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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 19th April 2012

No. 3094—li-1(BH)-25/2005(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th December 2011 in I. D. Case No. 6 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Mayurbhanj Irrigation Division, Baripada and its Workmen Shri Krushna Chandra Mohanta and 20 others, Ex-N.M.Rs. was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 6 OF 2011

The 28th December 2011

Present :

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of the Executive Engineer,
Mayurbhanj Irrigation Division, Baripada. .. First Party—Management

And

Their Workmen Shri Krushna Charan Mohanta
and 20 others, Ex-N.M.Rs. (List attached to
the Conciliation Failure Report). .. Second Party—Workmen

Appearances :

Shri Gouranga Charan Sahoo, .. For the First Party—Management
Assistant Engineer.

Shri K. C. Mohanta, .. For the Second Party—Workmen
Authorised Representatiive.

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. 2270—li-1 (BH)-25/2005-LE., Dt. 7-3-2011. The Schedule of reference runs as follows :

“Whether the retrenchment from service of Shri Krushna Chandra Mohanta and 20 others (as per list enclosed to the order of reference) by the management the Executive Engineer, Mayurbhanj Irrigation Division, Baripada from 15-6-1983 is legal and/or justified ? If not, what relief the workmen are entitled to ?”

2. In the present reference the validity of termination of services of 21 workmen is the subject matter but 17 out of the disputant workmen have filed a joint claim statement contending that they were engaged as N.M.Rs. by the erstwhile management of Kalo Irrigation Project at Udala in between 1973 and 1983 and they had continued in such employment for more than four years. It is further alleged that the erstwhile management without complying with the provisions of Section 25-F of the Act retrenched them at different point of time in between 1979 and 1990 (a list is Annexed to the claim statement showing the year of joining as well as retrenchment of the respective workmen). It was after the retrenchment of the workmen the erstwhile management was takenover by the present management i.e., Mayurbhanj Irrigation Division with effect from the 1st August 1992. The workmen had approached the management time and again for their reinstatement but no action was taken. So, on 18-3-2000 they approached the local Labour Machinery by raising a dispute.

The disputant workmen claim their reinstatement with full back wages. They claim parity with the workmen in I.D. Case No. 58 of 1992 and I.D. Case No. 18 of 1995 who have been reinstated with back wages on the strength of Awards passed by the Labour Court/Tribunal and subsequently confirmed by the Hon'ble High Court.

3. The first party i.e., Executive Engineer, Mayurbhanj Irrigation Division, Baripada in his written statement has stated that the Baripada Division has been functioning with effect from the 28th February 1983. The erstwhile management i.e., Kalo and Sunei Irrigation Project which was under the Mayurbhanj Investigation Division, Udala was transferred to the control of the first party with effect from the 1st August 1992. As regards employment of the disputant workmen the first party's stand is that they might have been engaged as casual labourers under the erstwhile management as an when required for the Project Work. However, on verification of records the factum of their engagement could not be established except the engagement of the following six disputant workmen who were engaged for very short periods as noted against each of their names :

Sl. No.	Name of the workmen	Period of engagement
1	Bishnu Charan Pradhan	1-6-1984 to 30-6-1984
2	Biram Murmu	1-9-1983 to 10-9-1983
3	Arjun Hembram	1-9-1983 to 10-9-1983
4	Purna Chandra Pradhan	1-9-1983 to 30-9-1983
5	Ajyodhya Kumar Mohanta	1-4-1980 to 30-4-1980
6	Bipin Behari Mohanta	1-4-1980 to 30-4-1980

It is further pleaded that the above named six workmen left employment voluntarily. It is denied by the first party that the second party had approached the management time and again and the latter gave assurance for their reinstatement. Further contention is that the Government has imposed ban on employment of N.M.Rs. vide letter, dated the 13th September 1990. It is further contended that the claim having been raised after 27 years of the alleged retrenchment it is barred by limitation.

4. The following issues have been settled on the basis of the pleadings of the parties :—

ISSUES

- (i) “Whether there ever existed employer-employee relationship between the first party and the members of the second party except (i) Bishnu Charan Pradhan, (ii) Biram Murmu, (iii) Arjun Hembram, (iv) Purna Chandra Pradhan, (v) Ajyodhya Kumar Mohanta and (vi) Bipin Behari Mohanta ?
- (ii) Whether the above named six persons have completed one year of continuous service ?
- (iii) Whether the retrenchment from service of Shri Krushna Chandra Mohanta and 20 others (as per list enclosed) by the management the Executive Engineer, Mayurbhanj Irrigation Division, Baripada from 15-6-1983 is legal and/or justified ?
- (iv) What relief ?”

