contract is liable for the alleged illegal retrenchment effected by the sub-contractor. Thus, it is not explained as to how the contractor is a necessary party to this industrial dispute. The second party members were engaged by M/s Seema Engineering Works and they were allegedly disengaged by the same employer. In the absence of any pleadings as well as materials showing that M/s MICCO is liable

for the act or omission committed by the sub-contractor, it is to be held that the contractor M/s MICCO is not a necessary party and it is not liable for the action taken by its sub-contractor.

Both the issues are therefore, answered in the negative.

8. *Issue No. (i)*—As already stated, the sub-contractor has failed to make its appearance before this Tribunal to contest the second party's claim. So the assertions made by the second party that they had completed more than one year of continuous service before they were retrenched with effect from the 4th August 2009 remain unchallenged. However, the contractor who has appeared and filed written statement in this case has denied this assertion by making a specific plea that the second party members had not completed 240 days of work under the employment of the sub-contractor. In support of this contention the contractor relies on Ext.C. Ext.C consists of 21 pages. It is claimed that these are the statements submitted by the sub-contractor under the Employees' State Insurance Scheme. The workmen, on the other hand, have exhibited series of daily attendance cards in which their attendance has been marked. On a comparison of the entries made in the daily attendance cards with the corresponding E.S.I. statement marked Ext.C it is found that the number of days worked in a given month as reflected in the E.S.I. statement does not tally with the attendance marked in the daily attendance cards. On the body of Ext.C there is no endorsement of any E.S.I. Authorities in order to show its authenticity whereas, there is nothing to disbelieve the attendance marked in the daily attendance cards exhibited in this case. For the aforesaid reason Ext.C is found unreliable. The workmen's claim which is not controverted by their employer but corroborated by the daily attendance cards is found to be acceptable. It is to be presumed that for more than one and a half years the workmen were in continuous employment under the sub-contractor.

9. That apart, Rule 12 of the Odisha Contract Labour (Regulation & Abolition) Rules, 1975 (for short, the Rules, 1975) lays down the procedure for termination of services of a workman engaged under a contractor. As per the said rules, no contractor shall without reasonable cause terminate the services of a workman who has been in his employment continuously for a period of thirty days or more without giving such workman at least three days notice in writing or wages in lieu thereof except for acts of misconduct. In this case, the employer of the second party members having not appeared to participate in the proceeding, there is absence of any defence in the light of the provisions contained in Rule 12 of the Rules, 1975. It is to be presumed that neither the provisions contained in the Act nor the requirements laid down in Rule 12 of the Rules, 1975 have been complied with. Therefore, the termination of service which is the subject matter of dispute is found to be illegal and/or unjust.

9. *Issue No. (iv)*—It is claimed that the workmen were refused employment with effect from the 4th August 2009. Evidence has been adduced by M/s MICCO to the effect that the term of contract it had entered with M/s Seema Engineering has expired on 1-10-2009 and that the project work in which the disputant workmen were engaged through the sub-contractor is also over since October 2009. W.W. Nos. 1 and 3 also admit that their employer i.e. M/s Seema Engineering Works has left the contract work and has ceased to be a contractor of M/s MICCO. In view of such materials on record, there can be a presumption that the services of the second party members

would have terminated with effect from 1-10-2009. However, as claimed by the workmen their services were terminated one month prior to the termination of the terms of contract between contractor and the sub-contractor. Taking all these into consideration along with the provisions contained in Rule 12 of the Rules, 1975, this Tribunal considers it just and appropriate to award compensation to each of the workmen in the sum of Rs. 10,000 (Rupees ten thousand) only.

10. Thus, the reference is answered against the first party No. 3 namely, M/s Seema Engineering Works who is held liable to pay compensation of Rs. 10,000 to each of the second party members within a period of three months of the date of publication of the Award in the Official Gazette. No Award is made as against the first party No.2 i.e. M/s MICCO.

Dictated and corrected by me.

RAGHUBIR DASH
10-5-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
10-5-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

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