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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 8th May 2012

No. 3599—li/1(B)-108/2006(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th November 2011 in Industrial Dispute Case No. 93 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of GRID Corporation of Odisha Ltd., Bhubaneswar and their Workman Shri Pravakar Pradhan represented through O.S.E.B. Ministerial Employees' Union, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 93 OF 2006

Dated the 15th November 2011

*Present :*

S. A. K. Z. Ahamed,  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Management of  
GRID Corporation of Odisha Ltd.,  
Bhubaneswar. . . First-party—Management

And

Their Workman  
Shri Pravakar Pradhan  
represented through O.S.E.B.  
Ministerial Employees' Union,  
Bhubaneswar. . . Second-party—Workman

*Appearances :*

|                                  |       |                                       |
|----------------------------------|-------|---------------------------------------|
| Shri L. Dash and Shri A. K. Sahu | . . . | For the First-party—Management        |
| <hr/>                            |       |                                       |
| Shri P. Pradhan                  | . . . | For the Second-party—Workman himself. |

## AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 11315—II/1(B)-108/2006-LE., dated the 22nd December 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the claim of the workman Shri Pravakar Pradhan regarding officiating pay and allowances in the post of Section Officer from the 30th May 2000 to the 30th September 2005 is legal ? If so, what should be the quantum ?"

3. The case of the workman, in brief, as set out in his statement of claim is that he joined as Lower Division Clerk (in short L.D.C.) in the State Government Service on 27-10-1969 and thereafter he was transferred to the establishment of Odisha State Electricity Board (in short O.S.E.B.) on exercise of his option. While working as L.D.C., he was promoted to the rank of Gr. II Assistant and subsequently Gr. I Assistant with effect from 1980 and 24-5-2000 respectively. Considering his sincerity, integrity and responsibility while discharging his official duty on the strength of Gr. I Assistant, the authority of the management directed to the second-party workman to do the work of Section Officer with effect from the 30th May 2000. Accordingly the second-party workman performed the duty of Section Officer till his retirement i.e., on 30-9-2005 without any stigma. At the relevant point of time the Scale of Pay of the Section Officer was Rs. 5,350—Rs. 10,520 which was higher than the Pay Scale of Gr. I Assistant i.e., Rs. 4,760—Rs. 9,370. Though he was directed to do the work of Section Officer, but he was not allowed to draw the officiating pay and allowances in the post of Section Officer. Accordingly the workman contended that he is entitled to the officiating pay and allowances in the post of Section Officer from 30-5-2000 to 30-9-2005.

4. On the other hand, the first-party management appeared and filed written statement denying the claim made by the second-party workman. The first-party management has contended that the second-party workman is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, inasmuch as, he was drawing wages exceeding one thousand six hundred rupees per month and that the post of Section Officer belongs to the cadre of executive/administrative grade i.e., E-2 and governs under the GRIDCO Officers Service Regulation and the Rules and partly admitted that the second-party workman was continuing in the post of Gr. I Assistant and was only directed to look after the establishment matter and the second-party workman was never allowed to officiate in the post of Section Officer. As per the GRIDCO Officers Service Regulation and the Promotion Policy, the Chairman-*cum*-Managing Director is the competent authority to accord permission for officiating promotion and that such officiating promotion should be given initially for

a period of 90 days and the further extension for another period of 90 days basing upon the recommendation of the committee of the Board so constituted for the purpose and on approval of Chairman-*cum*-Managing Director and there shall be no further extension of officiating period beyond extended period of 90 days. The first-party management has also contended that the second-party workman was never allowed to officiate in the post of Section Officer and there was no post existing in the office of the Chief Engineer (T.P.) being abolished on retirement of one Shri Dasarathi Panda, Ex Section Officer. The first-party management has further pleaded that the pendency of the reference by virtue of Odisha Electricity Reforms (Transfer of Transmission and related activities) Scheme, 2005, transfer the establishment of management has been transferred to M/s OPTCL along with assets, proceedings and personnel from the said date. Hence the first-party management has denied the claim of the second-party workman and ultimately pray this Court that the second-party workman is not entitled to the officiating pay and allowances for the period in question and the reference may be answered in favour of the first-party management.

5. In view of the above pleadings of the parties, the following issues are settled :—

#### ISSUES

- (i) "Whether the claim of the workman Shri Pravakar Pradhan regarding officiating pay and allowances in the post of Section Officer from 30-5-2000 to 30-9-2005 is legal ?
- (ii) If so, what should be the quantum ?"