5. On behalf of the workmen one of the disputant workmen is examined as W.W. No. 1 and Exts. 1 to 7 have been marked. Similarly, M.W. No. 1, an Assistant Engineer working under the first party is examined on behalf of the management but no document has been exhibited.

FINDINGS

6. *Issue Nos. (i) & (ii)*—The present management takes the stand that engagement of the disputant workmen except six of them who have been named in Para. 3 above could not be established after thorough search of records. According to the management, the disputant workmen might have been engaged by the erstwhile management as casual labourers as and when required in the project work. On the other hand, the disputant-workmen have claimed to have worked for more than four years under the erstwhile management and were retrenched from their work without any notice. The workmen have Annexed with their claim statement a list containing their name, father’s name, address, year of joining and year of retrenchment. For the sake of convenience the year of joining and year of retrenchment of the disputant workmen as reflected in the Annexure is reflected hereunder :—

Sl. No.	Name of the workmen	Year of joining	Year of retrenchment
(1)	(2)	(3)	(4)
1	Krushna Chandra Mohanta	1973	1979
2	Bishnu Charan Pradhan	1983	1987
3	Bijay Murmu	1973	1987
4	Kalakar Simnokia	1973	1979

(1)	(2)	(3)	(4)
5	Biram Murmu	1981	1987
6	Lada Singh	1981	1987
7	Bharat Chandra Hembram	1983	1987
8	Arjun Hembram	1981	1987
9	Bhagabat Nayak	1981	1990
10	Biseswar Sahoo	1974	1980
11	Purna Chandra Pradhan	1981	1987
12	Anama Simnokia	1975	1979
13	Ajodhya Kumar Mahanta	1976	1979
14	Chata Murmu	1973	1979
15	Naba Kishore Mahanta	1976	1984
16	Bauri Mahanta (His name does not find place in the list)		
17	Bipin Behari Mahanta (Name does not find place in the list).		

The workmen have not exhibited any document to support their claim with regard to the year of joining and year of retrenchment as reflected in the said Annexure. In the absence of any documentary evidence and when it is not admitted by the first party that the disputant workmen had ever worked in the establishment of the erstwhile management it is not possible on the part of this Tribunal to arrive at a conclusion that they were actually employed under the erstwhile management. That apart, the claim of the disputant workmen becomes highly doubtful when their age factor is taken into consideration. For example, the age of Krushna Chandra Mohanta (vide Sl. No. 1 in the above table) who is examined as W.W. No. 1, as on the year of joining with the erstwhile management, if worked out on the basis of the age he has given at the time of his deposition so also the age given in the Cause Title of the claim statement, was 14. On 12-10-2011 he adduced evidence before this Tribunal. At that time he claimed to be aged about 52. In the claim statement also his age is stated to be 52 years. If that is correct then his year of birth is 1959. It is claimed that his year of joining is 1973. If his year of birth is 1959 then he was 14 years old in the year 1973.

In the Cause Title of the claim statement the age of each of the disputant workman is mentioned. Only one of them is examined as a witness. At no other place their age is available. Basing on their age given in the Cause Title of the claim statement it is found that the disputant workmen Vide Sl. Nos. 1, 3, 6, 10, 12, 13, 14 & 15 were aged about 14, 11, 12, 11, 9, 10, 16 & 17, respectively by the year of joining as given in the Annexure. It is not believable that these persons were employed by the erstwhile management while they were minors. Due to this reason the claim advanced by the disputant workmen is found to be highly suspicious. Therefore, in the absence of any documentary evidence this Tribunal cannot believe the claim of the disputant workmen as to their employment under the erstwhile management.

7. So far the other six persons named in Para. 3 of this Award are concerned, the management takes the plea that each of them was engaged for a very short period. According to the management, the period of their respective engagement could be ascertained from documents available in their establishment. In the absence of any documentary evidence this specific claim of the first party is to be accepted. As there is no evidence on record it cannot be said that any of these six persons had completed 240 days of work so as to enable them to invoke the provisions of Section 25-F of the Act.

8. It appears, the disputant workmen have raised this dispute only when they came to know that several other persons got reinstated in the establishment of the first party on the strength of Awards passed by the Labour Court/Industrial Tribunal in some I.D. Cases. The disputant workmen have claimed parity with those persons who have been so reinstated. The disputant workmen have exhibited certified copy of some Awards as well as Orders passed by Hon'ble High Court. I have gone through the contents of the Awards and orders of the Hon'ble Court. The facts and circumstances of those cases are quite different from that of the present one. In those cases the management while admitting the existence of employer employees relationship for more than one year taken the plea that the concerned workman had abandoned their employment voluntarily. But, in the case at hand the management does not admit the existence of employer employee relationship. There is no material to establish such relationship. Rather it is found that several persons who have raised the dispute were minors at the time they had allegedly joined with the erstwhile management. Therefore, merely on the ground that on the strength of Awards passed by this Tribunal in some other I.D. Cases several persons have been reinstated in the establishment of the first party the claim of the disputant workmen of this case cannot be allowed.

