The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 370 CUTTACK, TUESDAY, MARCH 6, 2012/FALGUNA 16, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd February 2012

No. 1383—IR-ID-108/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th January 2012 in Industrial Dispute Case No. 79 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Managing Director, M/s NEM Engineering Project Pvt. Ltd., Contractor Estt. of M/s Brahmani River Pellet Ltd., Sarangpur, Jajpur and its workman Shri Sunanda Sethi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 79 OF 2010

Dated the 24th January 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of Managing Director, M/s NEM Engineering Projects Pvt. Ltd., Contractor Establishment of M/s Brahmani River Pellet Ltd., Sarangpur, Jajpur. . . First Party—Management

And

Its Workman Shri Sunanda Sethi S/o Ratnakar Sethi, At/P.O. Ghadiali, P.S. Dhusuri, Dist. Bhadrak. . . Second Party—Workman

Appearances :

For the First Party—Management	. .	Sujata Priyadarshini Dash Authorised Representative
For the Second Party—Workman himself	. .	Shri Sunanda Sethi

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 8532—ID-108/2010-LE., dated the 5th October 2010. The Schedule of refecence runs as follows :—

> ''Whether the action of the management of M/s NEM Engineering Projects Pvt. Ltd., in terminating the services of Sunanda Sethi, Fitter with effect from the 25th June 2009 is legal and/or justified ? If not, what relief Shri Sethi is entitled to ?''

2. In the claim statement filed by the second party workman it is stated that the first party is a contractor of M/s Brahmani River Pellets Ltd., Kalinga Nagar, Jajpur that the second party had joined in the establishment of the first party on the 13th December 2007 to work as a Fitter, that he continued as such till the 24th June 2009 and that on the 25th June 2009 he was refused employment which amounts to retrenchment without following the mandatory provisions of the Act. The workman claims for his reinstatement with full back wages.

3. In the written statement the first party management takes the stand that being a contractor under the establishment of Brahmani River Pellets Ltd., the first party undertakes certain jobs of the Principal company on job contract basis. For fulfilment of its contractual obligations the first party engages workers on daily wage basis. The engagement and disengagement of such workers is concomittant with the terms of contract. The second party, in particular, was engaged on daily wage basis to execute the contract work. The second party used to be very much irregular by remaining absent from duty unauthorisedly for which he was put under suspension from the 25th June 2009 to the 24th August 2009. The Workman was supposed to report for duty from the 25th August 2009 but he did not. So, it is a case of voluntary abandonment of job. Apart from that, the workman had not completed 240 days of work during the year preceding the date of termination. Therefore, compliance of Section 25-F of the Act is not necessary. Further more, the first party being a contractor and the second party a contract labourer, this case is not covered by the Act and for that matter the reference is not maintainable.

4. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

(i) "Whether the action of the Management of M/s NEM Engineering Projects Pvt. Ltd. in terminating the services of Sunanda Sethi, Fitter with effect from the 25th June 2009 is legal and/or justified ?

(ii) If not, what relief Shri Sethi is entitled to ?''

5. Both the parties have adduced evidence. The Workman has examined himself as W. W. No. 1 and has exhibited documents marked Exts. 1 to 3 series. On the other hand, the first party has examined its Manager as M.W. No. 1 and proved documents marked Exts. A to C.

FINDINGS

6. *Issue No. (i)*—The pleadings of the parties put their dispute in a narrow compass. The real dispute is the disagreement between the parties as to how the employment of the second party came to an end. Though there is no dispute that the employment of the second party came to an end with effect from the 25th June 2009, it is not admitted by the first party that there was refusal of employment amounting to retrenchment. Therefore, the burden lies on the Management to establish that this is a case of voluntary abandonement of employment.

It is the case of the first party that since the workman was very much irregular in attending his duties he was placed under suspension from the 25th June 2009 to the 24th August 2009 on disciplinary ground and that though he was supposed to join his duties from the 25th August 2009 he failed to do so. But, the management has failed to bring any documentary evidence showing that either any written order of suspension was served on the workman or any notice was served on him stating therein that he was placed under suspension from the 25th June 2009 to the 24th August 2009 and he was to join his duty from the 25th August 2009. It is not pleaded by the first party that for the alleged misconduct any disciplinary proceeding was initiated against the workman. Even no evidence is adduced to show that when the workman failed to report for duty from the 25th August 2009 the management had served any notice on him inviting him to either report for duty or show-cause as to why his name should not be struck off the Roll.

On the 9th October 2009 the workman raised the dispute by filing a complaint before the Labour mechinery. The conciliation failure report which is received alongwith the Schedule of reference reflects that on the 23rd October 2009 the Conciliation Officer tookup an enquiry in presence of both the parties. It further reflects that the management before the Conciliation Officer did not take the plea of voluntary abandoment of job. Rather it had stated before the Conciliation Officer that with effect from the 13th June 2009 the workman had remained absent unauthorisedly. It is not stated before the Conciliation Officer that the workman was put under suspension from the 25th June 2009 to the 24th August 2009. Thus, the plea of abandonment of employment seems to be an after thought. Taking all the facts and circumstances into consideration this Tribunal is of the considered view that the management refused employment to the workman with effect from the 24th June 2009.

