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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 4th April 2012

No. 2703—IR-(ID)-37/2011-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd March 2012 in I. D. Case No. 38 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Divisional Manager, Odisha Forest Development Corporation Ltd., Bhubaneswar and its workman Smt. Pranati Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 38 OF 2011

The 3rd March 2012

Present :

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

Between :

The Managements of Divisional Manager, Odisha Forest Development Corporation Ltd., Bhubaneswar. .. First Party—Management

And

Its Workman Smt. Pranati Behera, At Chakeisiani, Behera Sahi, P.O. Rasulgarh, Bhubaneswar. .. Second Party—Workman

Appearances :

Shri B. K. Pattanaik, Authorised Representative. .. For the First Party—Management

Shri P. K. Swain, Authorised Representative. .. For the Second Party—Workman

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. 4146—ID-37/2011-LE., Dt. 29-4-2011. The schedule of reference runs as follows :

> "Whether the action of the Divisional Manager, Odisha Forest Development Corporation Ltd., Bhubaneswar in terminating the services of Smt. Pranati Behera, Ex-Peon with effect from the 6th September 2001 is legal and/or justified ? If not, to what relief Smt. Behera is entitled ?"

2. Facts relevant for the purpose of the reference are narrated hereunder —

The second party in her claim statement has pleaded that on the death of her husband Late Prafulla Kumar Behera, who was an employee in the establishment of the first party, she was given employment under the Rehabilitation Assistance Scheme. Though under the said Scheme she was to be appointed on regular basis, the management engaged her on daily wage basis. She worked as a Peon during the period from 19-4-1993 to 5-9-2001 continuously. Yet, her employment was terminated with effect from the 6th September 2001 without following the requirements of law as contained in Section 25-N of the Act. According to the second party, the Odisha Forest Development Corporation (for short, the Corporation) being an 'industrial establishment' as defined under Section 25-L of the Act, the first party ought to have followed the provisions of Section 25-N of the Act in order to effect a valid retrenchment of the second party.

3. The first party in its written statement has denied that the second party was given employment under the Rehabilitation Assistance Scheme. However, it is admitted that on the demise of her husband who was working as a Watcher in the establishment of the first party, the second party was engaged as a Peon on daily wage basis and that appointment was solely on humanitarian ground. At the relevant time there was huge surplus of manpower of the Corporation in comparision to the work load available. That apart, the Government of Odisha in the Forest & Environment Department vide Letter No. 6370, Dt. 8-4-1994 had imposed a ban on fresh recruitment even under the Rehabilitation Assistance Scheme. Therefore, the second party was engaged purely on temporary basis.

It is further contended that the Board of Directors of the Corporation took a decision to gradually reduce the surplus manpower and accordingly Letter No. 23856, Dt. 10-9-1996 was issued by the Corporation to retrench the daily wage employees who were engaged after 1-1-1990. However, the second party's case, who was engaged after 1-1-1990, was not taken up and she was allowed to continue. But, when the Board of Directors in their 188th meeting held on 26-6-2001 decided to retrench all the temporary wrorkers working in different establishments of the Corporation and issued instructions vide Letter No. 17843, Dt. 30-6-2001 to retrench all such workers the first party was compelled to issue retrenchment notice to the second party and , on compliance of the provision contained in Section 25-F of the Act, her service was terminated with effect from the 31st July 2001. When the order of retrenchment alongwith the notice pay and retrenchment compensation was offered to the second party she refused to accept the same.

The first party's further contention is that it is not an 'industrial establishment' as defined under the Act and therefore, Section 25-N of the Act is not attracted.

4. In her rejoinder the second party has pleaded that since her appointment was under the Rehabilitation Assistance Scheme, her service could not have been subjected to retrenchment in view of the instructions contained in Letter No. 23856, Dt. 10-9-1996 of the Corporation. She has further contended that after her retrenchment the management has appointed persons who are junior to her.