Both the issues are, therefore, answered against the second party-workmen.

9. *Issue Nos. (iii) & (iv)*—In view of the findings on Issue Nos. (i) and (ii), the alleged retrenchment of the second party-workmen cannot be said to be illegal or unjustified and they are not entitled to any relief.

List of workers

1. Shri Anam Siminakia, S/o. Shri Mulia Siminakia,
At Phuljhari Colony, Salamunduli, P. S. Udala,
Dist. Mayurbhanj.
2. Shri Ajodhya Kumar Mohanta, S/o. Shri Kshetra Mohan Mohanta,
At Nabara Colony, P. O. Bahubandha, P. S. Udala,
Dist. Mayurbhanj.
3. Shri Krushna Chandra Mohanta, S/o. Shri Purna Chandra Mohanta,
At Nabara Colony, P. O. Bahubandha, P. S. Udala,
Dist. Mayurbhanj.
4. Shri Dhuma Tudu, S/o. Shri Chaitan Tudu,
At Dangarchua, P. O. Chuinposi, P. S. Kaptipada,
Dist. Mayurbhanj.

5. Shri Bijay Murmu, S/o. Shri Shyam Murmu,
At Ghagaragadia, P. O. Salamunduli, P. S. Udala,
Dist. Mayurbhanj.
6. Shri Lada Singh, S/o. Shri Lada Singh,
At Ghagaragadia, P. O. Salamunduli, P. S. Udala,
Dist. Mayurbhanj.
7. Shri Chhata Murmu, S/o. Shri Jarge Murmu,
At Kukurdima Talasahi, P. O. Potaldiha, P. S. Udala,
Dist. Mayurbhanj.
8. Shri Biseswar Sahu, S/o. Shri Jagabandhu Sahu,
At Urmal, P. O. Bahubandha, P. S. Udala,
Dist. Mayurbhanj.
9. Shri Bhagabat Nayak, S/o. Shri Banchhanidhi Nayak,
At Dibyasinghpur, P. O. Bhimtali, P. S. Udala,
Dist. Mayurbhanj.
10. Shri Biram Murmu, S/o. Shri Gurva Murmu,
At Ghagaragadia, P. O. Salamunduli, P. S. Udala,
Dist. Mayurbhanj.
11. Shri Arjun Hembram, S/o. Shri Musu Hembram,
At Mahulbani, P. O. Pedagadi, P. S. Kaptipada,
Dist. Mayurbhanj.
12. Shri Kalakar Siminakia, S/o. Shri Muralidhar Siminakia,
At Nabara Colony, P. O. Bahubandha, P. S. Udala,
Dist. Mayurbhanj.
13. Shri Bishnu Charan Pradhan, S/o. Shri Siba Pradhan,
At Kukurdima, P. O. Taldiha, P. S. Udala,
Dist. Mayurbhanj.
14. Shri Renta Soren, S/o. Shri Dukhu Soren,
At Dadgasahi, P. O. Anantapur, P. S. Udala,
Dist. Mayurbhanj.
15. Shri Purna Chandra Pradhan, S/o. Shri Siba Pradhan,
At Kukurdima, P. O. Potaldiha, P. S. Udala,
Dist. Mayurbhanj.
16. Shri Bipin Bihari Mohanta, S/o. Shri Kshetra Mohan Mohanta,
At Bahubandha, P. O. Bahubandha, P. S. Udala,
Dist. Mayurbhanj.
17. Shri Bhagaban Lenka, S/o. Shri Bhalu Lenka,
At Kukurdima, P. O. Potaldiha, P. S. Udala,
Dist. Mayurbhanj.
18. Shri Biswanath Mohanta, S/o. Shri Rama Chandra Mohanta,
At Gorandijodi, P. O. Saharpada, P. S. Saharpada,
Dist. Keonjhar.

19. Shri Naba Kishore Mohanta, S/o. Shri Nitu Mohanta,
At Saradha, P. O. Karanjia, P. S. Karanjia,
Dist. Mayurbhanj.
20. Shri Bharat Hembram, S/o. Shri Tima Hembram,
At Hutarikham, P. O. Chakradharpur, P. S. Udala,
Dist. Mayurbhanj.
21. Shri Bauri Mohanta, S/o. Shri Puma Ch. Mohanta,
At /P. O. Chuinpasi, P. S. Kaptipada,
Dist. Mayurbhanj.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
28-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
28-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government