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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 10th December 2012

No. 10144—li-1 (J)-38/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th September 2012 in I. D. Case No. 6 of 2009 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of Executive Engineer (D. & G.) Division No. I, Berhampur and its Workmen Shri Ganeswar Samal and 11 others, ex-NMRs of Drilling & Grauting Subdivision, Khariar 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. 6 OF 2009

Dated the 25th 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,
Drilling & Grauting Division No. I,
Berhampur, At/P.O. Berhampur,
Dist. Ganjam. .. First Party—Management

And

1. Shri Ganeswar Samal,
S/o Shri Sura Samal,
At/P.O. Rengali, Dist. Angul. .. Second Party—Workmen
2. Shri Bhaktabandhu Dwibedi,
S/o Narotham Dwibedi,
At/P.O. Sukinda, Dist. Jajpur.

3. Shri Gunadhar Barik,
S/o Bichananda Barik,
At Kaligapal, Via Rengasol,
Dist. Dhenkanal.
4. Shri Koda Sabar, S/o Damiraj Sabar,
At Kuligaon, P.O. Badamaheswar,
Via Khariar, Dist. Nuapada.
5. Shri Duryodhan Mahanta, S/o Paramananda Mahanta,
At Jujapati, P.O. Haldharpur,
Via Narayanpur, Dist. Keonjhar.
6. Shri Durga Prasad Singh Babu, S/o Loknath Singh Babu,
At Jajam, P.O. Badi, Via. Khariar, Dist. Nuapada.
7. Shri Kalicharan Oram, S/o Mala Oram,
At Kunjhari Dam Site, P.O. Raghunathpur,
Dist. Keonjhar.
8. Shri Nimunath Sabar, S/o Tunu Sabar,
At Kuduagaon, P.O. Badamaheswar,
Via Khariar, Dist. Nuapada.
9. Shri Chittaranjan Pradhan, S/o Banchanidhi Pradhan,
At Potara, Dist. Nuapada.
10. Shri Niranjan Pradhan, S/o Banchanidhi Pradhan,
At Potara, Dist. Nuapada.
11. Shri Dillip Sethi, S/o Bhukar Sethi,
At/ P.O. Bharmabandha, Via Potri,
Dist. Nuapada.
12. Shri Anup Singh Majhi, S/o Late Munda Munda,
At/ P.O. Mota, Nuapada,
Dist. Nuapada.

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

Appearances :

Self	.. For the Management
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Shri Trinath Singh Lal, Shri K. C. Mishra and Shri B. Padhy, Advocate, Joypore.	.. For the Workmen
Date of Argument	.. 12-9-2012
Date of Award	.. 25-9-2012

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 Industrial

Disputes Act, 1947 vide their Memo. No. 3607 (5)-LE., dated the 15th April 2009 for adjudication of the following disputes :—

SCHEDULE

“Whether the termination of Services of Shri Ganeswar Samal, Bhaktabandhu Dwibedi, Gunadhar Barik, Koda Sabar, Duryodhan Mahanta, Nimunath Sabar, Kalicharan Oram, Durga Prasad Singh, Chittaranjan Pradhan, Niranjan Pradhan, Dillip Sethi and Anup Singh Majhi, N. M. R. Workers with effect from the 10th April 2007 by the Management of Executive Engineer, Drilling & Grauting Division, Berhampur is legal and/or justified ? If not, to what relief they are entitled ?”

2. The workmen (second party) have filed this case with prayer for their reinstatement in service with back wages. Briefly stated the case of the workmen (second party) runs thus :—

That all the aforesaid workmen joined as N. M. Rs. under the Executive Engineer, Drilling and Grauting Division No. I, Berhampur, Ganjam and continued in work for 15 to 20 years. It is averred that the Government decided vide L. No. 377/8, dated the 11th February 2006 to retrench 114 N.M.Rs. including the workmen as surplus staff. It is pleaded that, in the above said Letter (Order) the Government had directed to follow the principles of “Last come first go” while making retrenchment but without following the above direction, principles of natural justice and mandatory provisions of Section 25-G of I. D. Act, the Executive Engineer, Drilling and Grauting Division No. I, Berhampur, Ganjam (O.P. 1), retrenched the present workmen arbitrarily, illegally and with ulterior motive and allowed the Junior N. M. Rs. who were his closeman to continue in service. According to the workmen, they repeatedly approached to the authorities to allow them to continue in service but in vain for which they approached the District Labour Officer, Koraput for relief. The D.L.Os. of Koraput and Nuapada district enquired in to the matter and ultimately they have submitted a failure report. So the Government has referred this case for adjudication. Hence, the trial.

