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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 17th April 2012

No. 2989–IR-ID-23/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th October 2011 in Industrial Dispute Case No. 3 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Institute of Textile Technology, Choudwar, Cuttack and their workman Shri Akshaya Kumar Das & Five Others 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 2011

Dated the 15th October 2011

Present :

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

Between :

The Management of Institute of Textile Technology, Choudwar, Cuttack. . . First Party —Management

And

1. Shri Akshaya Kumar Das, S/o Pahali Das, At Aguribinda, P.O. Jaupada, Dist. Kendrapara. . . Second Party Workman

2. Shri Gagan Kumar Behera,
and Bhagaban Behera,
S/o Suryamani Behera,
At/P.O. Choudwar,
Mangalasahi,
Cuttack.

3. Shri Dhaneswar Nayak,
S/o Late Jhari Nayak,
At/ OTM Durga Bazar,
P.O. Choudwar,
Cuttack.

4. Shri Durga Charan Jena,
S/o Bijay Kumar Jena,
At Rudha Nagar, Jenasahi,
P.O. Raghunathpur,
Dist. Jagatsinghpur.

5. Shri Pradip Kumar Nayak and
Pradip Nayak,
S/o Purnananda Naya,
At/P.O. Choudwar Pradhansahi,
Cuttack.

6. Shri Ispa Dilli Babu,
S/o Ispachina Babu,
At/ Pandia,
P.O. Purusottampur,
Dist. Ganjam.

Appearances :

Shri R. K. Dash &
B. C. Pradhan, Advocate. . . For the First Party —Management

Shri S. N. Biswal,
General Secretary of
Cuttack Commercial Workers Union. . . For the Second Party —Workman

AWARD

This is a refefrence 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. 1132—ID-23/2010-LE., dated the 29th January 2011. The Schedule of reference runs as follows :—

> "Whether the demand of Shri Akshya Kumar Das and five others namely, Shri Gagan Kumar Behera, Dhaneswar Nayak, Shri Durga Charan Jena, Shri Pradip Kumar Nayak and Shri Ispa Dilli Babu, employed in M/s Institute of Textile Technology,

Choudwar, Cuttack initially through the Security Agency i.e. M/s Bazz Security & Detective Agency (P) Ltd., Sahidnagar, Bhubaneswra and continue to engage and paid by the said Institute direct from January 2007 after the Security Agency has absconded from the scene, Institute are legal and/or justified ? If not, to what relief are they entitled ?

2. Shorn of irrelevent facts pleaded in the claim statement, the satan taken by the second party members narrated, in short, is as follows :—

The six workman have raised the dispute have been working under the first party, a State Government Institute, from different dates as stated below :—

Sl. No.	Name of the workmen	Date of engagement
1.	Shri Akshaya Kumar Das	1-12-1999
2.	Shri Gagan Kumar Behera	1-4-2002
3.	Shri Dhaneswar Nayak	1-5-2002
4.	Shri Durga Charan Jena	1-4-2005
5.	Shri Pradip Kumar Nayak	4-11-2003
6.	Shri Ispa Dilli Babu	1-5-2002

All of them have been performing their duties continuously till date. They are the security personnel directly employed under the first party and they have been performing work of permanent and perennial nature availing any holiday including Sundays. The first party directly supervises their work and allots duty to them. But, in orders fto avoid responsibilities and obligations under different Labour Laws hthe first party used to make payment of wages to the second party-members through a contractor firm namely, M/s Bazz Security and Detective Agency (P) ltd., (for short, 'Bazz Security'). However, since January 2007 the management has been directlgy paying wages to the second party-members. The second party members have been rendering services satisfactorily. No charge has been framed against any of them. Under such circumstance, they are entitled to be regularised in service under the first party. Inspite of several approaches of the second party-members the first party is not requlrising their services.

3.

4. The following issues have been settled :—

ISSUES

(i) "Whether the termination of services of Shri Khirod Kumar Jena, Watcher with effect from the 31st July 2001 by the management of M/s Odisha Forest Development Corporation Ltd., Dhenkanal (C) Division, Dhenkanal is legal and/or

justified ?

(iv) If not, what relief Shri Jena is entitled to ?"

5. The workman has examined himself as W.W. No.1. No other witness is examined on behalf of the workman. IOn the other hand, the management has examined two witnesses. M.W. No.1 is a watcher and M.W. No.2 is an L.D. Assistant, working in the Dhenkanal division of the corporation. Exts1 to 7 have been marked on behalf of the workman and Exts.A to J have been marked on behalf of the management.

FINDINGS

6. *Issue Nos. (i)*—The dispute under reference is with regard to the legality and/or justifiabilifty of the termination of service of the second party effected from the 31st Jyly 2001. Regarding completion of one years of continuous service preceding the date of retrenchment there is no dispute between the parties. The management's plea that the requirements of Section 25-F of the Act were duly complied with at the time of the impugned retrenchment is also not under challenge. The real dispute is with regard to the applicability of Sectionh 25-N of the Act to the establishnent of the first party. Admittedly, there is non-compliance of the requirements of Section 25-N of the Act. Therefore, if it is found that the provisions contained in Section 25-N of the Act are applicable to the case in hand, then the order of retrenchment will be illegal. Therefore, it is to be examined as to whether the corporation is an "Industrial Establishment" as defined under Section 25-N should have been complied with in order to bring about a valid retrenchment of the second party.