7. It is not claimed that the mandatory provisions of Section 25-F of the Act were complied with. Rather, the Management has taken the stand that the workman had not completed 240 days of work during the year preceding the termination. This plea appears to be false. Ext. C is a statement Whowing the number of days the workman had working during the entire period of his employment. Ext. 2 series are the Attendance cards and Ext. 3 series are the payment slips where from the number of days worked by the workman can be worked out. Basing on the figures mentioned in Ext. C it is worked out that during the period of twelve months immediately preceding the alleged date of termination of service the workman was paid for 222 days of work. Ext. C readwith Ext. 2 series and Ext. 3 series reflect that the number of working days reflected in Ext. C does not include

the number of Sundays and other Public holidays. If the Sundays are taken into account then the workman can be said to have complted 240 days of work during the period of twelve months preceding the termination. Therefore, compliance of Section 25-F of the Act in order to bring about a valid retrenchment was very much necessary.

8. It is pleaded that the provisions of the Act are not applicable to the present case in as much as the first party is a Contractor and the second party is a Contract Labourer. There is nothing in the Act excluding an industrial dispute between a contractor and its contract labourers from its purview. Relying on the Judgement in Hira Cement Worker's Union *Vrs*. State of Odisha, reported in 2001 (II) LLJ 545 (Odisha), it is argued on behalf of the first party that the Government could not have made the reference of the dispute to this Tribunal. There is nothing in the cited Judgment of the Hon'ble High Court to support the first party's contention on the maintainability of the present reference. On a perusal of the Judgment of the Hon'ble Court it is found that the Government after consideration of the materials had arrived at a conclusion that there was no case for reference as there did not exist employer-employee relationship between the Principal employer and the contract labourers. That order being under challenge in the reported case the Hon'ble High Court held that the Government had rightly refused to make the reference of the dispute raised by the Worker's Union for adjudication in the Labour Court/Industrial Tribunal. In the case at hand the workman has not claimed any relief against the Principal employer. He raised the dispute as against the contractor and the dispute having been referred to this Tribunal and the parties before this Tribunal being the contract labourer and the contractor, it cannot be said that this Tribunal has no jurisdiction to adjudicate on the dispute.

Apart from all these it is considered relevant to refer to the proviso to Section 2 (a) (ii) of the Act i.e. the definition of ''appropriate Government'', which has been recently inserted by way of Industrial Dispute (Amendment) Act, 2010. The proviso runs as follows :—

> ''provided that in case of a dispute between a contractor and the contract labour employed though the contractor in any industrial establishment where such dispute first arose, the appropriate Government shall be the Central Government or the State Government, as the case may be, which has control over such industrial establishment''.

Form a bare reading of the proviso there can be a valid inference that the Act, does not exclude the dispute between a contractor and the contract labourer from its purview. Therefore, the contention raised by the first party on the maintainability of the reference is found not tanable.

9. Since it is held to be a case of refusal of employment with further finding that compliance of Section 25-F of the Act was necessary, the termination of service which is the subject matter of the present reference is found to be illegal. It is also found to be not justified in as much as the termination has been a effected as a disciplinary measure without preceded by any enquiry.

10. *Issue No. (ii) :*—From the pleadings contained in the claim statement it can be construed that had the workman not abandoned his job the management would have continued him as usual. There is no pleading in the written statement but it is deposed to by M.W. No. 1 during his cross-examination that the contract between the first party and the Principal employer got completed in December, 2010. But, this is not agreed to by the second party. in the absence of any other

materials it is difficult to believe what M.W. No. 1 has stated about the termination of the term of contract between the contractor and the Principal employer. The second party had continuously worked for one and a half years before he was retrenched illegaly. From Ext. 3 series it is ascertained that the second party was getting wages @ Rs. 145 per day, besides over time allowance against over time duty performed by him. There is neither any averment nor any evidence to the effect that the workman is not in gainful employment ever since his retrenchment. Taking all these facts into consideration this Tribunal holds that the second party should be reinstated by the first party and he should be paid 50 % of back wages from the date of his retrenchment till expiry of two moths from the date the Award becoming enforceable and in case of nonimplementation of the Award within the stipulated period, he shall be entitled to get full back wages thereafter till his actual reinstatement. However, if the contract between the Principal employer and the first party has infact been determined and the first party is not undertaking any work in the establishment of the principal employer, then the first party shall be liable to pay a compensation of Rs. 50,000 (Rupees fifty thousand) only to the second party in lieu of reinstatement and back wages

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
24-01-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
24-01-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
T. K. PANDA
Under-Secretary to Government

Printed and published by the Director, Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 2459—193+11