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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 16th March 2012

No. 2052—IR-(ID)-134/2010-L & ESI—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd February 2012 in I. D. Case No. 12 of 2011 & 13 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Central Electricity Supply Utility of Odisha Ltd. and its workman Shri Nrusingha Charan Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 12 OF 2011

INDUSTRIAL DISPUTE CASE No. 13 OF 2011

The 23rd February 2012

Present :

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

Between :

The Managements of—

- (1) The Chief Executive Officer,
M/s Central Electricity Supply
Utility of Odisha, Bhubaneswar. .. First Party—No. 1
- (2) The Senior General Manager,
M/s Central Electricity Supply
Utility of Odisha, Bhubaneswar. .. First Party—No. 2
- (3) Manager (Electrical),
Cuttack Electrical Division,
At/P.O. Jobra, Cuttack, renamed
as CESCO Ltd. .. First Party—No. 3

(4) The Executive Engineer, .. First Party—No. 4
Nayagarh Electrical Division.,
Nayagarh.

And

Shri Nrusingha Charan Patra, Ex-N.M.R., .. Second Party—Workman
At Sujannagar Patna, P.O. Kantapada,
Cuttack.

Appearances :

Shri Nabin Kumar Mishra, .. For the First Party—Nos. 1 to 3
Deputy Manager.

None .. For the First Party—No. 4

Shri N. C. Patra .. The Second Party—Workman himself

AWARD

The two I. D. Cases (I. D. 12/2011 & 13/2011) arising out of two separate references, one in respect of regularisation of service of the second party and the other on his retrenchment, have been tagged together for the purpose of recording of one set of evidence and to dispose of both the cases by a common Award. The Schedule of Reference in I. D. Case No. 12/2011 made by the Government of Odisha in the L. & E. Department vide their Order No. 2486, dated the 15th March 2011 runs as follows :

“Whether the action of the management of CESU Ltd./the Manager (Electrical), Cuttack Electrical Division, Cuttack in terminating the service of Shri Nrusingha Charan Patra, Ex-N.M.R. workman with effect from the 1st September 1983 by way of refusal of employment is legal and/or justified ? If not, to what relief is Shri Patra entitled ?”

The Schedule of Reference in I. D. Case No. 13/2011 made by the Government of Odisha in the L. & E. Department vide their Order No. 2491–ID-134/2010-L.E., dated the 15th March 2011 runs as follows :

“Whether the service of Shri Nrusingha Charan Patra, Ex-N.M.R. need to be regularised as per the Circular vide Order No. 30387, Dt. 18-11-1995 of the Secretary, OSEB, Bhubaneswar at par with his other Co-N.M.R. workman ? If so, what should be the details ?”

2. According to the workman/second party, he was a skilled N.M.R. in Niali Electrical Construction Section which was then under the Executive Engineer, Nayagarh Electrical Division. He had worked as such from 1-1-1982 to 31-8-1983 without any interruption. He had rendered continuous service for 607 days during the said period. But, on 1-9-1983 his service was terminated without compliance of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (for short, ‘the Act’). Though the erstwhile management i.e., Odisha State Electricity Board (OSEB) had issued the Notification No. 11043, Dt. 23-5-1987 to the effect that all the N.M.Rs./D.L.Rs. who had completed 400 days of

work in different Divisions of OSEB as on either 1-9-1981 or 1-10-1986 were to be regularised in service and accordingly, the erstwhile management had regularised the services of such employees with effect from the 18th November 1995, the case of the second party was not taken into consideration. Even though he had completed 400 days of work as on 1-10-1986 the erstwhile management did not regularise his service.

The workman raised the two disputes in his complaint Dt. 11-2-2010 sent to the Assistant Labour Officer, Cuttack. In the meanwhile the erstwhile Management of OSEB has been taken over by M/s GRIDCO & then by Central Electricity Supply Utility of Odisha (CESU). Therefore, the Chief Executive Officer and the Senior General Manager of CESU have been arrayed as first party No. 1 and first party No. 2 respectively. Since Niali Electrical Section is now under Cuttack Electrical Division, the Manager (Electrical) of Cuttack Electrical Division has been arrayed as first party No. 3.

