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LABOUR & E.S.I. DEPARTMENT
NOTIFICATION

The 1st November 2012

No. 8997–IR-(ID)-98/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th October 2012 in the I.D. Case No. 11 of 2010 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of Secretary, Berhampur Co-operative Central Bank Ltd., Berhampur, At/P.O. Berhampur, Dist. Ganjam and their workman represented through the General Secretary Berhampur Co-operative Central Bank Employees Union, Berhampur, Dist Ganjam was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE No. 11 OF 2010
Dated the 4th October 2012

Present :

Shri D. C. Mishra, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court,
Jeypore, Koraput.

Between :

The Management of
Secretary, Berhampur
Co-operative Central Bank Ltd.,
Berhampur, At/P.O. Berhampur,
Dist. Ganjam.

. . First Party —Management

Versus

Their Workman,
Represented through
The General Secretary,
Berhampur Co-operative Central Bank Ltd.,
Employees Union, Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

. . Second Party —Workman

Under Sections 10 & 12 of the Industrial Disputes Act ,1947

Appearances :

Shri Surendra Padhi, Branch Manager (A.&E.) . . For the – Management
on behalf of the Berhampur Co-Operative
Central Bank, Ltd., Berhampur.

Shri Prasanta Kumar Nayak, . . For the –Workman
General Secretary of Employees'
Union Ltd., of the Berhampur
Co-operative Central Bank
Employees Union, Berhampur.

Date of Argument 28-9-2012
Date of Award 4-10-2012

AWARD

The matter arises out of a reference made by the State Government in the Labour & Employment Department, Odisha, Bhubaneswar under Section 12 (5), read with Section 12 (1) of the I.D. Act, 1947 vide Memo No. 7450 (5)-L.E., dated the 4th September 2010 for adjudication of the following disputes :—

SCHEDULE

“Whether the demand of Berhampur Co-operative Central Bank Employees Union, Berhampur for implementation of 6th pay committee report on revision of pay scale to the Bank Employees at par with the State Government Employees with effect from the 1st January 2006 is legal and/or justified ? If so, what should be the details ?”

2. In this case Order was passed on 24-10-2011 but vide Order, Dt. 20-7-2012 in W.P.(c) No. 2210/2012 the Hon'ble High Court have set aside the order and remanded back for fresh disposal by taking into consideration Ext. 6 and paragraph 7 of the counter affidavit which has been extracted in the Order.

3. The case of the second party (workman) runs thus :—

That, after publication and implementation of 6th Pay Commission Report Government employees on revision of pay scale the second party (workman) being employees of the first party-management approached to the first party vide charter of demand Dt. 14-1-2009 for implementing the 6th Pay Commission, report for them with effect from the 1-1-2006. It is avered that, the 6th Pay Commission Report for Government employees is also applicable to the workman of the first party, i.e. for the second party members. According to the workman, the management examined the charter of demands of the second party and communicated to the second party Union vide letter dated 1-6-2009 that they have resolved on 29-4-2009 to implement demand No.1 with regard to revision of salary of the employees in tune with the 6th Pay Commission Report. It is also pleaded

that, the management moved the Registrar of Co-operative Society, Odisha, in the matter Vide Ext.2 and being the competent authority under O.C.S. Act, 1962, the R.C.S. (O) gave Order No. 14812, Dt.12-6-2009 Ext.3 and No. 15444, Dt.23-6-2009 Ext.8 for implementing the 6th Pay Commission Report, but the first party did not give effect to its commitment or to the Order of the R.C.S. (O). So the second party served a strike notice to the management (first party) on 13-7-2009 and in response the management intimated to the Union not to resort to strike as because the management had already decided to implement the demand and a sum of Rs. 2,06,50,598 (Rupees two crore, six lakhs fifty thousand five hundred ninety -eight) only had been allotted to the balance sheet for payment.

It is specifically pleaded that, inspite of all the above facts, the management did not fulfil the demands of the second party for allowing the 6th Pay Commission from 1-1-2006 to the second party and on 17-4-2009 made a resolution (Ext.4) to implement the 6th Pay Commission Report from 1-4-2009. Since the management did not implement the 6th Pay Commission Report fully, i.e. from 1-1-2006, the Union, i.e the second party approached the District Labour Officer, Berhampur for settlement. The District Labour Officer, Berhampur repeatedly tried for conciliation and settlement between the parties but the management never attended the conciliation for for which the conciliation failed and gave rise to this dispute, it is also avered that on 23-8-2010, the management gave a written assurance (Ext.6) to the second party members to implement the 6th Pay Commission Report fully and to pay the arrear within one month but in vain.

