

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 781 CUTTACK, MONDAY, APRIL 23, 2012/BAISAKHA 3, 1934

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 4th April 2012

No. 2708—IR-ID-110/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th March 2012 in Industrial Dispute Case No. 69/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri and its workman Shri Benudhar Sahoo was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 69 OF 2010

Dated the 19th March 2012

Present :

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

Between :

The Executive Engineer, . . . First-party Management
Nimapara Irrigation Division, Nimapara,
Dist. Puri.

And

Shri Benudhar Sahoo, . . . Second-party Workman
S/o Shri Birabar Sahoo,
Village Bentapur, Dewanpatna,
Post Brahmansarangi,
Via. Balipatna, Dist. Khurda.

Appearances :

Shri Basudev Behera, Senior Clerk.	. .	For the First-party Management
<hr/>		
Shri Susanta Dash, Advocate	. .	For Second-party Workman

AWARD

The Government of Odisha in the Labour & Employment Department (Presently, the Labour and Employees State Insurance Department) in exercise of the powers conferred upon them by 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) (for short the Act) have referred the following dispute for adjudication vide their Order No. 8470-I.D./110/2010-L.E., dated the 4th October 2010.

"Whether the action of the management of the Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri in terminating the services of Shri Benudhar Sahoo, ex-N.M.R., with effect from the 31st August 2004 is legal and/or justified ? If not, what relief Shri Sahoo is entitled to ?"

2. The case of the second-party in brief is that he had been working as an N. M. R. under the first-party since 1st January 1992 and he worked as such till the 31st August 2004 without any break. He was working under the direct control of the Junior Engineer, Bentapur Section of Balipatna Canal Subdivision which is under the ultimate control of the Executive Engineer, Nimapara Irrigation Division (first-party). His service was terminated with effect from the 31st August 2004 on the ground that his engagement in the establishment of the first-party being after the 12th April 1993 was in contravention of the Ban Order imposed by the Government of Odisha on engagement of N. M. R. workers. The Government of Odisha had imposed a ban on engagement of N. M. R. workers with effect from the 12th April 1993. Therefore, the second-party having been working since the 1st January 1992 as an N. M. R. worker, the said ban order was not applicable to him. Therefore, he could not have been retrenched from service on the aforesaid ground. But, unfortunately, the first-party falsely showing the workman to have been earlier retrenched with effect from the 31st October 1993 and re-engaged on a date subsequent to the cut-off date, terminated his service with effect from the 31st August 2004.

It is also claimed that after his retrenchment the Management has engaged several new workers from time to time ignoring the second-party's right under Section 25-H of the Act.

3. It is admitted by the first-party that the second-party was engaged as a labourer with effect from the 1st January 1992. But, it is specifically pleaded that his service was terminated with effect from the 31st October 1993 due to reduction of work. Subsequently, he was engaged as an N. M. R. worker and as such he continued from the 1st December 1995 to the 31st August 2004. Therefore, it is contended, the workman had not worked continuously from the 1st January 1992 to the 31st August 2004. It is also claimed that the termination of service of the workman with effect from the 31st August 2004 which is the subject matter of reference was effected on payment of retrenchment benefit which the workman had accepted without any protest.

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

ISSUES

- (i) Whether the action of the Management of the Executive Engineer, Nimapara Irrigation Division, Nimapara, Puri in terminating the services of Shri Benudhar Sahoo, ex-N. M. R. with effect from the 31st August 2004 is legal and/or justified ?
- (ii) If not, what relief Shri Sahoo is entitled to ?

5. The workman has examined himself as W. W. No. 1. and has proved documents marked Exts. 1 to 5. The management, on the other hand, has examined one witness as M. W. No. 1 who is the present Executive Engineer of Nimapara Irrigation Division. On behalf of the management documents have been marked as Exts. A to H.