3. The first party No. 3 appears to have filed written statement on behalf of first party Nos. 1 to 3. In the written statement it is pleaded that the second party was engaged on daily need basis of certain miscellaneous works during construction period of electrical lines and structures, on completion of which his engagement came to an end which comes within the ambit of Section 2 (oo) (bb) of the Act. Alternatively, it is contended that the workman had performed duties in between 1-1-1982 and 31-8-1983 but he had never completed 240 days in twelve calendar months and his employment was not continuous. It is the management's further case that the workman had abandoned his employment with effect from the 1st September 1983. However, it is contended that due to change of management the records pertaining to the workman's engagement and disengagement are not available with the first party. It is also contended that the dispute having been raised after lapse of 28 years from the alleged retrenchment the Government ought to have refused to refer the matter and that for such unreasonable delay the workman is not entitled to any relief.

Regarding the alleged non-regularisation, the first party's case is that the Office Order of the erstwhile management on regularisation of services of N.M.Rs./D.L.Rs. contained conditions, *inter alia*, that to be eligible for being regularised such employees must have completed 400 days of work as on 1-10-1986. But, it appears the workman had not completed 400 days of work as his name does not find place in the list of N.M.R. employees containing names of 173 persons for regularisation of their services which was prepared by the Executive Engineer, Nayagarh Electrical Division in order to implement the policy of Regularisation of N.M.R./D.L.R. employees. Therefore, it is contended, the second party is not eligible for service regularisation.

4. During pendency of the proceeding order was passed on 12-9-2011 to implead the Executive Engineer, Nayagarh Electrical Division as first party No. 4. Accordingly, notice was served on the Executive Engineer, Nayagarh Electrical Division by registered post. The Postal A.D. received back from the Postal Authority reflects that the notice was delivered to the Executive Engineer but no one

having appeared on behalf of the Executive Engineer, Nayagarh Electrical Division, he has been set *ex parte*.

5. In I. D. Case No. 12 of 2011 the following issues have been settled :—

ISSUES

- (1) Is the reference bad for unusual delay in raising the industrial dispute ?
- (2) Did the workman complete one year of continuous service before the alleged retrenchment ?
- (3) Whether the Executive Engineer, Nayagarh Electrical Division is a necessary party ?
- (4) Whether the workman voluntarily abandoned his job ?
- (5) Whether the termination of service of the workman comes within Section 2 (oo) (bb) of the I. D. Act ?
- (6) Whether the retrenchment of the workman is by way of refusal of employment with effect from 1st September 1983 and whether the same is legal and/or justified ?
- (7) What relief (s) ?

In I. D. Case No. 13 of 2011 the following issues have been settled :—

ISSUES

- (1) Whether the service of Shri Nrusingha Charan Patra, Ex-N.M.R. need to be regularised as per the Circular vide Order No. 30387, Dt. 18-11-1995 of the Secretary, OSEB, Bhubaneswar at par with his other Co-N.M.R. workmen ? If so, what should be the details ?
- (2) Whether the reference is bad on the ground of long delay in raising the dispute ?
- (3) Whether the Executive Engineer, Nayagarh Electrical Division is a necessary party ?

6. The workman has examined himself as W.W. No. 1. Exts. 1 to 10 have been marked on behalf of the workman. On behalf of the first party, the Deputy Manager (Electrical) Cuttack Electrical Division is examined as M.W. No. 1 and Exts. A and B have been marked.

7. There are two identical issues framed in each of the I. D. Cases on the point of maintainability. Therefore, for the sake of convenience the issues which are common in both the I.D. Cases and related to the maintainability of the two cases are taken up first.

Issue No. 1 of I. D. Case No. 12/2011 & Issue No. 2 of I.D. Cases No. 13/2011

These issues are related to the long delay in raising the disputes. The Management has vehemently contended that the disputes having been raised after lapse of 28 years from the date

the cause of action arose, the references made by the State Government are not maintainable and the workman is estopped from raising the dispute at such a belated stage. No authority in support of such a contention is cited by the management. No period of limitation for raising of an industrial dispute has been prescribed. Therefore, this Tribunal is not in a position to answer the issues in favour of the management. The issues are therefore answered in the negative.

Issue No. 3 of I. D. Case No. 12/2011 & as well as I.D. Case No. 13/2011

8. The first party has raised a contention that since the workman had been working under the control of the Executive Engineer, Nayagarh Electrical Division during the entire period of his employment the latter should have been made a party to this case and in the absence of the Executive Engineer, Nayagarh Electrical Division the reference is not maintainable.

