

The Odisha Gazette



EXTRAORDINARY PUBLISHED BY AUTHORITY

No. 1652 CUTTACK, SATURDAY, AUGUST 18, 2012/SRAVANA 27, 1934

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 4th August 2012

No. 7021—IR-(ID)-31/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th July 2012 in Industrial Dispute Case No. 14/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Odisha Sponge Iron & Steel Ltd., Project & Engineering Division, O.S.I.L. House, Gangadhar Meher Marg, P.O. KIIT, Bhubaneswar and its Workmen Smt. Priti Patnaik, Smt. S. R. Satapathy, Shri Purusottam Palai and Shri Durga Prasad Mishra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 14 OF 2010

Dated the 7th July 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Director, Odisha Sponge Iron & Steel Ltd., . . . First Party—Management
Project & Engineering Division, O.S.I.L. House,
Gangadhar Meher Marg, P.O. KIIT,
Bhubaneswar-751024.

And

1. Smt. Priti Patnaik, MIG-II, Plot No. 13/25, . . . Second Party—Workmen
BDA Colony, Chandrasekharapur,
Bhubaneswar-16.
2. Smt. S. R. Satapathy, C/o Dr. P. K. Mohanty,
Utkal Apartment, C/12, Kalyaninagar,
Cuttack-13.

3. Shri Purusottam Palai, Resident C1/12,
VSS Nagar, P.-S. Saheednagar, Bhubaneswar.
4. Shri Durga Prasad Mishra, At Jajpur,
P.O. Sakhigopal, P.-S. Satyabadi, Dist. Puri.

Appearances :

For First Party—Management	..	Smt. Manjushree Das, Deputy General Manager
<hr/>		
The Workmen themselves	..	{ Smt. Sreemarani Satapathy (Sl. No. 2)
		{ Shri Purusottam Palai (Sl. No. 3)
For the Workmen Nos. 1 and 4	..	None

AWARD

The Government of Odisha in their Labour and E.S.I. Department, exercising powers conferred upon them by Section 12 (5), read with Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute to this Tribunal for adjudication vide their Order No. 2536—ID-31/2010/LE., dated the 27th March 2010 :—

"Whereas the termination of services of Smt. Priti Patnaik, Assistant Officer, Smt. S. R. Satapathy, Junior Assistant, Shri Purusottam Palai, Peon and Shri Durga Prasad Mishra by the Management of Odisha Sponge Iron & Steel Ltd., with effect from the 6th October 2009 is legal and/or justified ? If not, to what relief the workmen are entitled ?"

2. At the outset, let it be mentioned that out of the four workmen whose retrenchment is the subject-matter of the reference, Smt. Preeti Patnaik did never appear before this Tribunal and Shri Durga Prasad Mishra after filing his claim statement on the 7th June 2010 stopped participation in the proceeding. On the 23rd February 2011 the management filed a petition stating that Smt. Preeti Patnaik and Shri Durga Prasad Mishra had already entered into settlements with the management to resolve their dispute.

3. In their joint claim statement filed on the 12th May 2011 by the remaining two workmen it is pleaded that Smt. Sreemarani Satapathy, as Junior Assistant and Shri Purusottam Palai, as Peon, had joined in the establishment of the first party on the 16th February 1981 and the 1st April 2004 respectively. They had rendered continuous service till their services were terminated with effect from the 6th October 2009. Prior to their retrenchment on the 7th September 2009 the Director of the first party had issued a letter to each of them stating therein that their names having been enlisted for retrenchment, the termination of their services would take effect on the expiry of one month from the date of the letter and that compensation would be paid under the Act along with other legitimate dues. The reason that allegedly compelled the management to retrench them was stated to be 'Global Recession/Depreciation' affecting the industry of the first party. Accordingly, with effect from the 6th October 2009 they were not allowed to discharge their duties. However, the management did not pay retrenchment compensation to both of them. It is further pleaded that even the service of one month's notice is improper inasmuch as the establishment being an 'industrial establishment' coming within the mischief of Chapter-VB of the Act, the management ought to have served them three month's notice. Also, it is alleged that while effecting the retrenchment the management did not follow the principle of law laid down under Section 25-G of the Act.