4. The first party management has contested the case by filing W.S. According to the first party the management in its Letter No.785, Dt. 13-5-2009 had sought approval from R.C.S. (O) to implement the benefits of 6th Pay Commission Report to the workman and after due consideration the R.C.S. (O) issued Orders, Letter Nos. 14812, Dt. 12-6-2009 and No. 15444, Dt 23-6-2009 to the first party to take appropriate decision in the matter subject to fulfillment of the required conditions mentioned in those letters, and accordingly the management examined the matter in details and passed resolution for extending the benefits of 6th Pay Commission Report to the second party with effect from the 1-4-2009. After remand of the case by Hon'ble High Court, the first party has filed W.S. almost admitting the claims of the second party.

5. In order to substantiate the case, two witnesses have been examined from workman's side. The workman witness No.1 Basudeb Choudhury is the ex -Branch Manager of Central Co-operative Bank, Berhampur and workman witness No.2 Prasanta Ku. Nayak is the Sr. Assistant of Berhampur Co-operative Central Bank.

Documents marked Exts.1 to 13 have been proved from workman side. Ext.1 is the charter of demand of the second party submitted to the first party Ext.2 is the request letter of the management to the R.C.S.(O) to grant permission for implementation of 6th Pay Commission Report, for the second party members. Ext.3 is the letter No. 14812, Dt. 12-6-2009 of the R.C.S.(O) granting permission to the first party to implement the 6th Pay Commission Report for the second party. Ext.4 is the resolution Dt.17-9-2009 of the first party implementing the 6th Pay Commission Report with effect from the 1-4-2009. Ext.5 is the strike notice Dt.13-7-2009 of the first party and Ext.6 is

the copy of the minutes of the meeting held between the first party and the second party on 23-8-2010. Ext.7 is the page No. 36 of O.C.S. Act and Ext.8 is the copy of Letter No. 15444, Dt. 23-6-2009 of O.C.S. (O) addressed to the Chief Executives of all District Co-operative Central Banks. Ext.9 is the xerox copy of Audit Certificate for the year 2003–2004. Ext.10 is the xerox copy of Audit Certificate for the year 2004-2005 and Ext.11 is the xerox copy of Audit Certificate for the year 2005-2006. Ext.12 is the xerox copy of comparative financial position of the Bank from the years 2003–2004 to 2010-2011. Ext.13 is the xerox copy of counter affidavit filed by the first party in W.P. (c) No. 2210 of 2012.

6. Two witnesses have been examined from management side, M.W. No.1 Shri Surendra Padhi, is the Branch Manager of Berhampur Co-operative Central Bank Ltd., and M.W. No.2 Shri Sasidhar Pattnaik is the Branch Manager of Berhampur Co-operative Central Bank Ltd., in another Branch.

The copies of Letter Nos. 14812, Dt.12-6-2009 and No. 15444, Dt. 23-6-2009 and the copy of Resolution Dt. 29-4-2009 of the management has been filed from management side.

7. In the above premises, the following issues have have been framed in this case for adjudication :—

ISSUES

- (i) “Whether the demand of Berhampur Co-operative Central Bank Employees Union, Berhampur for implementation of the 6th Pay Committee Report on revision of pay scale to the Bank Employees at par with the State Government Employees with effect from the 1-1-2006 is legal and/or justified ?
- (ii) If so, what should be the details ?”

Issue No. (i)—The workman witness No.1 has deposed that their association (second party) moved the management vide charter of demands (Ext.1) to give them financial benefits with effect from the 1-1-2006 as per 6th Pay Commission Report recommendation for Government employees and accordingly the first party sought for approval from the Registrar of Co-opertative Society (O) vide Ext.2. The specific evidence of W.W. No.1 is that, in the enclosure of Ext.2, i.e. the proceedings of the meeting of the management committee Dt.29-4-2009, the management has very clearly admitted that the concerned Bank was earning profit consequitively for more than three(3) years and there was capital adequacy of minimum level of 7% and the Bank was fulfilling all the required conditions stipulated by NABARD and R.C.S. (O) for which recommendation has ben made by the management for full implementation of the 6th Pay Commission Report in favour of the second party members. The W.W. No.1 has further diposd that, although recommendation was made by the management vide (Ext.2) for fulfilment of the 6th Pay Commission Report but subsequently the revision of pay of the second party was implemented from 1-4-2009 vide resolution Dt. 17-9-2009 (Ext.4). Thus, workman witness No.1 claims that, Exts.2 and 4 are contrary to each other and in view of specific admission of the first party in Ext.2 about profit earning for 3 consequitive years, capital adequacy and fulfilment of the required conditions of NABARD, the management can not take a contrary decision vide Ext.4.

