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**LABOUR & E.S.I. DEPARTMENT**

NOTIFICATION

The 7th December 2012

No. 10116—li-1(J)-35/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th September 2012 in I. D. Case No. 1/2009 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of SOUTHCO, Berhampur represented through the Managing Director (Chief Executive Officer), Southern Electrical Supply Company Ltd., Berhampur/The Executive Engineer, Electrical Division, SOUTHCO, Digapahandi, Aska/Chatrapur and their Workmen represented through SOUTHCO Meter Reader Sangha, Aska, 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  
CIRCUIT COURT AT BERHAMPUR

INDUSTRIAL DISPUTE CASE No. 1 OF 2009

Dated the 26th September 2012

*Present :*

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

*Between :*

1. The Executive Engineer,  
Electrical Division (SOUTHCO), Aska,  
At/P.O. Aska, Dist. Ganjam. . . First Party—Managements
2. The Executive Engineer,  
G.N.E.D. (SOUTHCO), Chatrapur,  
At/P.O. Chatrapur,  
Dist. Ganjam.

3. The Executive Engineer,  
G.S.E.D. (SOUTHCO), Digapahandi,  
At/P.O. Digapahandi,  
Dist. Ganjam.

*Versus*

Their Workmen represented . . . Second Party—Workmen  
through SOUTHCO Meter Reader  
Sangha, At/P.O. Khambeswaripatna,  
Dist. Ganjam.

*Appearances :*

Shri R. N. Acharya, . . . For the First Party—Managements  
High Court Advocate, Cuttack.

Shri Prafulla Rao, President of . . . For the Second Party—Workmen  
SOUTHCO Meter Reader Sangha,  
Aska.

Date of Argument . . . 1-9-2012

Date of Award . . . 26-9-2012

AWARD

The matter arises out of a reference made by the State Government in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5), read with Section 10(1) of the I. D. Act, 1947 (14 of 1947) vide their Memo. No. 2843 (4)-LE., dated the 18th March 2009 for the adjudication of the following disputes :

SCHEDULE

- (i) "Whether the termination of 56 Meter Readers as listed in Schedule-1 of the C.F.R. by the management of Southern Electricity Supply Company of Odisha Ltd., Berhampur and Executive Engineer, Aska Electrical Division, Aska, Executive Engineer, G.N.E.D., Chatrapur and Executive Engineer, G.S.E.D., Digapahandi are legal and/or justified ? If not, to what relief the workman is entitled ?"
- (ii) "Whether demand of SOUTHCO Meter Reader Sangha, At/P.O. Khambeswaripatna, Aska, Ganjam for regularisation of services of six Meter Reader by the management of Southern Electricity Supply Company of Odisha Ltd., Berhampur and Executive Engineer, Aska Electrical Division, Aska, Executive Engineer, G.N.E.D., Chatrapur and Executive Engineer, G.S.E.D., Digapahandi as per list in Schedule-II of the report of the C.O.-cum-District Labour Officer, Berhampur is legal and/or justified ?"

The workman (second party) have filed this case with prayer for their reinstatement in service with back wages.

2. Briefly stated the workmen's case runs thus :—

That, initially the workmen worked under GRIDCO continuously and without any break as Contractual Meter Reader. As per an agreement, dated the 24th May 1999 between the GRIDCO

and SOUTHCO, the power distribution licence of GRIDCO was given to SOUTHCO represented by the Chief Executive Officers at Berhampur, district Ganjam. The first party management, i.e. the opposite parties are the sub-ordinates of SOUTHCO. After transfer of power distribution licence to SOUTHCO by the GRIDCO, the present workmen also continued to do the work of meter reading, maintenance, collection of bills and distribution of bill papers under the Executive Engineer of Aska Electrical Division, Chatrapur Division and Digapahandi Division under the SOUTHCO. It is pleaded that, the workmen are having required serving qualifications, service certificates and officer orders with them and continuously worked under the SOUTHCO without any break to the satisfaction of their authorities but without any reason, the workmen were refused to do the work. It is specifically pleaded that though the workmen were doing the work of meter reading since about a decade in spite of changes of power supply from the hands of O.S.E.B. to GRIDCO and from GRIDCO to SOUTHCO but they have not been regularised in their services. Rather they have been disengaged without following the mandatory provisions of Section 25-F of the I. D. Act. So they approached the D.L.O., Berhampur to get relief but the conciliation made by the D.L.O., Berhampur failed and ultimately failure report was submitted to the Government and the Government has referred this case for adjudication.

3. The managements (three O.Ps.) have contested the case by filing separate written statements. All of them have pleaded that there was no employer and employee relationship between the first party managements and the second party workmen for which this case is not maintainable and the workmen have no cause of action to file the case. It is averred that, due to increase in work load, the management decided to engage some outsiders for meter reading job on contract basis and accordingly the workmen were engaged on contractual basis at the rate fixed by the O.Ps. (managements). According to the management, the workmen have neither been recruited against any sanction posts nor through due recruitment procedure of the Company and their engagement is *ipso facto* contractual on rate contract basis and different rates was fixed for meter's installed in rural and urban areas. They have specifically averred that the workmen are not paid wages or salary for the contract job of meter reading and their engagement being on contract basis, they are not required to put their attendance nor work within any schedule time. According to the management, the workmen were not required to work under the control and supervision of the management and they attended their work at their own time for which by know stretch of imagination, Meter Readers can be said to be workmen under Section 2(s) of the I. D. Act.