4. In its written statement the management does not dispute the employer-employee relationship between the parties. It is contended by the management that its Factory situates at

Palaspanga with its Head Office at Bhubaneswar. Due to recession and global meltdown it was compelled to take various steps for cost reduction including reduction of manpower. In that process it retrenched six employees employed in its office at Bhubaneswar. The two workmen who have contested in this case are amongst those six employees.

It is further pleaded that both the workmen were initially working in the Registered Office of the first party. Subsequently, they were transferred to work in M/s. TORSTEEL Ltd., an Associate Unit of the first party which was incorporated as a Company distinct from the first party. Due to adverse market conditions M/s. TORSTEEL Ltd., was closed down and all the employees engaged therein were offered alternative engagement at different Offices/Units of the first party. The two contesting workmen who were engaged in M/s. TORSTEEL Ltd., at the time of its closure were brought back to the establishment of the first party even though practically there was no job available to suit their suitability and experience. Thus, they were found to be surplus employees. When the occasion of cost reduction came up the first party decided to do away with all the surplus posts and accordingly the two workmen suffered retrenchment.

As regards applicability of Section 25-N of the Act, the first party contends that the office at Bhubaneswar cannot be treated as a part of the Factory and that only seven workmen having been employed in that Office Chapter-VB of the Act cannot be attracted as against the first party.

It is further contended that since the workmen were employees working in M/s. TORSTEEL Ltd., and its closure led to their retrenchment, the provisions of Section 25-FFF are applicable to this case.

5. Basing on the terms of the reference as well as the pleadings of the parties the following issues have been settled :—

ISSUES

1. Whether the termination of services of the second party workmen is in contravention of Section 25-F or 25-N and Section 25-G of I. D. Act ?
2. Whether the first party is an Industrial Establishment as defined under Section 25-L of I. D. Act ?
3. Is the Establishment of the first party an industry as defined in I. D. Act ?
4. Whether the first party is guilty of unfair labour practice/victimisation ?
5. Relief, if any ?

6. In this case both the workmen have examined themselves as W. W. No. 1 and W.W. No. 2. On their behalf Exts. 1 to 10 have been marked. On the other hand, the management has examined its Deputy General Manager (HR) as M. W. No. 1 and exhibited documents marked Exts. A to D/2.

FINDINGS

7. *Issue Nos. 1 & 2*—Though the management admits that one month's notice for retrenchment was served on both the Workmen on the ground of reduction of manpower cost and that on the expiry of the period of one month from the date of the notice the services of the workmen were terminated, a queer plea has also been taken by the management that the retrenchment having occasioned due to closure of M/s. TORSTEEL Ltd., the provisions of Section 25-FFF are applicable to this case which is nothing but red herring. Exts. 4 and 10 are the one month's notices served on Smt. Sreemarani Satapathy and Shri Purusottam Palai respectively. The notices were issued on the 7th September 2009 and the retrenchment was made effective from the 6th October 2009. It is not disputed that the second party members are workmen as defined under the Act. However, the management's stand is that the establishment in which the second party members

were employed is not an 'industry'. There is a separate issue on that matter which will be taken up at a later stage. However, assuming that the establishment of the first party is an 'industry', let it be examined whether the retrenchment under dispute has been brought about in accordance with Section 25-F of the Act.

The second party members do not claim improper compliance of Clause(a) of Section 25-F of the Act. However, they have claimed that Clause (b) of Section 25-F of the Act has not been complied with. The management on its part has not tried to make out a case of proper compliance of Clause (b) of Section 25-F of the Act. In the one month's notices (Exts. 4 & 10) it is simply stated that the concerned notices would be entitled to receive compensation under the provisions of the Industrial Disputes Act, 1947 along with other legitimate dues. But, the management has not placed materials before this Tribunal showing that payment of retrenchment compensation, i.e., 15 days' average pay for every completed year of continuous service was either paid or payment of the compensation amount was offered to the workmen concerned. It is the settled position of law that compliance of Clause (b) of Section 25-F of the Act is mandatory and its non-compliance renders the order of retrenchment invalid. It is also well-settled that simultaneous compliance of Clauses (a) and (b) of Section 25-F is necessary. The compliance with the requirements of both Clauses (a) and (b) should appear to be parts of a single transaction. Though it is mentioned in the notices (Exts. 4 and 10) that the workmen concerned were entitled to receive compensation as per the provisions of the Act, it is not specified therein as to when and where the retrenchment compensation would be paid to them. That apart, the management has not stated in its written statement that any amount towards retrenchment compensation was paid or offered to the workmen either on the date the retrenchment was given effect to or on any date subsequent thereto. Therefore, the workman's plea that the management has not paid them retrenchment compensation as contemplated under the provisions of the Act is to be accepted as true. Consequently, the retrenchment is held to be invalid and void *ab initio*.