5. In terms of the reference, the following issues have been framed :

ISSUES

(i) Whether the action of the Divisional Manager, Odisha Forest Development Corporation Ltd., Bhubaneswar in terminating the services of Smt. Pranati Behera, Ex-Peon with effect from the 6th September 2001 is legal and/or justified ?

(ii) If not, what relief Smt. Behera is entitled to ?

6. The second party has examined herself as W.W. No. 1 whereas the first party has examined a Lower Division Assistant of the Corporation as M.W. No. 1. On behalf of the second party Exts. 1 to 6 have marked and on behalf of the first party documents are marked as Exts. A to J.

FINDINGS

7. *Issue No. (i)*—It is not in dispute that the second party was a workman under the first party and as such she had completed eight years of continuous service. It is also not in dispute that her employment was terminated with effect from the 6th September 2001. While the first party claims to have fully complied with the requirements of Section 25-F of the Act, the second party claims that the Corporation as a whole being an 'industrial establishment' the retrenchment is illegal due to non-compliance of the requirements of Section 25-N of the Act. Therefore, at this stage it is to be decided as to whether the provisions of Section 25-N of the Act are applicable or not.

In support of the claim that the Corporation is an 'industrial establishment' as defined under Section 25-L of the Act, learned representative for the workman has placed reliance on a decision in Uttaranchal Forest Development Corporation and another *Vrs*. Jabar Singh and others, reported in 2007 (113) FLR-1 (S.C.). In the reported case the establishment of Uttaranchal Forest Development Corporation is held to fall within the definition of 'industrial establishment' as contained in Section 25-L of the Act. Accepting the argument that the work of cutting of trees and converting them into logs constitute manufacturing process for the purpose of Section 2 (k) of the Factories Act, 1948 and that the various areas of the forest where the said work is being conducted would form part of the Factory for the purpose of Section 2 (m) of the said Act. Hon'ble Supreme Court have held that Uttaranchal Forest Development Corporation falls within the definition of 'industrial establishment' as contained in Section 25-L of the Act.

For the purpose of Sections 2(k) and 2(m) of the Factories Act the first party Corporation seems to be in the same footing as the Uttaranchal Forest Development Corporation. It is not in dispute that the main function of the first party is with regard to cutting of trees and converting them into logs. Therefore, the first party is an 'industrial establishment' as defined under Section 25-L of the Act.

8. Admittedly, while terminating the services of the second party the provisions of Section 25-N of the Act have not been complied with. Therefore, as per the provisions of sub-section (7) of Section 25-N of the Act the retrenchment is deemed to be illegal from the date on which the notice of retrenchment was given to the workman. However, the retrenchment cannot be said to be unjustified. Retrenchment of a large number of employees working with the Corporation on daily wage/consolidated/*ad hoc*/NMR basis was effected on the ground of reduction of work of the Corporation as well as its poor financial condition. Ext. E is a circular issued by the Corporation wherein the circumstances under which the management was compelled to retrench a large number of such employees have been mentioned in a nutshell, besides the procedure for retrenchment to be followed by different Authorities of the Corporation. By the time Ext. E was issued the Judgment of the Hon'ble Supreme Court in Uttaranchal Forest Development Corporation *Vrs*. Jabar Singh (*supra*) had not yet been delivered. It appears, the first party was under an impression that in the matter of retrenchment of its workmen Section 25-F of the Act would be applicable. Be that as it may, the retrenchment under consideration, though justified is illegal.