As already stated, on the orders of this Tribunal passed during the pendency of the proceedings the Executive Engineer, Nayagarh Electrical Division has been arrayed as first party No. 4 and therefore, the aforesaid contention was not pressed by the contesting Management. Accordingly, it is needless to make a detailed discussion on this point.

Issue Nos. 2, 4, 5, & 6 of I. D. Case No. 12/2011

9. All the four issues being interlinked are taken up together. I. D. Case No. 12 of 2011 is on the alleged illegal retrenchment of the workman with effect from the 1st September 1983. According to the workman, he was in continuous employment from 1-1-1982 to 31-8-1983 working as a Skilled N.M.R. in Niali Section under the administrative control of the Executive Engineer, Nayagarh Electrical Division and that during the said period he had completed 607 days of work. It is his further plea that on 1-9-1983 when he reported for duty he was not allowed to work and thus his service was terminated without compliance of the statutory provisions of the Act. The contesting management in its written statement does not dispute that the workman had been working in the Nayagarh Electrical Division from 1-1-1982 to 31-8-1983. However, it is contended that the workman did not complete 240 days of work in 12 calendar months and therefore, he had not completed one year of continuous service. In order to prove one year of continuous service the workman has exhibited some documents which have been marked as Exhibits but with objection raised by the contesting management. The workman exhibits xerox copy of an Attendance Register Ext. 1 claiming that it was maintained in the establishment of the Electrical Construction Section, Niali, Cuttack. Ext. 1 purports to be a xerox copy taken from the Attendance Register for the period 1981—1983. The name of the second party appears in the Attendance Register but it is stated by the workman that the xerox copy has been obtained unofficially. Therefore, Ext. 1 cannot be said to be an authenticated document. If the workman could obtain xerox copy of the Attendance Register he could have made a prayer to this Tribunal to cause production of the same by the management. Similarly, Ext. 2 which purports to be a xerox copy of letter No. 1413, Dt. 29-3-1997 of the Executive Engineer, Nayagarh Electrical Division cannot be said to be an authenticated document because the workman admits to have obtained the xerox copy unofficially. Exts. 5 and 5/1 are xerox copy of Experience Certificates. Ext. 5 is purportedly issued on 1-12-1987 by the Junior Engineer, Electrical, Niali. In this Certificate it is mentioned that the workman had worked in Niali Electrical Section during 1984

and 1985. But, in his claim statement the workman has nowhere stated that he was working in Niali Electrical Section in 1984 and 1985. Therefore, Ext. 5 is not relevant for the purpose of this case. Ext. 5/1 purports to have been issued on 3-5-1987 by the Section Officer, Electrical Construction Section, Niali. In this Certificate it is mentioned that the workman had worked as a Skilled N.M.R. in Electrical Section, Niali from 1-1-1982 to 1-8-1983. The Original Certificate is not brought on record. Claiming it to be a created document it is argued by the management that since the certificate is not issued officially no reliance can be placed on it. It is true that Ext. 5/1 is not issued officially. The certificate purports to have been granted on 3-5-1987. It is not reflected in the certificate as to on what basis the period of work of the workman has been certified. It is also not specifically mentioned that during the period of employment, as certified by the Section Officer, the workman had worked continuously. It also appears to the naked eyes that the figures showing the date "1-1-1982" in the certificate have been overwritten and the overwritings have not been initialled. The Officer who granted the certificates is not examined as a witness. Under such circumstances no reliance can be placed on Ext. 5/1.

10. Since the management does not admit that the workman had completed one year of continuous service, the workman should have adduced sufficient evidence to prove the period of continuous service he had rendered. In *Range Forest Officer Vrs. S. T. Hadimani*, AIR 2002 (SC) 1147, it is observed by the Hon'ble Supreme Court that filing of an Affidavit by the workman is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had in fact worked for 240 days in a year. It is further observed that proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period should have been produced by the workman. In the case at hand, the workman did not take any pain to secure production of such proof to support his claim that long back in 1982-83 he had worked for more than 240 days to complete one year of continuous service.

