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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 16th April 2012

No. 2960—li-1(B)-122/2008(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th December 2011 in I. D. Case No. 3 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Tribal Development Co-opetative Corporation of Odisha Ltd., Bhubaneswar and its Workman Late Kishore Chandra Biswal substituted by his legal representatives was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 3 OF 2009

The 12th December 2011

Present :

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

Between :

The Management of Tribal Development Co-opetative Corporation of Odisha Ltd.,
Bhubaneswar. .. First Party—Management

And

Kishore Chandra Biswal (since dead),
substituted by his legal representatives .. Second Party—Workman

namely :

- (1) Sanjukta Biswal,
- (2) Smruti Ranjan Biswal,
- (3) Amiya Ranjan Biswal,
- (4) Manoranjan Biswal, &
- (5) Swarnamayee Biswal.

of village Odang, P.O. Akhudakhin,
P.-S. Patkura, Dist. Kendrapara.

Appearances :

Shri B. K. Patjoshi & Shri N. K. Mohanty, Advocates.	..	For the First Party—Management
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Shri Satyabrata Mohanty, Advocate	..	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. 2743—li-1 (B)-122/2008-LE., dated the 17th March 2009. The schedule of reference runs as follows :

“Whether the termination of services of Shri Kishore Chandra Biswal, Ex-Shop Supervisor by the management of M/s Tribal Development Co-operative Corporation, Odisha Ltd., Bhubaneswar with effect from the 30th September 2003 is legal and/or justified ? If not, what relief Shri Kishore Chandra Biswal is entitled to ?”

2. The case of the deceased second party (hereinafter referred to as the 'second party') as narrated in his claim statement, in short, is that he was initially working in the establishment of the first party Corporation as a Sales Assistant with effect from the 31st March 1975 and subsequently on 21-3-1980 he was promoted to the post of Shop Supervisor. While working as such the management had initiated a proceeding against him by issuing a charge-sheet on 5-8-2000 and put him under suspension. An unfair enquiry was conducted and order was passed by the Managing Director (for short, 'M.D.') of the Corporation dismissing him from service. On an appeal the order of dismissal was set aside by the President of the Corporation. The dismissal order having been set aside the second party submitted his joining report on 6-2-2002. On 7-2-2002 the M.D. issued an order stating that the earlier order of suspension passed against the second party be deemed to have been in force until further orders. He also directed that a fresh enquiry on the charges framed earlier be initiated. Accordingly, a *de novo* proceeding was initiated. During pendency of the proceeding the M.D. initiated an additional proceeding on some additional charges vide Order No. 3865, Dt. 11-7-2002. Thereafter, during pendency of those proceedings the management passed orders on 30-9-2003 giving compulsory retirement to the second party on the ground of lack in integrity. Though approval of the Managing Committee of the Corporation was required to give effect to the order of compulsory retirement, no such approval was taken. Thus, challenging the legality of the order of compulsory retirement the second party in his claim statement has prayed for his reinstatement with full back wages and other service benefits.

3. Here, it may be mentioned that after filing the claim Statement the second party died. Therefore, his Legal Representatives have been permitted to proceed with the I. D. Case. The Legal Representatives, who are so permitted, will hereinafter be referred to as the 'L. Rs. of the second party'.

4. In the written statement the first party management has taken the stand that the duty of the second party being supervisory in nature and his salary being Rs. 1,800 per month, he is not a 'workman' as defined under the Act. Further case of the first party is that the second party had

misappropriated funds of the Corporation to the tune of Rs. 9,08,579.32 paise for which three sets of disciplinary proceedings were drawn up against him and all the proceedings are still pending. About the enquiry proceeding it is asserted by the first party that the order of dismissal was set aside by the Appellate Authority but with a direction to conduct *de novo* enquiry for which the M.D. directed a *de novo* enquiry vide office Order No. 355, Dt. 30-1-2002. On the plea of non-approval of the order of compulsory retirement passed by the M.D., it is the case of the first party that such approval is not necessary. Justifying the order of compulsory retirement the first party has taken the stand that the management has given compulsory retirement to the second party along with other 21 of its employees which is under Rule 38 of the TDCC Employees Service Rules, 1990 observing all the requirements under that Rules.

5. Basing on the pleadings of the parties, the following issues have been framed :

ISSUES

- (i) Whether the termination of services of Shri Kishore Chandra Biswal, Ex-Shop Supervisor by the management of M/s Tribal Development Co-operative Corporation, Odisha, Ltd., Bhubaneswar with effect from the 30th September 2003 is legal and/or justified ? If not, what relief Shri Kishore Chandra Biswal is entitled to ?
- (ii) Whether the second party is a 'workman' as defined under I.D. Act ?