The second party challenges the legality of the retrenchment on an additional ground that since her appointment was made under the Rehabilitation Scheme the management could not have terminated her service even on the ground of surplus of manpower. Ext. 1, the order of appointment, Dt. 19-4-1993, reflects that the second party was appointed on daily wages basis under the Rehabilitation Assistance Rules. Ext. 6 is the letter bearing No. 23856, Dt. 10-9-1996 issued by the Corporation to all the establishments under it to dispense with the services of all the daily rated/consolidated rated/*ad hoc*/Muster Roll employees who had been engaged after Dt.1-1-1990. In this letter some categories of employees have been excluded from the purview of such retrenchment. One of the categories is the employees employed on Rehabilitation Assistance Scheme. It appears, in view of such exclusion the management did not terminate the services of the second party in compliance with the instructions contained in Ext. 6 even though the second party was a daily wage employee who was employed after Dt. 1-1-1990. The letter marked Ext. 6 was issued on the basis of the decision taken by the Board of Directors of the Corporation. Subsequent to this letter the Corporation issued another letter (Ext. E) containing instructions in terms of the Board of Directors decision taken in their 188th meeting held on 26-6-2001. Instruction was issued to retrench all the daily wage employees working in different establishments of the Corporation. In the subsequent letter, however, there was no clause to exclude any category of daily wage workers from its operation. In other words, there was no instruction in Ext. E not to implement the instructions contained therein as against those daily wagers who had been engaged under Rehabilitation Assistance Scheme. Therefore, this time the management retrenched the second party even though she was given employment under the Rehabilitation Assistance Rules.

It is submitted on behalf of the second party that if a workman is given employment under the Rehabilitation Assistance Scheme the management can not terminate the services of such workman on the ground of surplus manpower or, even taking recourse to Section 25-F or 25-N of the Act. It is argued on behalf of the first party that as a matter of fact the second party was not given employment in terms of the Rehabilitation Assistance Scheme and that her employment was purely on humanitarian ground. It is further submitted that had she been given employment under the Rehabilitation Scheme she should have been employed on regular basis instead of being employed as a daily wager, inasmuch as there is no contemplation in the Rules that under the scheme one should be given employment on daily wage basis. The Rehabilitation Assistance Rules is not placed before this Tribunal. Therefore, it is not possible to examine the merits of the contentions raised by both the sides on the compliance or non-compliance of the Rehabilitation Assistance Rules/Scheme.

On behalf of the second party it is further submitted that instead of terminating the services of the second party the management ought to have regularised her services. The present reference is not with regard to the refusal of regularisation of services of the second party. Therefore, this matter cannot be dealt with by this Tribunal. Even the point raised with regard to the contravention of the Rehabilitation Assistance Rules is also beyond the scope of the present reference. There is considerable force in the submission made on behalf of the first party that the very Rehabilitation Assistance Scheme pre-supposes that there must be a vacancy to rehabilitate someone under the Scheme. It is also submitted that when the workman was given appointment there was no vacancy, rather the Corporation had huge surplus staff. Therefore, it is submitted, the workman was not given appointment on regular basis under the Rehabilitation Assistance Scheme. The issue as to whether the workman was given employment under the Rehabilitation Assistance Scheme is beyond the scope of this reference. The validity of the retrenchment can be determined taking into consideration the facts that the second party was a daily wage workman who had completed more than one year of continuous service and her services were terminated on Dt. 6-9-2001 by complying or non-complying with the mandatory provisions of the Act. It has already been held that the retrenchment under consideration was effected without complying with the provisions of Section 25-N of the Act which renders the retrenchment illegal.

Though it is claimed that after the impugned retrenchment some workmen junior to the second party have been given appointment under the first party, no evidence is aduced to substantiate the same. While aducing evidence the workman has stated that one Iswar Chandra Mahanta who is her junior was given appointment after her retrenchment. But, in cross examination she admits that Shri Mahanta got appointment on the strength of orders passed by the Hon'ble High Court. There is no evidence to show that the second party and Shri Mahanta stand in the same footing.

9. In the result, the issue is answered in favour of the second party. The termination of service under reference is found to be illegal on the ground of non-compliance of Section 25-N of the Act. However, in the facts and circumstances of the case the same is found to be justified.

