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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 10th December 2012

No. 10132—li/1(J)-28/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th April 2012 in Industrial Dispute Case No. 4 of 2008 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of the Charged Officer, Ganjam-Koraput Settlement, Phulbani. And their workman Shri Brushav Mukhi, ex Sweeper 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. 4 OF 2008

Dated the 30th April 2012

Present :

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

Between :

The Charge Officer,
Ganjam-Koraput, Major
Settlement, Phulbani,
At/P.O. Phulbani,
Dist. Kandhamal.

.. First Party—Management

Versus

Its Workman,
Shri Brushav Mukhi,
S/o Debarchan Mukhi,
At Penjisahi, P.O. Phulbani,
Dist. Kandhamal.

.. Second Party—Workman

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

Appearances :

Self	..	For the Management
Shri K. Ch. Mishra, Advocate, Berhampur	..	For the Workman
27-4-2012	..	Date of Argument
30-4-2012	..	Date of Award

A W A R D

The Government of Odisha in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Memo. No. 3853 (5) L.E., dated the 29th March 2008 for adjudication of the following disputes :

SCHEDULE

“Whether the action of the Ganjam-Koraput, Major Settlement, Phulbani in terminating the services of Shri Brushav Mukhi, Sweeper with effect from the 1st October 2004 is legal and/or justified ? If not, to what relief the workman Shri Mukhi is entitled ?”

2. Briefly stated the case of the workman (second party) runs thus :—

That the mother of the workman was working as a Sweeper under the Charge Officer, Ganjam-Koraput, Major Settlement first party management at Phulbani and quit her service due to old age. The post of Charge Officer has been redesignated as the Additional Sub-Collector, Kandhamal-Phulbani. After that, the workman requested the first party management to appoint him as he is a poor landless and Schedule Caste person. Considering the representation of the workman, the management appointed him on a monthly salary of Rs. 578- D.A., and the workman continued in his service from 1-7-1991 to 30-9-2004 without any break. It is alleged that though the workman was discharging his duties to the utmost satisfaction of the authority but without any rhyme or reason, he was not allowed to work from 1-10-2004. While retrenching the workman, the mandatory provision of Section 25-F have not been applied. So the workman filed a compliant before the Labour Authority, Phulbani District who conducted enquiry and submitted the failure report. Hence the case.

3. After receiving the reference from the Government several notices were issued to the first party management to participate in the hearing but the management neither appeared nor participated in the case for which the management was set *ex parte* and *ex parte* award was passed on 31-3-2009. Against the *ex parte* award, the management preferred W.P. (C) No. 768 of 2010 before the Hon'ble High Court. The Hon'ble High Court set aside the *ex parte* award and directed for fresh hearing after issuing notice to both the parties. The management appeared, filed W.S. and

has contested the case. According to the first party-management, the workman was erroneously engaged as temporary Passi Mohurior from 1-7-1991 and retrenched on 4-8-1991 but he was never given any appointment in true sense of the terms. The management has further averred that, from 4-8-1991 the second party workman worked as a Sweeper for 2 to 3 hours on the working days as part time casual worker but due to audit objection the workman was not allowed to work from 1-10-2004. The management has specifically averred that, it is not an industry and the relationship of employer and employee does not exist in this case for which this industrial dispute case is not maintainable. In the above premises the management has prayed for dismissal of the case.

4. In order to substantiate the case, the second party workman has examined himself as W.W. No.1. He has proved the certified copy of the W.P. (C) No. 768 of 2010 as Ext.1.

In support of its plea, the management has examined Rudraprasana Sahu, Additional Sub-Collector, Phulbani as M.W. No.1. Xerox copy of the appointment order of the workman has been proved as Ext. A and onthenticated xerox copy of note sheet, dated 19-4-2012 has been proved as Ext.B from management side.

5. Ext.A proved from management side shows that, Shri Brushav Mukhi (workman) was appointed as a temporary Passi Mohurior on a monthly pay of Rs. 578 with usual D.P. and D.A. and posted to Charge Office, Phulbani. The appointment was purely temporary and terminable at any time without prior notice or assigning any reason thereon. The Charge Officer, Phulbani was a Government Office, as such the office order of the first party management vide Ext. A is a Government order. When the workman was retrenched on 3-8-1991, he could have approached the proper authority (State Administrative Tribunal) for appropriate relief but he did not do so and remained silent.