According to the management, when it experienced difficulty to assess or check the bill payable to each Meter Reader basing on the meter reading taken by those persons, their contract of service was discontinued. It is further averred that, since most of the Meter Readers did not have any technical qualification in electrical trade, they could not also give the correct position of the meter installed in the consumers' house and by such meter reading system, the Company sustained huge loss and faced lot of consumer dispute for which the Company decided to take up the meter reading work by engaging existing employees having technical skill or I.T.I. qualification or by engaging an outsourcing agency. It is also averred that, the workmen have not worked for 240 days in any financial years. In the above premises the management has prayed for dismissal of the case with costs on the grounds that the claimants are not workmen under Section 2(s) of the I. D. Act for which Section 25-F of the said Act is not applicable to them.

4. In order to substantiate the case, Shri Manjaya Kumar Patnaik has been examined as workman witness No. 1.

27 numbers of documents have been proved as Exts. from workmen's side. Ext. 1 is the xerox copy of L. No. 486, dated the 22nd December 2005 and Ext. 2 is the xerox copy of

L. No. 6205(4), dated the 11th November 2004. Ext. 3 is the meter reading statement and Ext. 4 is the xerox copy of pay bill of W.W. No. 1 from 12/1999 to 1/2000. Ext. 5 is the xerox copy of A/c. of Roll of W.W. No. 1 and Ext. 6 is the xerox copy of cheques. Ext. 7 is the xerox copy of L. No. 100, dated the 31st January 2007 of S.D.O., Polasora and Ext. 8 is the xerox copy of L. No. 630, dated the 20th February 2008 of the Executive Engineer, Aska. Ext. 9 is the xerox copy of L. No. 466, dated the 9th February 2009 of the Executive Engineer, Aska and Ext. 10 is the xerox copy of L. No. 5859(2), dated the 2nd September 2009 of the Executive Engineer, Aska. Ext. 11 is the xerox copy of L. No. 71, dated the 24th January 2008 of S.D.O., Polasora. Ext. 12 is the xerox copy of wage bills of W.W. No. 1 from April 2001 to May 2007. Ext. 13 is the Experience Certificate issued by S.D.O. and Ext. 13/A is the Experience Certificate issue by the Junior Engineer. Ext. 14 is the xerox copy of L. No. 0173, dated the 13th January 2006 of J.E., Polasora. Ext. 15 is the xerox copy of Circular of O.S.E.B. and Ext. 16 is the register of meter readings and bill distribution. Ext. 17 is the xerox copy of pay bill of Chatrapur Division and Ext. 18 is the xerox copy of Orders of S.D.O., Chatrapur. Ext. 19 is the xerox copy of Identity Card of Shri B. Hota. Ext. 20 is the xerox copy of hand receipts. Ext. 21 is the xerox copy of Experience Certificate and Ext. 22 is the xerox copy of L. No. 6756, dated the 28th September 2001 of the Executive Engineer, Bhanjanagar. Ext. 23 is the xerox copy of cheques of P. K. Muni and Ext. 24 is the xerox copy of Office Order. Ext. 25 is the xerox copy of pay bills of P. K. Muni and Ext. 26 is the xerox copy abstract of meter reading. Ext. 27 is the xerox copy of retrenchment Order No. 9226(21), dated the 1st May 2005.

In support of their plea, the management has examined three (3) witnesses in total. M.W. No. 1 R. K. Sethi is the Executive Engineer of Digapahandi Electrical Subdivision and M.W. No. 2 Shri Santos Ku. Panda is the Executive Engineer of SOUTHCO, Ganjam North Electrical Division. M.W. No. 3 Shri P. Ch. Padhy is the S.D.O., Electrical, SOUTHCO of Digapahandi.

Four (4) numbers of documents have been proved as Exts. from the management side. Ext. A is the xerox copy of L. No. 3750(9), dated the 13th July 1999 of M.D. addressed to all the Executive Engineers under SOUTHCO. Ext. B is the xerox copy of L. No. 7728, dated the 28th November 2006 of Executive Engineer addressed to the Conciliation Officer-*cum*-D.L.O., Berhampur. Ext. C is the xerox copy of meter reading and distribution for the period from 12/1999 to 1/2000. Ext. D is the xerox copy of meter reading and bill distribution for the period from 4/2000 to 5/2000.