8. As an alternative plea the workmen have taken the stand that the first party being an 'industrial establishment' covered under Chapter-VB of the Act, the provisions of Section 25-N of the Act should have been complied with. But, the management does not admit that Chapter-VB of the Act is applicable to it. Save and except the plea that in the establishment of the first party more than hundred workmen used to be employed on an average per working day for the preceding twelve months, there is no other pleading nor any materials placed before this Tribunal to arrive at a conclusion that the first party is an 'industrial establishment' as defined under Section 25-L of the Act. Therefore, it is not possible to hold that the provisions of Chapter-VB of the Act can be attracted against the management.

9. The workmen have also alleged violation of Section 25-G of the Act. It is alleged that employees junior to each of the workmen were retained by the management. In reply to this plea, the management in its written statement has not made a specific denial. In Para. 10 of the written statement it is simply stated "for the purpose of the Industrial Disputes Act and application of the provisions of Section 25-G of the Act" the principle of 'last come, first go' does not apply in the present case. It is not in dispute that Sreemarani Satapathy was holding the post of Junior Assistant and the other workman was in the post of Peon. The management has not made a clear averment that each of the workmen was the last person to be in the employment of the first party in the respective category of workmen. Rather, the management has contended in Para. 10 of the written statement that Section 25-G of the Act is not applicable to the present case. So far workman Sreemarani Satapathy is concerned, it is the case of the first party that since no other commensurate job comparable to the post held by her was available she cannot allege violation of the principle of Section 25-G of the Act. This is a peculiar plea not supported by the provisions of law contained in the Act and for that it does not deserve any consideration. So far the other workman Shri Purusottam Palai is concerned, the management has indirectly admitted that another workman junior to him and in the same category was retained by the management at the time his service was terminated. In Para. 11 of the written statement it is contended that there was another employee in the

Bhubaneswar Office who was designated as Peon but having a qualification of H.S.C. pass who was engaged in official documentation, record keeping, file handling, etc., which are skilled categories of work and as such cannot be comparable for the purpose of application of the principle of 'last come, first go' inasmuch as Shri Palai could not have been able to handle such official nature of job including handling the confidential files. This stand is also unknown to the provisions contained in the Act and the management cannot be said to have advanced a plausible defence as against the allegation of violation of 'last come, first go' principle.

The management has neither pleaded nor proved that while terminating the services of the two workmen the principle of 'last come, first go' as laid down under Section 25-G of the Act was complied with. Therefore, it is held that the retrenchment under challenge also suffers from contravention of Section 25-G or the Act.

Thus, both the issues are answered against the management.

10. *Issue No. 3*—On a close reading of the Written Statement it is now felt that this issue should not have been settled inasmuch as no where in the written statement the management has denied itself to be coming within the definition of 'industry' as defined in Clause (j) of Section 2 of the Act. It appears, in absence of such pleadings the parties have not adduced any evidence on this issue. Since there is no such denial, the issue is answered in the affirmative.

11. *Issue No. 4*—In their claim statement the Workmen have taken the plea of victimisation and unfair labour practice merely on the basis of alleged violation of Section 25-G of the Act. No other facts and circumstances are either pleaded or proved to make out a case of victimisation or unfair labour practice. Hence, this issue is answered in the negative.

12. *Issue No. 5*—Since the retrenchment is held to be invalid and void *ab initio*, both the workmen are entitled to be reinstated in service with full back wages.

The reference is answered accordingly. The two workmen namely, Smt. Sreemarani Satapathy and Shri Purusottam Palai be reinstated in service with full back wages within a period of two months of the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

Shri RAGHUBIR DASH
7-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar.

Shri RAGHUBIR DASH
7-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar.

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