5 (i). The workman (W.W. No.1) claims that he continued in service from 1-7-1991 to 30-9-2004 on the strength of appointment order vide Ext. A. On the other hand the management (Additional Sub-Collector), Phulbani (M.W. No.1) has deposed that the workman performed his duties from 1-7-1991 to 3-8-1991 (34 days) on the strength of Ext. A but thereafter he was retrenched and engaged as a temporary casual labourer from 4-8-1991 to 30-9-2004. Ext.B proved from management side shows that the workman has received wages from 4-8-1991 at the rate of Rs.271 which was subsequently enhanced to Rs. 300 per month from October 1991 and to Rs. 360 from May 1993 likewise. The above evidence of the management witness No.1 and Ext.B have gone un-challenged. If the workman was appointed at a monthly salary of Rs.578 per month with usual D.A. and D.P., why he received Rs. 271 per month from 4-8-1991, Rs. 300 per month from October 1991 and Rs. 360 per month from May 1993. When the unchallenged oral evidence of management witness No.1 coupled with Ext.B is analysed, this Tribunal is driven to conclusion that the workman was not continuing in service on the strength of Ext. A, but he was temporarily engaged from 4-8-1991 as a part time casual labourer on daily wage basis. So the plea of the workman that he was continuing in service from 1-7-1991 to 30-9-2004 on the strength of office order (Ext.A) is not worthy of acceptance.

5(ii). Admittedly from 4-8-1991 to 30-9-2004, the workman was engaged as a temporary part time casual labourer with breaks on daily wage basis. The first party management relied on a decision reported in “Director, Food and Supplies, Punjab-Vrs.-Gurnath Singh, LLJ-II-207 page 813” wherein it has been held that award on reference cannot be sustained in the absence of adjudication of jurisdictional fact or, viz. appealant is industry or not.

Therefore for ends of justice and for proper decision, first it must be decided whether the first party management is an industry or not. Also it is to be seen whether there is employer-employee relationship between the parties or not.

As per Industrial Disputes Act, Industry means :—

- (i) “Industry” means any systematic activity carried on by co-operation between an employer and his workman (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature) whether or not :—
 - (i) any capital has been invested for the purpose of carrying on such activity or;
 - (ii) such activity is carried on with a motive to make any gain or profit and includes.
- (a) any activity of the Dock Labour Board established under Section 5-A of the Dock workers (Regulation of Employment) Act, 1948 (9 of 1948),
- (b) any activity relating to the promotion of sales or business or both carried on by an establishment.

5. (iii) The post of Charge Officer is a Government post and it is not working for gain or profit but it is doing the sovereign function of the State. So, as per the above definition, the first party-management cannot be considered to be an Industry. In the decisions reported in “Executive Engineer (State of Karnatak)- Vrs.- K.Sama Setty and others, 1997, LLR-889” it has been held that :—

“Industry and reference—Respondent was appointed on daily wages in a project. He was discharged on closure of project. State is not an Industry under the I.D. Act.”

From the definition of employer and workman (employee) given in Section 2 of the I.D. Act, the first party management cannot be held as an employer. Thus the employer-employee relationship does not exist in this case. When the meaning of “Industry”, “employer”, ‘employee’ and “Industrial Disputes” defined in the I.D. Act coupled with the oral and documentary evidence of both parties is

analysed, this Tribunal is driven to irresistible conclusion that the first party management is not an Industry and there is no employer and employee relationship between the parties for which this industrial dispute is not maintainable. Hence ordered.

ORDER

The reference is answered on contest against the second party workman. The workman's case is dismissed as not maintainable. The workman will not get any relief in this case.

Dictated and corrected by me.

D. C. MISHRA
30-4-2012
Presiding Officer
Labour Court, Jeypore

D. C. MISHRA
30-4-2012
Presiding Officer
Labour Court, Jeypore

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