The reference is on the following two (2) points :—

- (i) "Whether the termination of services of 56 Meter Readers as listed in Schedule-I of the C.F.R. by the management of Southern Electricity Supply Company of Odisha Ltd., Berhampur and the Executive Engineer, Aska Electrical Division, Aska, the Executive Engineer, G.N.E.D., Chatrapur and the Executive Engineer, G.S.E.D., Digapahandi are legal and/or justified ? If not, to what relief the workman is entitled ?"
- (ii) "Whether the demand of SOUTHCO Meter Reader Sangha, At/P.O. Khambeswaripatna, Aska, Ganjam for regularisation of services of six Meter Readers by the management of Southern Electricity Supply Company of Odisha Ltd., Berhampur and the Executive Engineer, Aska Electrical Division, Aska, the Executive Engineer, G.N.E.D., Chatrapur and the Executive Engineer, G.S.E.D., Digapahandi as per list in Schedule-II of the report of the C.O.-*cum*-District Labour Officer, Berhampur is legal and/or justified ?"

**Reference Nos. (i) and (ii) :**

The mere question in this case is whether the second-party members are workmen under the managements or not.

Admittedly the workmen were given job contract of meter reading by the management. They were getting payment as per the contract. Initially the workmen worked under GRIDCO. From the GRIDCO, the present management (SOUTHCO) took licence of power distribution in the year 1997 and the workmen continued in their contract job under the management without any break in their job of contract meter reading. Since these facts are admitted, scrutinising or perusing evidence elaborately in that regard is not necessary.

It is alleged by the workmen (second party members) that they have been unlawfully removed from their job without following the mandatory provision of Section 25-F of the I. D. Act although they were working under the management. In order to support their contention that they were workmen under the management as per Section 2(s) of the I.D. Act, they have relied on the decision of the Hon'ble Supreme Court reported in "AIR-211-S.C.-2532, Devinder Singh V. Municipal Council, Sanaur." The Para. Nos. 13, 14 and 15 of the above said decision are very crucial in nature and very important as well as helpful for deciding the present case for which those paras. are extracted below :—

'13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act.

14. It is apposite to observe that the definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

15. Whenever an employer challenges the maintainability of industrial dispute on the ground that the employee is not a workman within the meaning of Section 2(s) of the Act, what the Labour Court/Industrial Tribunal is required to consider is whether the person is employed in an industry for hire or reward for doing manual, unskilled, skilled operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of workman.'

The learned counsel for the management submitted that the decision of the Hon'ble Supreme Court relied on by the workman is not applicable to the present case in view of different facts and circumstances appearing in this case.

In the above case in Para. 14 it has been held that :

"The one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

From the above it is clear that a contractual job worker appointed on fixed wages or doing work for fixed hours can be a workman. In the instant case, no fixed wages or fixed working hours was there.

Moreover it is found that there was no employer and employee relationship between the parties. For establishment of employer and employee relationship, the following decisions are referred to :—

- (1) In the decision reported in "Ram Singh and others V. Union Territory, Chandigarh and other, 2004, LLR 47 : 2003 (99) FLR 1064." It has been held that :

In determining the relationship of employer and employee, "control" is one of the important tests but is not to be taken as sole test.

- (2) In the decision reported in "Nilgiri Co-op. Mkt. Society Ltd. V. State of Tamil Nadu and others 2004 LLR-351." It has been held that :

For determination of concept of employment the essential ingredients are :—

- (i) Employer—one who works for another for hire and
- (ii) Employee—one who works for another for hire and
- (iii) Contract of employment the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision :

In the case at hand, there is no cogent evidence to come to a conclusion that :—

- (i) Master-servant relationship existed between the parties;
- (ii) The employer had control over the workman (second party members);
- (iii) There was fixed working hours and they were getting fixed wages;
- (iv) The service of the workman were controlled by standing order or any law/rule of the Company; and
- (v) The workmen were availing leave with permission of the management.

Rather P.W. No. 1 has admitted that, C.L., E.L. or Medical Leave was not applicable to them.

There was no control of the management (first party) on the workman (second party) as to their coming to work or going from work or number of days attending the work.

All the above circumstances, combined together go to show that there existed no employer and employee relationship between the parties. Hence they cannot be termed as workmen under the management. The management has relied on a decision reported in "2007-II-LLJ Panjab State Electricity Board and another Vrs. Sudesh Kumar Puri" wherein the Hon'ble Supreme Court have held that :—

"Engagement of Meter Reader under agreement and payment based on per meter reading will not be a regular employment and hence disengagement will not attract retrenchment."

I have thoroughly scrutinised the oral as well as documentary evidence and other case laws adduced from both the sides but those do not improve the case of the claimants. In view of the

findings already arrived at above. Therefore both the issues (reference) are answered against the workman (second party). Hence, ordered :

ORDER

The reference is answered on contest. The case is dismissed against the workmen. The workmen are not entitled to get any relief in this case. No orders as to cost.

Dictated and corrected by me.

D. C. MISHRA  
26-9-2012  
Presiding Officer  
Labour Court  
Jeypore

D. C. MISHRA  
26-9-2012  
Presiding Officer  
Labour Court  
Jeypore

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By order of the Governor  
J. DALANAYAK  
Under-Secretary to Government