FINDINGS

6. *Issue No. (i)*—Before going to adjudicate on the legality and propriety of the retrenchment which is under reference, it is necessary to find out how far the management has proved its specific plea on the disruption of workman's service from the 1st November 1993 to the 30th November 1995. According to the Management, the workman was earlier disengaged with effect from the 31st October 1993. In support of this contention the management has proved Ext. H which is claimed to be the workman's representation, dated the 18th April 1998. During cross-examination when this document was confronted to the workman he admitted his signature appearing on that document but took the plea of failure of memory as to whether he made such a representation admitting that he was once removed from employment from the 31st October 1993. This is an evasive reply made by the workman. A bare perusal of Ext. H would make it clear that in that representation he had stated that he had been working as an N. M. R. from the 1st January 1992 to the 31st October 1993 but after that he was unfortunately retrenched. There is nothing to disbelieve that the workman had made such a representation admitting that after being engaged from the 1st January 1992 to the 31st October 1993 he was terminated from employment. Ext. E is another document. It is a forwarding letter of the first-party, dated the 22nd June 2002 and one of its enclosures contains the second-party's name with other particulars with regard to his engagement. The enclosures are said to be "census" of existing N. M. Rs./D. L. Rs./H. R. staff of the first-party. Each of the workman whose names appear in this Census Report has put his signature against his entry. Likewise the second-party also has put his signature. In the Census Report containing the name of the second-party his date of engagement is shown as the 1st December 1995. Relying on this Census Report the Management argues that after the workman's disengagement with effect from the 1st November 1993 he was again engaged in the establishment of the first-party with effect from the 1st December 1995. Taking both the documents (Exts. E and H) into consideration, I find that the specific plea taken by Management that the workman had been once disengaged with effect from the 1st November 1993 and was out of employment till the 31st November 1995 has been established.

7. The workman has pleaded that the management has falsely shown him to have been retrenched with effect from the 31st October 1993 and again re-engaged on the 1st December 1995 only to justify the order of retrenchment under challenge which could not have been given effect to for the sole reason that he having been engaged prior to the 12th April 1993 the cut-off date of the Ban Order on engagement of N. M. R. workers his service was not terminable. He relies on Exts. 2 and 3. But these documents do not support his plea. Both the letters read together will make it clear that what the Management has contended is correct. In Ext. 3 it is clarified that the

workman was retrenched on the 31st October 1993 and was re-engaged on the 1st December 1995. The plea that the first-party had falsely shown him to have been disengaged with effect from the 31st October 1993 is not to be accepted without there being any supporting materials, more so when the management has successfully shown by proving Exts. E and H that his service was terminated with effect from the 1st November 1993 and he was again engaged with effect from the 1st December 1995. In the present reference this Tribunal has no scope to give a finding as to whether the alleged retrenchment with effect from the 1st November 1993 is illegal or improper. The subject matter of the present reference is the legality of the retrenchment of the workman with effect from the 31st August 2004. The workman has not pleaded that the disputed retrenchment was made without following the mandatory provisions of Section 25-F of the Act. The management, on the other hand, has pleaded that his service was terminated on payment of retrenchment benefit which the workman had accepted without protest. If the workman's plea that he was falsely shown to have been disengaged with effect from the 31st October 1993 is found not acceptable, then the retrenchment under reference is to be held to have been made on payment of retrenchment benefits. Because, it is not disputed that the workman had received a total sum of Rs. 31,374 (vide Ext. G) towards his salary for the period from 3/2003 to 8/2004, one month's notice pay and retrenchment compensation and it is also not pleaded or proved that the amount of retrenchment compensation for the period of continuous work from the 1st December 1995 to the date of retrenchment, i. e. the 31st August 2004, is incorrect or the payment was not made in accordance with the provisions of Section 25-F of the Act. This Tribunal does not accept the workman's plea that the management had falsely shown him to have been disengaged with effect from the 31st October 1993. Therefore, it is not a case of continuous service from the 1st January 1992 till the date of the disputed retrenchment. Once that plea fails the workman cannot succeed in making out a case of illegal retrenchment.

8. The other plea that after his retrenchment the management has engaged other workers in contravention of Section 25-H of the Act is not found to be duly established. The specific instances of contravention of Section 25-H of the Act is neither pleaded nor proved. Therefore, on this ground also the workman cannot challenge the legality or propriety of the retrenchment under consideration.

The Issue is answered against the workman.

9. *Issue No. (ii)*— In view of my findings on Issue No. i, the workman is not entitled to any relief.

Dictated and corrected by me.

RAGHUBIR DASH
19-3-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
19-3-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

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