3. The first party management has contested the case by filing W.S. It is pleaded by the first party management that as per Government decision, 114 numbers of N.M.Rs. were to be retrenched but due to necessity, again it was decided to allow 68 N. M.Rs. to continue in work. According to the first party management, while making the retrenchment and allowing 68 N.M.Rs to continue in work, it was decided that those N.M.Rs. who had rendered continued and uninterrupted works to the department shall be taken into consideration and only those selected N.M.Rs. were allowed to continue in work. But the present workmen were regularly, unauthorisedly and willfully neglecting in their services and engaging themselves elsewhere for which prejudicious was caused to the department in its work and despite repeated oral and written notice, the present workmen kept quite for such long period of absence from their duties for which those were not considered fit to continue in service. According to the management for the interest of the department, the present workmen have been rightly retrenched and the mandatory provisions of Section 25-F of the I. D. Act has been duly complied for which the present workmen have no *locus standi* to file the case or get any relief in this case. In the above premisses prayer has been made for dismissal of the case with costs on the grounds that the case is not maintainable and there is no cause of action to file the case and it is barred by limitation.

4. As per the reference of the Government, the following issues have been framed for adjudications :—

ISSUES

- (i) “Whether the termination of Shri Ganeswar Samal, Bhaktabandhu Dwibedi, Gunadhar Barik, Koda Sabar, Duryodhan Mahanta, Nimunath Sabar, Kalicharan Oram, Durga Prasad Sing Babu, Chittaranjan Pradhan Niranjn Pradhan, Dillip Sethi and Anup Singh Majhi, N.M.R. workers with effect from the 10th April 2007 by the management of Executive Engineer, Drilling and Grauting Division, Berhampur is legal and or justified ?
- (ii) If not, to what relief they are entitled ?”

In order to substantiate the case, 11 numbers of workmen have examined themselves as Witness W.W. No. 1, Shri Gunadhar Barik, W.W. No. 2, Shri Durga Prasad Sing Babu, W.W. No. 3, Shri Ganeswar Samal, W.W. No. 4, Shri Bhaktabandhu Dwibedi, W.W. No. 5, Shri Kalicharan Oram, W.W. No. 6, Shri Duryodhan Mahanta, W.W. No. 7, Shri Dillip Sethi, W.W. 8, Shri Niranjn Pradhan, W.W. No. 9, Shri Nimunath Sabar, W.W. No. 10, Shri Chittaranjan Pradhan and W.W. No. 11, Shri Anup Singh Majhi are the workmen in this case.

27 numbers of documents have been proved from workmen side. The xerox copy of L. No. 37717/W.R., dated the 11th December 2006 of Water Resources department is marked Ext. 1 and copy of Office Order No. 1508, Dt. 10-4-2007 of the management is marked Ext. 2. Ext. 3 is the xerox copy of the list of the retrenched N. M. Rs. and Ext. 4 is the xerox copy of certificate of the Junior Engineer, dated 8-4-2007 issued to the workmen and Ext. 5 is the xerox copy of certificate of Junior Engineer, Dt. 31-3-2007 issued to the workmen. Ext. 6 is the complaint of the present workmen addressed to the Engineer-in-Chief, W.R. Department, Odisha, Bhubaneswar and Ext. 7 is the xerox copy of the complaint of the workmen addressed to the Chief Engineer (M) E.I.C. (Odisha , Bhubaneswar). Ext. 8 is the copy of Statement of representation of Shri Gunadhar Barik and Ext. 9 is the copy of Statement of retrenchment benefit of Shri Durga Prasad Singh Babu, Ext. 10 is the copy of Office Order No. 1538, Dt. 10-4-2007 and Ext. 11 is the xerox copy of Statement of retrenchment benefits of Shri Ganeswar Samal (workmen). Ext. 12 is the copy of the Office Order No. 1518, Dt. 10-4-2007 of the management. Ext. 13 is the xerox copy of Statement of retrenchment benefits of Shri B. B. Dwibedi and Ext. 14 is the copy of the Office Order No. 1458, Dt. 10-4-2007 of the management. Ext. 15 is the xerox copy of the Statement of retrenchment benefits of Shri K. C. Oram and Ext. 16 is the xerox copy of Statement of retrenchment benefits of Shri B. D. Mahanta, Ext. 17 is the copy of the Office Order No. 1448, Dt. 10-4-2007 of the management and Ext. 18 is the copy of Office Order No. 1598, Dt. 10-4-2007 of the management, Ext. 19 is the xerox copy of the Statement of retrenchment benefits of Shri D. Sethy and Ext. 20 is the copy of the Office Order No. 1558, Dt. 10-4-2007 of the management. Ext. 21 is the copy of retrenchment benefit Statement of Niranjn Pradhan and Ext. 22 is the copy of the Office Order No. 1578, Dt. 10-4-2007 of the management. Ext. 23 is the xerox copy of Statement of retrenchment benefit of Shri Nimunath Sabar. Ext. 24 is the copy of the Office Order No. 1608, Dt. 10-7-2007 of the management and Ext. 25 is the copy of retrenchment benefit Statement of Shri C. R. Pradhan. Ext. 26 is the copy of the Office Order No. 1528, Dt. 10-4-2007 of the management and Ext. 27 is the xerox copy of Statement of retrenchment benefit of Shri A. S. Majhi.