In support ocf the claim that the corporation is an"industrial establishment" as defined under Section 25-L of the Act, learned Advocate 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 were the said work is being conducted would form part of the Factory for the purpose of Section 2(n) of the said Act, Hon'ble Supreme Court have held that Uttaranchal Forest Development Corporation fall within the definition of "industrial establishment" as contained in Section 25-L lof the Act.

For the purpose lof Section 2(k) and 2(n) 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 trees and converting then into logs. Therefore, the first party in "industrial establishment" as defined under Section 25-L of the Act.

7. Admittedly, while terminating the services of the second party the provisions of Section-25N 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 data date on which the notice of retrenchment was given to the workman. However, the retrenchment cannot be said to be unjustified. Retrenchment lof a large number of employees working with the corporation on daily

wage/consolidated/adhoc/NMR basis was affected on the ground of reduction of work of the corporation as well as its poor financial condition. Ext.C os a circular issued by the corporation wherein the circumstance 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.C 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 workman Section-F of the Act would be applicable. Be that as it may, the retrenchment under consideration though justified, it is illegal.

8. The second party challenges the legality of the retrenchment on further grounds such as non-observance of Section 25-G and 25-H of the Act. In claim statementr he has made bold allegations that after his reyrenchment the management recruited new employees to fill-up different posts in which he himself was aworking and that while his juniors were retained by the management he was terminated from service. In this regard he has adduced evidence saying that after his termination his juniors who were retained in employment were regularised in services. Hespecifically named one Srikanta Kumar Pradhan, Watcher as one of his juniors. While adducing further evidence he has stated that Rabindra Kumar Pand and Ramesh Ch. Jena, though junior to him, have been regularised in services. The regularisation of services of the workman *vis- a -vis* his juniors is not the subject matter of dispute. With the materials available on record there cannot be a definite conclusion that while regularising their services the management had ignored the senciority of the second party. Because, it is not disputed by the workman that earlier his service was terminated with effect from the 7th July 1992 and under an Award of the Kabour Court he was reinstated on 24-2-2000 but without any back wages. The management does not admit that workman junior to the second party were regularised in service. On behalf of the first party it is argued trhat the workman cannot claim seniodrity from the date of his first party engagement as he was not under the employment of the first party from the 7th July 1992 to 24th February 2000. The argument seems to be justified. In this proceeding it is not within the scope of the reference to decide whether the workman should be deemed to be in continuous service with effect from the date of his first engagement. Thus, it is found that the workman has failed to establish infraction of Section 25-G and 25-H of the Act.

Issue No. (i) i s therefore, answered against the management. The retrenchment may be held to be justified but it is illegal in as much as Section 25-N of the Act has not been compled with.

9. *Issue No. (ii)*— The workman claims for his 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 in as much as it no more requires the services of any NMR/ daily wage/Consclidated/adhoc employees. The workman has filed a copy of the Award passed by this Tribunal in I.D. case No.297 of 2008 in which the firat party corporation had been arrayed as the first party and in almost similar circumstances this Tribunal has passed the Award for reinstatement of the workman with a lump sum amount of Rs. 10,000 as compensation in lieu of back wages. The management, on the other hand, has filed copy of Award by this Treibunal in I.D. case No. 5 of 2004 and 6 of 2004 made against the first party corporation in which under simol;ar circumstances

reinstattement of the workman concerned has been refused and compensation has been granted in lieu of reinstatement and back wages.

10. The second party had completed little more than one year of continuous service by the time he was retrenched. Of course, in the first spell of his employment he had completed around ten years of continuous service after which his service was terminated with effect from the 1st July 1992 and under an Award he was re-engaged with effect from the 24th February 2000 without allowing him to get back wages. In the earlier Award there is no observation as to whether the period of his disengagement should be counted for the purpose of continuity of service. Therefore, in my considered view it is to be presumed that the period of disengagement of the second party cannot be taken into account while computing the period of his continuous employment. Therefore, it is to be held that the workman had completed little more than one year of continuous service by the time the imugned retrenchment was given effect to.

On the basis of his affidavit evidence it can be said the workman was about 50 years old by the time he was retrenched. he claims to have been out of gainful employment ever since his retrenchment. He is not a skilled workman. He was working as a watcher on daily wage basis. It cannot be said that he could not have taken up manual work at the agse of 50. From the 31st July 2001 till date he has not rendered any service to the corporation. The management hsa shown hthat there 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) SC 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.

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 him. 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 back wages and otherservice benefits. It is further pointed out that in Uttaranchal Forest Development Corporation' scase (supra), 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 Honble Supreme Court taking the peculiar facts circumstancs of that case have refused the relief of reinstatement with back wages and in lieu thereof a sum of Rs.1 lac wasawarded by way of compensation to each of the workman. In that case the industry concerned was in financial doldrums and ten facing proceedings before the B.I.F.R. under the sick industrial companies Act.

In the case at hand it is already held that the retrenchment is justified though for non-compliance of Section 25-N of the Act it is illegal. The management has shown that it no more needs the services of the temporary employees like N.MRs./D.L.Rs. etc.. Therefore, in my considered view the relief of reinstatement with back wages will definitely be prejudical to the first party. Considering different

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