6. Two witnesses have been examined from the side of the second party. W.W. 1 is the son of the second party and W.W. 2 is an ex-employee of the first party. On behalf of the management its Branch Manager (Marketing) is examined as M.W. 1. Exts. 1 to 10 are marked for the second party and Exts. A to C for the first party.

FINDINGS

7. *Issue Nos. (i) & (ii)*—Since the first party claims that the second party is not a 'workman' as defined in the Act, this issue is taken-up first. According to the management, the second party was not a 'workman' in as much as he was employed in a supervisory capacity drawing wages exceeding Rs. 1,600 per mensem. To support its stand the first party relies on one Job Chart which has been marked Ext. C on admission. M.W. 1 says that the duties of a Shop Supervisor are enumerated in pages 11 to 14 of the Booklet which is marked Ext. C. It is suggested to the witness but denied by him that the instructions contained in the Job Chart contained in Ext. C were not being followed by the management. In cross examination M.W. 1 admits that a Shop Supervisor has no power to grant leave or to initiate disciplinary proceeding or to write the C.C.Rs. in respect of the Shop Assistants and Weighmen-*cum*-watchmen who are attached to the Shops in respect of which he is kept in-charge. W.W. 1 has adduced evidence but he being a son of the second party has no direct knowledge as to what he has stated in his evidence. W. W. 2 in the capacity of an ex-employee has stated that the post of Shop Supervisor has no managerial or supervisory power. He has further stated that a Shop Supervisor works under the control of the Branch Manager. He has further stated that the main function and nature of work of a Shop Supervisor is to receive advance

from the Branch Manager, collect minor forest products from the tribals and deposit the same at the Central Godown of the first party Corporation. He has further stated that a Shop Supervisor has no power to sanction leave to any employee or initiate and conduct disciplinary proceedings. He has further stated that a Shop Supervisor has no power to appoint any employee and that no employee works under his direct control.

Learned Advocate for the second party cites a decision of the Hon'ble Supreme Court, reported in 1985 Lab I.C. 1008 (*Arkal Govind Vrs. Ciba Geigy of India Ltd., Bombay*). In this Judgment their Lordships have observed that where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other works, the additional duties cannot change the character and status of the person concerned. It is held that the dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person. It is further observed that the person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in a supervisory capacity.

In *Ramesh Vrs. Commissioner, Revenue Division, Amaravati, 1995 Lab. I. C. 546* (Bombay High Court), it is observed as follows :

“It is popularly believed that in order to dub the work as a “supervisory”, the person concerned must have control over the subordinates and the person concerned should have the power to sanction leave, give promotions etc. which is only one of the facets of the supervisory work. That is not the be all and end all of the term ‘supervisory work’. If the supervision is required to be made in some other different way, like over the quality of the work and over other aspects such as to see and examine whether the work is completed or not in satisfactory manner and in keeping with specifications, that also becomes the supervisory work. It is, therefore, clear that really speaking, none of the duties of the petitioner are of technical nature, but are of supervisory nature.”

In the case at hand there is no dispute that Ext. C contains a job chart specifying the duties of a Shop Supervisor. According to the Job Chart a Shop Supervisor is to perform the following principal duties :

- (i) A Shop Supervisor remains in-charge of three or more forest product shops as assigned to him by the Divisional/Branch Manager (D/BM) and he is to visit the shops kept under his charge to—
 - (a) verify whether the Shop Assistant of the concerned Shop has been opening and closing the shop in time ;
 - (b) see, if the goods in the Shop have been displayed properly and the rate chart is placed at a conspicuous place ;
 - (c) check the Stock Book ;

On checking the Stock Book, if any article is found lying in the shop for more than 60 days he has to investigate into the reason thereof and to bring it to the notice of the

Branch Manager. Furthermore, if he finds any shortage of any item he will report to the Divisional/Branch Manager suggesting the amount or value of the goods found short for recovery from the person responsible for the shortage. It is further stipulated in the Job Chart that if any discrepancy in stock is detected afterwards it will be deemed as loss occasioned due to negligence of the Shop Supervisor and he would be accountable for that ;