11. Now it may be considered as to whether it is a case of voluntary abandonment of employment or retrenchment by way of refusal of employment. According to the workman, on 1-9-1983 when he reported for duty the erstwhile management terminated his service without complying with Section 25-F of the Act. The conciliation failure report which is annexed to the order of reference received from the Government reflects that on 11-2-2010 the workman made a complaint to the Labour machinery alleging termination of service with effect from the 1st September 1983 as well as claiming for regularisation of his service under the present management. On the basis of that complaint petition the Assistant Labour Officer, Cuttack took-up conciliation proceeding and on failure of conciliation the Government have made the present two references. Thus, it is found that after lapse of about 27 years the workman raised the dispute. To show that during the intervening period the workman had made several representations to the erstwhile management as well as the present management he has exhibited three applications marked Ext. 3 series. These purport to be the workman's applications, Dt. 15-10-1983, 22-9-1995 and 17-9-1997. Since there is no proof of sending of the applications by registered post or receipt of the same by the addresses, it is difficult to place reliance on these applications because these are self-serving documents and can

be created for the purpose of the litigation. The management's contention that these three applications have been manufactured for the purpose of this case finds support from the fact that Ext. 3, the application dated 15-10-1983 has been addressed to the Executive Engineer, Cuttack Electrical Division, GRIDCO whereas as on 15-10-1983 GRIDCO was not yet in existence. It is rightly submitted by the first party that GRIDCO came into existence after the enactment of the Orissa Electricity Reforms Act, 1995. M.W. No. 1 says that GRIDCO was formed on 1-4-1996 and it started functioning with effect from the 1st April 1997. There is nothing to disbelieve this part of his evidence. Therefore, not only Ext. 3 but also Ext. 3/1, which purports to be an application, Dt. 22-9-1995 addressed to the Chairman, O.S.E.B. (GRIDCO), are found to be documents of suspicious nature. M. W. No. 1 further says that CESCO was formed with effect from the 1st December 1998. In this regard the management has exhibited the Extraordinary Gazette Notification No. 1523, Dt. 26-11-1998. Therefore, there is nothing to disbelieve M.W. No. 1 in this respect. Since CESCO was created with effect from the 1st December 1998 the workman could not have sent his letter, Dt. 17-9-1997 addressing it to the "Executive Engineer, Cuttack Electrical Division, GRIDCO/ CESCO, Cuttack". For all these reasons this Tribunal does not accept Ext. 3 series as genuine documents. If Ext. 3 series are kept out of consideration, then there is no other material showing that the workman had taken any action objecting to the alleged illegal retrenchment. His long silence for about 27 years is a very strong circumstance for a presumption that he had abandoned the job. The workman remained silent for such a long period and it was only after the disposal of OJC No. 5276 of 2002 arising out of the Award in I. D. Case No. 61 of 1998 under which several persons got reinstated under the present management of CESU, the second party approached the Hon'ble High Court in W.P. (C) No. 1949 of 2009 and as per the direction of the Hon'ble High Court passed in the said W.P. (C) he raised the dispute before the Labour Authority. Long delay may not be ground to prevent the workman from raising an industrial dispute and getting appropriate relief. But inordinate and unreasonable delay in raising the dispute gives rise to a presumption of abandonment of employment. In the facts and circumstances of this case, this Tribunal is of the considered view that the second party had voluntarily abandoned his job and the plea that the erstwhile management refused employment to the workman with effect from the 1st September 1983 is not acceptable.

12. The management has pleaded that the Experience Certificates relied on by the workman clearly reflect that his employment was confined to the electrical construction work of 33 KV line, 11 KV line, LT line fabrication and different S/S maintenance etc. and, therefore, on closure of those construction work the engagement of the second party came to an end and for that matter it cannot be said to be a case of retrenchment. Such a pleading is clearly hypothetical in nature. It does not appear to be based on any official record. Exts. 5 and 5/1 are the certificates basing on which the management has taken such a stand. The management disputes these documents saying that they are created documents. The Tribunal also finds these documents to be unreliable and unacceptable. Since there is no other material showing that the workman was engaged for a particular project or any specific work on the completion whereof the contract of employment expired, it cannot be said that the alleged retrenchment comes within Clause (bb) of Section 2 (00) of the Act.

Since it is held to be a case of voluntary abandonment of employment, the termination of employment of the second party with effect from the 1st September 1983 cannot be said to be either illegal or unjust. All the four issues are answered accordingly.

