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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th November 2012

No. 9436—IR(ID)-116/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th August 2012 in Industrial Dispute Case No. 84 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Akshaya Patra Foundation, Puri and their Workman Shri Sarat Kumar Das was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 84 OF 2010
Dated the 18th August 2012

Present :

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

Between :

The Management of . . . First Party—Management
M/s Akshaya Patra Foundation, Puri.

And

Shri Sarat Kumar Das, . . . Second Party—Workman
S/o. Late Lokanath Das,
At Matiapada, Near Railway Gate,
Kumbharpada, P. S./Dist. Puri - 752 001.

Appearances:

Shri Mahesh Kumar Pradhan, Authorised . . . For the First Party—Management
Representative.

Shri S. K. Dash . . . For the Second Party—Workman himself

AWARD

The Government of Odisha in their Labour & E. S. I. Department in exercising of power 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. 9430—ID-116/2010-LE., dated the 10th November 2010 :—

“Whether the action of the Management of M/s Akshaya Patra Foundation, Puri in terminating the services of Shri Sarat Kumar Das, Vehicle Supervisor with effect from the 8th June 2009 is legal and/or justified ? If not, what relief Shri Das is entitled to ?”

2. The Second Party in his claim statement has averred that he had been working as a Vehicle Supervisor in the establishment of the First Party with effect from the 25th June 2006. Initially, he was getting Salary of Rs. 2,000 per month and subsequently, it was raised to 2,500. The First Party/Management used to deduct from his salary contribution towards Employees' Provident Fund. He had been working continuously for more than one year without having ever been charged for any misconduct. However, all on a sudden on the 8th June 2009, the First Party denied him employment which amounts to retrenchment without compliance of Section 25-F of the Act. Therefore, the retrenchment being illegal, he should be reinstated in service with full back wages and other consequential benefits.

3. According to the First Party, it is a non-profitable social service oriented charitable organisation. So, it is not an 'industry' as defined under the Act. It does not employ any person on salary/wage basis. Persons interested to serve the beneficiaries of the First Party Organisation join in the Organisation out of their own volition and leave it at their sweet will. The Organisation in order to motivate such Volunteers makes some payment as 'honorarium'. So far the Second Party is concerned, he was one such Volunteers who joined in the Organisation to do social service. So, he is not a 'workman' as defined under the Act.

4. On the basis of the pleadings of the parties, the following issues have been settled:—

ISSUES

- (1) Whether any employer-employee relationship exists between the Management and the Workman ?
- (2) Whether the First Party's Organisation is an Industry ?
- (3) Whether the action of the Management of M/s Akshaya Patra Foundation, Puri in terminating the services of Shri Sarat Kumar Das, Vehicle Supervisor with effect from the 8th June 2009 is legal and/or justified ?
- (4) If not, what relief Shri Das is entitled to?

5. Each side has examined one witness. The Second Party himself is examined as W. W. No. 1. The Manager of the First Party is examined as M. W. No. 1. On behalf of the Second Party documents have been marked as Exts. 1 to 6/1. However, on behalf of the First Party, no document has been exhibited.

FINDINGS

6. *Issue No. 1 & 2*—It is not in dispute that the First Party is a Charitable Institution. But, all Charitable Institutions are not excluded from the definition of the word “industry” as explained by the Hon’ble Supreme Court in Bangalore Water Supply & Sewerage Board *Vrs.* A. Rajappa, AIR 1978(SC) 548. In the aforesaid case, their Lordships have observed that in any profession, club, educational institution, co-operative, research institute, charitable projects and other kindred adventure where systematic activity organised by co-operation between the employer and employee for production and/or distribution of goods and/or services calculated to satisfy human wants and wishes is undertaken, it comes within the definition of the word “industry”. In respect of Charitable institutions, it is further observed that if they fulfil the aforesaid tests they cannot be exempted from the definition “industry”. The Hon’ble Supreme Court have further held that the following two categories of Charitable Institutions would fall within the definition of “industry”:—

- “(i) where the enterprise, like any other, yields profits but they are siphoned off for altruistic object ;
- (ii) where the institution makes no profit but hires the services of employees in other like businesses but the goods and services which are the out put, are made available at low cost or no cost to the indigent needy who are priced out of the market.”