- (ii) he is to check and ensure that all prescribed Registers are duly maintained by the Shop Assistant ;
- (iii) his duty is to collect sale proceeds of the Shops from the concerned Shop Assistant against issue of money receipt and deposit the same either in the Bank or in the Branch Office of the Corporation. It is stipulated that in case he finds any shortage in cash he is to fix responsibility and report it at once to the Divisional/Branch Manager for necessary action ;
- (iv) he is to satisfy himself about the edibility of edible commodities and quality of other commodities and any defect found should be reported to the Divisional/Branch Manager before the same get damaged or destroyed due to prolonged storage. It is stipulated that if he fails to make such report he would be responsible for such damage ;
- (v) he is to receive monthly indent of commodities for the Shop from the concerned Shop Assistant and submit his recommendation for supply of such commodities to the Divisional/Branch Manager after checking the existing stock and average monthly sale of individual item ;
- (vi) he is to check monthly return of sale and take steps for improvement of the sale in case the sale decreases ;
- (vii) he is to take necessary action on the written request, if any, of the Shop Assistant on the working of the Shops ;
- (viii) he is responsible for the safe custody of all the properties in the Shop ;
- (ix) he is kept in-charge of disbursement and recovery of Consumption-*cum*-Production loan in accordance with the procedure prescribed from time to time and to maintain the Loan Ledger in the prescribed form ;
- (x) he is to receive advances from the Divisional/Branch Manager and procure SAP and MFP from the Tribals. He must utilise the advance within the shortest possible period ;
- (xi) he is required to visit each and every Palli and Village within his jurisdiction to keep contact with the tribal leaders and to explain to them the aims and objectives of the Corporation ;
- (xii) he is to maintain Records and Registers and submit the same to the Branch Manager every month for his verification.

From the above mentioned prescribed duties of a Shop Supervisor it can be noticed that the main duty of the Shop Supervisor is to procure forest products from the tribals and to exercise supervision over the forest product shops kept under his charge. While discharging the main job he is required to take judgment of his own. He is required to make investigation into the reasons of an article found lying in a Shop for more than 60 days. He is required to give suggestion to his superiors in his report on shortage of any item with regard to the amount/value of the goods found short and the person responsible for the shortage. He is also required to fix responsibility and submit his report to that effect to his superiors if he finds any shortage in cash with regard to the sale proceeds of a Shop. He is also required to exercise his independent judgment while satisfying himself about the edibility of edible commodities and quality of other commodities. He also makes recommendation for supply of commodities to the shops after checking the existing stock and average monthly sale of individual item. In the event there is any decrease in the sale of the commodities he is required to take step for the improvement of the sale. So far his duties with regard to the management of F. P. Shops under his charge are concerned, it is supervisory in nature. Even in the matter of procurement of SAP and MFP from the tribals he has been given scope to take judgment of his own in the matter of procurement and transportation of the forest products so also utilisation of the advances received by him for the said purpose. He has also got wide discretion in the matter of keeping contact with the tribal leaders to explain them the aims and objectives of the Corporation. No doubt he is required to maintain Records and Registers which is clerical in nature but that part of his duty does not dominate the main part of his duty which is supervisory in nature. Therefore, in my considered view the second party comes within sub-Clause (iv) of Clause 's' of Section 2 of the Act. Consequently, he is not a 'Workman' as defined under the Act.

8. This is a case of compulsory retirement. According to the management, the order of compulsory retirement has been passed in terms of Rule 38 of the TDCC Employees Service Rules, 1990 but the management has not brought the said Rules on record. If it is actually a case of compulsory retirement in terms of any such Rules, then the termination of service under challenge does not amount to retrenchment as observed by our own Hon'ble High Court in *Purna Chandra Giri Vrs. Odisha Khadi & Village Industries Board*, reported in Vol. 50 (1980) CLT 91. Therefore, there is no necessity for complying with the provisions of Section 25-F of the Act. However, if the second party is deemed to be a workman and if it is considered to be a case of retrenchment, then it is in contravention of Section 25-F of the Act. Similarly, if it is considered to be a case of termination of service as a punishment for alleged misconduct, then it is not sustainable in as much as the same has been effected without the second party being found guilty of the misconduct established in a departmental proceeding.

9. Since this Tribunal has arrived at a conclusion that the second party was not a 'Workman' as defined under Section 2(s) of the Act and since our Hon'ble High Court have held that 'compulsory retirement' in terms of Service Regulations does not amount to retrenchment as defined under the

Act, the reference is not maintainable and no relief can be granted to the second party or for that matter to his Legal Representatives.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
12-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
12-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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