10. *Issue No. (ii)*—The workman claims for her reinstatement with full back wages and other service benefits. The management submits that an order of reinstatement of the workman would cause prejudice to the management, inasmuch as it no more requires the services of any NMR/

daily wage or similar temporary employees. This Tribunal has earlier disposed of similar matters in which Awards have been passed against the Corporation on the ground of non-compliance of Section 25-N of the Act. In I. D. Case No. 297 of 2008 this Tribunal, almost in similar circumstances passed an Award directing reinstatement of the workman with a lump sum amount of Rs. 10,000 as compensation in lieu of back wages. On the other hand, In I.D. Case Nos. 5 of 2004, 6 of 2004 and 23 of 2010 this Tribunal in almost similar circumstances awarded compensation in lieu of reinstatement and back wages.

The second party had completed eight years of continuous service by the time she was retrenched. On the death of her husband she was given employment on daily wage basis. If the age she has mentioned in her affidavit evidence is correct, then she was 30 years old at the time of her retrenchment. She has not pleaded in her claim statement that after her retrenchment she was not in gainful employment. She belong to unskilled category of workman and there may be a presumption that she had undertaken some other employment for livelihood. The management has shown that there is no availability of work for such daily wagers. Under such circumstances, if the principles laid down in Jagbir Singh *Vrs*. Haryana State Agriculture Marketing Board. 2009 AIR S.C.W. 4824 and Ashok Kumar Sharma *Vrs*. Oberoi Flight Services, AIR 2010 (SC) 502 are to be followed, then the second party should be awarded with compensation in lieu of reinstatement with back wages. While granting compensation it must be kept in mind that though the retrenchment took place on Dt. 6-9-2001 the workman without any reason did not raise any dispute for a long period of nine years. It was only on Dt. 16-8-2010 she made a complaint to the Labour machinery which gave rise to the present reference.

However, a submission is made on behalf of the second party that under sub-section (7) of Section 25-N of the Act the impugned retrenchment is deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman is entitled to all the benefits under law for the time being in force as if no notice had been given to her. It is submitted that in view of the aforesaid provisions contained in sub-section (7) of Section 25-N of the Act, this Tribunal has no option but to grant the relief of reinstatement with full back wages and other service benefits. It is further pointed out that in Uttaranchal Forest Development Corporation's case (*supra*), the Hon'ble Supreme Court, taking note of the provisions of Section 25(7) of the Act, under similar circumstances have granted the relief of reinstatement with back wages and continuity of service to some of the Respondents who had invoked the jurisdiction of the Industrial Tribunal. The submission that in all cases in which there is contravention of Section 25-N of the Act the relief of reinstatement with back wages and service continuity is a must is not acceptable. In Hindustan Wire Products Ltd. *Vrs.* Jaspal Singh, reported in 2001 (89) FLR 364 the Hon'ble Supreme Court taking the peculiar facts and circumstances of that case have refused the relief of reinstatement with back wages and in lieu thereof a sum of Rs. 1 lakh was awarded by way of compensation to each of the workman. In that case the industry concerned was in financial doldrums and then facing proceedings before the B.I.F.R. under the Sick Industrial Companies Act.

In the present case it is already held that the retrenchment is justified. The management could have followed the provisions of Section 25-N of the Act. But, it appears, by then the position of law as laid down by the Hon'ble Supreme Court in Uttaranchal Forest Development Corporation's case (*supra*) was not yet settled. Considering different aspects such as duration and nature of employment, the age of the workman, the circumstances under which the retrenchment was made, etc., it is considered just and appropriate to award a sum of Rs. 1,50,000 (Rupees one lakh fifty thousand) only as compensation in favour of the workman in lieu of reinstatement and back wages.

The reference is answered accordingly. The management to pay the compensation in terms of the Award within a period of two months of the date of its publication in the Official Gazette, failing which it shall be liable to pay interest @ 8% per annum on the amount of compensation from the date of the Award.

Dictated and corrected by me.

RAGHUBIR DASH
3-3-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
3-3-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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By order of the Governor

T. K. PANDA
Under-Secretary to Government

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