In Ext.2, the management has reported to the R.C.S.(O) regarding the profit of the Bank and fulfilment of other required conditions imposed by the NABARD. In Ext.6, the management has agreed to consider release arrears from 1-1-2006 to 31-3-2009, paragraph-1 of Ext.6 is extracted below for clear understanding :—

That the issue of releasing revised pay scale to the employees of the Bank as per 6th Pay Commission Recommendations with effect from the 1-1-2006, the management in principle agreed to consider release arrears from 1-1-2006 to 31-3-2009 after obtaining formal approval from the R.C.S. Odisha for which the management will write a D.O. letter to R.C.S., Odisha mentioning all factual positions with recommendation to accord their approval and the said letter shall be sent within a week from today. The management of the Bank will make all positive and sincere efforts to get the approval from R.C.S. Odisha and to release the arrears within 30 days.”

In the counter affidavit filed by the management (first party) before the Hon'ble High Court in W.P. (c) No.2210/2012, it has admitted at paragraph-7 that, since the Bank had fulfilled all the conditions stipulated by NABARD/R.C.S., the Bank would not suffer if 6th Pay Commission Report is implemented with effect from 1-1-2006. The said affidavit has been proved as ext.13 the relevant portion of Para.7 of Ext.13 is as follows :—

It is a fact that the Managing Committee of the Bank had resolved in its proceeding held on 29-4-2009 (Ext.2) that since on account of implementation of 6th Pay Commission Report with effect from the 1-1-2006 Bank would not suffer since it had fulfilled all the conditions stipulated by NABARD/R.C.S. such as profit earning consecutively for more than three years and capital adequacy of minimum level of 7% and the cost of the management was well within the norms, therefore, the employees of the Bank could be given the benefit of pay revision with effect from 1-1-2006.

From the aforesaid discussions it is found that the first party management had agreed to implement 6th Pay Commission Report with effect from the 1-1-2006 for the second members. The second party members have proved the audit reports of the Bank (first party) for the financial years 2003-2004, 2004-2005 and 2005-2006 as Exts.9, 10 & 11 respectively which reveals that on those years, the Bank (management) had earned required profit. Ext.9,10 & 11 have gone unchallenged. The management has also agreed that the Bank has fulfilled all the norms and conditions of NABARD/R.C.S. (O) for implementing the 6th Pay Commission Report for the second party members with effect from the 1-1-2006. The specific evidence of workman witness No.2 that they are entitled to get enhanced pay with effect from the 1-1-2006 as per ORSP Rule, 2008 has also gone unchallenged. The M.W. Nos. 1 & 2 have deposed that the management had provided Rs. 2,06,50,598 only in the balance sheet of the bank for the years 2008-2009 for implementation of 6th Pay Commission Report to the workman with effect from 1-1-2006.

In the above premises it is held that the demand of Berhampur Co-operative Central Bank Employees Union (second party) for implementation of 6th Pay Committee Report on revision of pay scale to the Bank employees at par with the State Government employees with effect from the 1-1-2006 is legal and justified.

Issue No. (ii)—In view of the discussion made above in issue No.i the second party workman are entitled to get revised pay scale as per 6th Pay Commission Report for Government employees with effect from the 1-1-2006. Hence Order.

ORDER

The reference is answered on contest in favour of the second party workman, but without costs. The second party workman are entitled to get revised pay scale with effect from the 1-1-2006 as per ORSP Rule, 2008 meant for the State Government employees. The management is directed to implement the 6th Pay Commission Report and revise the pay scales of the workman (employees of Berhampur Co-operative Central Bank) with effect from the 1-1-2006 and pay the arrears as per ORSP Rule, 2008, within three (3) months of publication of the Award.

Dictated and corrected by me.

D. C. MISHRA
4-10-2012
Presiding Officer
Labour Court
Jeypore

D. C. MISHRA
4-10-2012
Presiding Officer
Labour Court
Jeypore

By order of the Governor

J. DALANAYAK

Under-Secretary to Government