Shri Ashok Kumar Nayak, Executive Engineer, Drilling and Grauting Division No. I, Berhampur, Ganjam has been examined as management witness No. 1. No documents proved from management's side.

Issue Nos. (i) & (ii)— Out of the 12 workmen, 11 workmen have been examined as workmen's witnesses in this case. Each of them have deposed that the N.M.Rs. juniors to them have been retained in service but they have been illegally retrenched. This fact has been clearly admitted by the management witness No. 1 but the witness has taken a plea that the workmen were not available in the locality or in their address to allow them to continue in their job. In the cross examination, the management witness No. 1 has admitted that no registered letter was sent to these workmen nor any other acknowledgment has been kept by the management from the workmen that they were really intimidated by the management to continue in their work. Since some junior Co-N.M.Rs. have been retained in service, therefore the principles of "last come first go" has not been strictly observed as required under Section 25-G of the I. D. Act. Thus illegality has been committed by the management by giving V.R.S. to these workmen and retaining juniors to them.

The management witness has admitted that the present workmen could have been retained in service but they could not be absorbed due to non available in the area. He has admitted that, no registered letter was sent to the workmen nor it was published in the local news papers nor any acknowledgment has been kept from the workmen to the effect that the management had observed the required legal principles meticulously. He has further admitted in the cross examination that it is a fact that the principles of "first come last go" and "last come first go" should be followed while making retrenchment of workmen but in this case that method could not be followed as the present workman along with others were not heard in the area. However such assertion has not been substantiated as stated above.

The management has taken a further plea that the present workmen were remaining absent unauthorisedly for long period for which the management was suffering a lot in discharging the work. But admittedly the management did not initiated any departmental proceeding or enquiry against the workmen for their negligence in duty. Also this fact has not been proved by any cogent evidence.

Therefore, the present workmen are entitled to be reinstated in their work. The workmen have not rendered any service to the management. They have not proved that they were unemployed during the period of their retrenchment. The management witness No. 1 has explained that, the workmen never came to the office and approached to continue in service. Though the workmen have proved Exts. 6 & 7 to justify that they had approached to the authorities but admittedly Exts. 6 & 7 were not sent by Registered post and no acknowledgments of the authorities who received those complaint have been proved. So importance can not be given to Exts. 6 & 7. It was the duty of the workmen to approach the authorities immediately for work but they could not prove this fact. Therefore, back wages benefits is not allowed to the workmen. The workmen have filed

claim statement with many other claims but those are not in the reference for which not answered.
Hence, Order.

ORDER

The reference is answered on contest in favour of the workmen as per the following norms :—

The retrenchment of the workmen with effect from the 10th April 2007 by the management is not legal or justified. They be reinstated in their post within six months hence. No back wages is allowed to the workmen. Also no order is passed as regards costs.

Dictated and corrected by me

D. C. MISHRA
25-9-2012
Presiding Officer
Labour Court, Jeypore
Camp at Berhampur

D. C. MISHRA
25-9-2012
Presiding Officer
Labour Court, Jeypore
Camp at Berhampur

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

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