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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 28th July 2012

No. 5861—II/1(B)-99/1999(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st May 2012 in Industrial Dispute Case No. 75 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha State Handloom Weaver's Co-operative Society Ltd. and its 43 workmen was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 75 OF 1999

Dated the 21st May 2012

Present :

S.A.K.Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s Odisha State Handloom Weaver's
Co-operative Society Ltd.

And

Its 43 workmen .. Second Party—Workmen

Appearances :

Shri B. Panda, Advocate | .. For First Party—Management
Shri B. Mohanty, Advocate |

Shri B. C. Bastia, Advocate | .. For Second Party—Workmen
Shri A. K. Sahoo, Advocate |

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them 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 following dispute to this Court for adjudication vide Order No. 11200 —li/1(B)-99/1999-LE., dated the 19th August 1999.

“Whether the management of M/s Odisha State Handloom Weaver’s Co-operative Society Ltd., Bhubaneswar has followed the principle of last come first go as envisaged in Section 25-G of the I.D. Act, 1947 in retrenching 43 D.L.R. employees ? If not, to what relief the D.L.R. employees are entitled ?”

2. After issuance of notice on the above stated reference, one Pravat Nalini Mallick claiming to be one of the workman and duly authorised by other seven workmen namely, Ashok Tripathy, Bhikari Parida, Sarat Kumar Panda, Purna Chandra Sahu, Sanjukta Das, Siba Prasad Mohanty and Ranjit Kumar Das filed statement of claim as per separate sheet attached to the case record and among them, the workmen namely, Pravat Nalini Mallick, Ashok Tripathy, Bhikari Parida and Purna Chandra Sahu contested the case by filing their affidavits evidence and the rest remained absent. Neither they have filed any authorisation to contest the present case in favour of the workman Pravat Nalini Mallick nor they personally appeared and challenged the reference in any manner.

3. The case of the workmen Pravat Nalini Mallick and 3 others in brief as set out in their statement of claim is that they were employed under the management during 1991 and 1999 in different posts. They performed their work most efficiently to the best satisfaction of the management. Although they were initially appointed for 89 days, but they were continuously working under the management for more than 8 to 10 years and have performed more than 240 days in each year. They have been retrenched from service without notice or notice pay and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947. They have further stated that the juniors to the workmen are still continuing in their service and the management wilfully not followed the principles of “last come first go” as stipulated under Section 25-G of the Industrial Disputes Act, 1947. As the management has illegally retrenched the above stated workmen without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947, they have raised the present dispute praying for reinstatement in service with full back wages and also regularisation of their services.

4. The management in its turn has filed the written statement refuting the claim of the workmen. While admitting the fact of engagement of the workmen, the management has urged that the statement of claim was filed on behalf of 8 workmen that too, without any authorisation and prayed not to accept the statement of claim which is incomplete and cannot be treated as a statement of claim on behalf of 43 retrenched workmen. It has been further urged that the management has duly followed the provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 and during pendency of this case, the workmen namely, Sanjukta Das, Siba Prasad Mohanty, Ranjit Kumar Das and Sarat Kumar Panda (Sl. Nos. 6,7,8 and 4) have received their retrenchment benefits under the voluntary retrenchment scheme formulated by the management. Due to financial stringency the management reached in a stage of winding up. But due to interference of the State Government, the management closes down its sales depot which were running in loss and further it reduces the strength of its workers and accordingly the fact of closing down the depot was communicated to the workmen and ultimately the management retrenched the casual/D.L.R. workers

who were engaged on daily wage basis and thereafter statutory notice under Section 25-F of the Industrial Disputes Act, 1947 was issued and as per the notice, most of the workmen have received their retrenchment benefits. On the above back drops, it has been urged that the reference should be answered in negative against the workmen.

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

ISSUES

- (i) “Whether the management of M/s Odisha State Handloom Weaver’s Co-operative Society Ltd., Bhubaneswar has followed the principle of “last come first go” as envisaged in Section 25-G of the I.D. Act, 1947 in retrenching 43 D.L.R. employees ?
- (ii) If not, to what relief the D.L.R. employees are entitled” ?