13. The reference on the regularisation of service requires this Tribunal to find out whether the service of the second party needs to be regularised as per the Circular Order No. 30387, Dt. 18-11-1995 of the Secretary, O.S.E.B., Bhubaneswar at par with his other Co-N.M.R. workmen. The second party in his claim statement has not mentioned anything about the Circular Order No. 30387, Dt. 18-11-1995. He has also not exhibited the said Circular. He did not make any prayer to call upon any Authority to cause production of a copy of that Circular. Therefore, it is not possible to refer to the Circular and to find out whether the workman is entitled to regularisation of his service in terms of the said Circular. Ext. 8 is an Office Order, Dt. 30-11-1995 passed by the Executive Engineer (Electrical), Bhubaneswar Electrical Division. It reflects that this order has been issued in accordance with aforesaid Order No. 30387, Dt. 18-11-1995 of the Secretary, OSEB, Bhubaneswar. This is an order under which 173 N.M.R. workers who had attended an interview conducted on 27-11-1995 and 28-11-1995 for selection to the post of "Helper" were selected by the Recruitment Committee. Thus, on the basis of Ext. 8 it can be presumed that the Executive Engineer, Bhubaneswar Electrical Division had conducted an interview in accordance with Order No. 30387, Dt. 18-11-1995 and the N.M.R. workers who were selected in that interview by the Recruitment Committee were posted as Helpers. It is not the case of the second party that he had attended to an interview conducted by the Executive Engineer, Nayagarh Electrical Division in accordance with the Order No. 30387, Dt. 18-11-1995 but his case was discriminated *vis-a-vis* his other co-workmen who got selected to be appointed in the post of Helper. Therefore, this Tribunal is not in a position to hold that the services of the second party should be regularised in accordance with the Circular No. 30387, Dt. 18-11-1995.

14. Further, the second party claims regularisation on the basis of the Notification No. 11043, Dt. 23-5-1987 of the erstwhile management of O.S.E.B. Copy of the said notification is marked Ext. 7, which contains instructions as to how absorption of N.M.R. workers in regular and work charged establishments of the O.S.E.B. were to be made. It reflects, *inter alia*, that for any vacant post in a Division of O.S.E.B. the N.M.R. workers who have completed 400 days and are still on the Rolls as on 1-9-1981 as well as on 1-10-1986 would be considered for selection/absorption as per the provisions of the O.S.E.B. N.M.R. workers Absorption Regulation, 1981. Ext. 7 further reflects that the instructions contained therein were issued on the basis of a tripartite settlement, Dt. 9-9-1981 and 10-9-1981 between the O.S.E.B. and its Labour Unions to the effect that the N.M.R. workmen who have completed 400 working days of continuous service and are in employment on 1-9-1981 shall be considered for absorption. Admittedly, the workman was not on the Roll either as on 1-9-1981 or 1-10-1986. It is also not proved by the workman that he had rendered 400 working days of continuous service. Therefore, even on the basis of Ext. 7 he is not entitled to be absorbed in the work charged/regular establishment under the O.S.E.B.

15. Relying on Ext. 9, an Office Order No. 5481, Dt. 11-9-1995 passed by the Executive Engineer, EHT (C) Subdivision, Bhubaneswar the second party claims that like the 44 N.M.R. workmen whose services have been regularised without subjecting them to any test/interview he himself should have been regularised in his service. The said Office Order reflects that 44 N.M.Rs.

working under Bhubaneswar Subdivision who had completed 400 days as on 1-10-1986 and who were still on the Roll as on the date of issue of the order were appointed temporarily as Helpers. The second party cannot claim parity *vis-a-vis* the 44 N.M.Rs. because he was not on the Roll as on 1-10-1986 and also has failed to prove that he had completed 400 days of work as on 1-10-1986.

In view of the discussions made above, the issue on the workman's entitlement to be regularised in service is answered against him.

Issue No. 7 of I. D. Case No. 12/2011

16. Since this Tribunal has arrived at conclusions that the second party has abandoned his employment under the erstwhile management, that he has failed to prove that he has completed 400 days of continuous work as on 1-10-1986 and has completed one year of continuous service as defined under the Act and that he has failed to establish that he is otherwise entitled to be regularised in service in terms of the Circular Order No. 30387, Dt. 18-11-1995 of the Secretary, O.S.E.B., Bhubaneswar, he is not entitled to get any relief.

Accordingly, both the references are answered against the second party/workman.

Dictated and corrected by me.

RAGHUBIR DASH
23-2-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
23-2-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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