The status of the First Party is to be considered in the touch stone of the observations made by the Hon’ble Supreme Court.

7. It is the case of the First Party that its main object is to provide free mid-day meals for the poor School students. In his evidence, M. W. No. 1 has stated that as many as 175 persons work for the Institution either directly engaged by it or through contractors. He has further stated that some persons work in supervisory capacity. He has further stated that persons engaged in supervisory capacity are appointed by the Chief of the Branch at Puri and all other persons are engaged by the Manager of the Branch. He has further stated that the Head Office of the First Party Branch is at Bangalore. The First Party has not produced any other materials in support of its contention that it is not an “industry”. Even the Workman’s plea that an amount is deducted regularly from his salary and deposited in his E. P. F. Account is not specifically denied by the First Party.

From the materials available on record, it is thus gathered that the main activity of the First party is to provide free mid-day meals to the poor School students. To carry out such activity, the Institution engages as many as 175 persons either directly or through contractors. To supervise their work, some Supervisors are also engaged by it. Persons who are engaged to carry out the activity are paid certain amount which the First Party terms as ‘honorarium’.

The strength of persons engaged by the First Party to carry out its activity is quite strong and it cannot be said that the First Party engages some stray servants on hire for manual and technical work. The Second Party claims that he used to get salary. But, according to the First Party, honorarium was paid to him. In absence of materials it is difficult to conclude as to whether the monthly amount that used to be paid to the Second party was either honorarium or salary. But, it is quite clear that persons engaged by the First party to render services for the Institution used to be paid in lieu of their work. It is not disputed that certain amount used to be deducted from the Second Party’s salary/honorarium as contribution to E. P. F.. The Management has failed to establish that its charitable activities are performed by persons who work not because they are paid wages

but because they share the passion for the cause and derive job satisfaction from their contribution. In Bangalore Water Supply & Sewerage Board's Case (*supra*), it is observed that Institutions which are called to be Philanthropic entities are industries, if they involve co-operation between employer and employee to produce and/or supply goods and/or services. In the case at hand, the materials available indicate that the social service activities of the First Party are being undertaken with co-operation of a large number of paid workers. Therefore, even if it is not having any profit motive, it is deemed to be an "industry" as defined under the Act.

8. The Second Party was employed in the establishment of the First Party for either hire or reward. The Second Party admits that he was engaged as a Vehicle Supervisor. He does not take the stand that though the nomenclature of his designation was Vehicle Supervisor, the nature of duties attached to that post was not supervisory but it was mainly manual or clerical. In the absence of such pleadings, it is to be presumed that he was employed to do supervisory work. He admits that as on the date of his disengagement, he used to get monthly salary of Rs. 2,500. So, his case does not come within Clause (iv) of Section 2(s) of the Act according to which a person even if employed in a supervisory capacity can be said to be a 'workman' provided he draws wages not exceeding Rs. 1,600 per mensem. Of course, this limit has been raised to Rs. 10,000 per mensem by virtue of the new amendment of the Act vide Act No. 24 of 2010. But, since that amendment comes into force with effect from the 15th September 2010 whereas the Second Party was removed from employment with effect from the 8th June 2009, he cannot get the benefit of the Amendment Act.

Thus, this Tribunal concludes that the First Party is an "industry" and the Second Party was its employee but being employed in a supervisory capacity drawing salary exceeding Rs. 1,600 per mensem, the latter is not a 'workman' as defined under the Act.

9. *Issue No. 3 & 4*—Since it is held that the Second Party is not a 'workman' the termination of his services, even if not in compliance with the mandatory provisions of Section 25-F of the Act, cannot be said to be either illegal or unjustified. Consequently, he is not entitled to any relief.

The reference is thus answered against the Second Party

Dictated and corrected by me.

RAGHUBIR DASH

18-08-2012

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

18-08-2012

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government