6. It is pertinent to mention here that initially the dispute was raised by 43 workmen out of 93 retrenched employees as per the list furnished by the management before the District Labour Officer-*cum*-Conciliation Officer, Khurda alleging illegal termination of their services and as because the conciliation failed, the present matter was referred to this Court for adjudication and accordingly notice was issued to the Secretary, Odisha State Handloom Weaver’s Co-operative Society Ltd., Pandit Jawaharlal Nehru Marg, Bhubaneswar, but the Secretary remained absent and the present workmen Pravat Nalini Mallick on behalf of other workmen filed the statement of claim, as per separate sheets attached to the case record and among them the workmen namely, Pravat Nalini Mallick, Ashok Tripathy, Bhikari Parida and Purna Chandra Sahu contested the case by filing their affidavit evidence and the rest remained absent. Neither they have filed any authorisation to contest the present case in favour of the workman Pravat Nalini Mallick nor they appeared and challenged the reference in any manner.

7. In order to substantiate their pleas, the workmen namely, Pravat Nalini Mallick, Ashok Kumar Tripathy, Bhikari Parida, and Purna Chandra Sahu have examined themselves as W.Ws. 1 to 4 respectively and proved the documents under the cover of Exts.1 to 3. On the other hand, the management has examined its Senior Assistant and Junior Assistant as M.Ws. 1 and 2 respectively and proved the documents under the cover of Exts. A to T.

8. Before going to discuss the evidence of both the parties in detail, it is an admitted fact that the above named workmen were working under the management and were retrenched with effect from the 16th March 1999. The only question that is now to be decided whether the management while retrenching the workmen have duly complied with the mandatory provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947.

9. On the above score, the Advocate for the workmen urged that no one month prior notice or notice pay in lieu thereof and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947 has been complied with by the management while retrenching their services. On the other hand, the Advocate for the management urged that at the time of retrenchment of the workmen from services, the provisions of Section 25-F of the Industrial Disputes Act, 1947 has been duly complied with. To substantiate the above plea, the management has not filed a single piece of the paper to prove the same. Rather during cross-examination, in Paragraph 6, M.W.1 has categorically admitted that he has not filed any document in support of payment and receipt of compensation and notice pay in respect of the workmen. So in view of the above admission of the M.W.1, the plea taken by the management that due notice and retrenchment compensation has been paid to the workmen is out of imagination and cannot be believable.

10. On perusal of the documents as available in the case record, it clearly shows that the management while retrenching the services of the workmen namely, Pravat Nalini Mallick, Ashok Kumar Tripathy, Bhikari Parida and Purna Chandra Sahu, no prior one month notice or notice pay in lieu thereof and retrenchment compensation has been paid to them as required under Section 25-F (a) and (b) of the Industrial Disputes Act, 1947. Similarly, the management has also violated the provisions of Section 25-G of the Industrial Disputes Act, 1947, by retaining some workers who are juniors to the present workmen and allowed them to continue in service even after retrenchment of the present workmen. So on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that the retrenchment of the above named four workmen from service with effect from the 16th March 1999 is neither legal nor justified. Hence the above named four workmen are entitled to be reinstated in service.

11. Regarding back wages, law is well settled that :

“When the workmen 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.”

However, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting full back wages, 50% back wages will meet the ends of justice in respect of above named contesting four workmen. Since the rest of the workmen remained absent and not contested the present case, it is presumed that they are not interested to proceed with this case. Hence, no relief is passed in their favour.

12. Hence Ordered :

That the management of M/s Odisha State Handloom Weaver's Co-operative Society Ltd., Bhubaneswar has not followed the principles of “last come, first go” as envisaged in Section 25-G of the Industrial Disputes Act, 1947 in retrenching Pravat Nalini Mallick, Ashok Kumar Tripathy, Bhikari Parida and Purna Chandra Sahu. The above four workmen are entitled to be reinstated in service with 50% back wages. The management is directed to implement this Award within a period of one month from the date of its publication, failing the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S.A.K.Z. AHAMED
21-5-2012
Presiding Officer
Labour Court
Bhubaneswar

S.A.K.Z. AHAMED
21-5-2012
Presiding Officer
Labour Court
Bhubaneswar

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