6. In order to substantiate his plea, the second-party workman has examined himself as W.W. 1 and proved documents under the cover of Exts. 1 to 14. On the other hand, the first-party management has examined two witnesses altogether, out of whom, M.W. 1 is the Assistant to Chief Engineer (T.P.) whereas M.W. 2 is the Deputy Manager (HRD) and proved documents under the cover of Exts. A to AB.

#### FINDINGS

7. *Issue No. (i)*—Before going to discuss the evidence in detail, it is pertinent to mention here that the order of reference is that whether the claim of the workman regarding officiating pay and allowances in the post of Section Officer is legal and justified.

8. It is not in dispute that the second-party workman has not received any promotion to the post of Section Officer. In the instant case, the second-party workman was also not claiming the officiating promotion to the post of Section Officer rather, he was claiming the officiating pay and allowances in the post of Section Officer which he was discharging basing upon the Order No. 3796, dated the 30th May 2000 under the cover of Ext. B which is quite distinguishable and basing upon the principle of 'equal pay for equal work'. It will be convenient to quote certain relevant provisions of the Industrial Disputes Act, 1947 at the outset.

"Section 2(k)—"industrial dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, or any person."

In Section 2(s) of the Industrial Disputes Act, 1947, the workman has been defined as follows :—

"Section 2(s)—'workman' means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person :—

(i) XX XX XX XX

(ii) XX XX XX XX

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, drawn wages exceeding one thousand six hundred rupees per mensem or exercise, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature."

9. On a fair reading of the provisions of Section 2(s) of the Industrial Disputes Act, 1947, it is clear that 'workman' means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward including any such person who has been dismissed, discharged or retrenched. The later part of the Section excludes 4 classes of the employees including a person employed mainly in a managerial or administrative capacity, or a person employed in a supervisory capacity drawing wages exceeding Rs. 1,600 per month or exercises functions mainly of a managerial nature. It has to be taken as an accepted principle that in order to come within the meaning of the expression 'workman' in Section 2(s) of the Industrial Disputes Act, 1947, the person has to be discharged in anyone of the types of the works enumerated in the first portion of the section. If the person does not come within the first portion of the Section then it is not necessary to consider the further question whether he comes within the any of the classes of workman excluded under the later part of the section. The question whether the person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing order or the appointment order or in any other material in which the duties assigned to him may be found. When the employee is assigned a particular type of duty and has been discharging the same then there may not be any difficulty in coming to a conclusion whether he is a workman within the meaning of Section 2(s) of the Industrial Disputes Act. If, on the other hand, the nature of duties discharged by the employees is multifarious then the further question that may arise for consideration is which of them is his principal duty and which are the ancillary duties performed by him. While deciding the question, designation of the employee is not of much importance and certainly not conclusive in the matter as to whether or not he is a workman under Section 2(s) of the Industrial Disputes Act. Law is well settled that if a person is mainly doing supervisory work and incidentally or for a fraction of the time also does some clerical work, it would have to be held that he is employed in a supervisory capacity and conversely, if the main work done is of clerical nature the mere fact that some supervisory duties are also carried out

incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity.

10. On perusal of the case record and evidence led by both the parties in the facts and circumstances of this case, it appears that the workman was employed to do the types of work enumerated in the definition of workman under Section 2(s) of the Industrial Disputes Act. It is an admitted fact that the Chief Engineer (T.P.), GRID Corporation of Odisha, Bhubaneswar intimated the fact regarding officiating pay and allowances as Section Officer in favour of the second-party workman to the Chief General Manager (HRD), GRIDCO, Bhubaneswar under the cover of Exts. 1 to 8. Nothing has been elicited from the mouth of the second-party workman to impeach his testimony on the above score. Except bare denial by the first-party management, there is no material on record to say that the workman is not coming under the category of workman as envisaged under Section 2(s) of the Industrial Disputes Act. After going through the evidence in detail and keeping in view of the principles laid down in the decided cases reported in *Ananda Bazar Patrika (P) Ltd. Vrs. Workmen* (1970) 3 SCC 248 and in *S. K. Maini Vrs. M/s Carona Sahu Company Limited and others* (1994) 3 SCC 510, I have no hesitation to hold that the second-party workman is a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

11. *Issue No. (ii)*—The case of the second-party workman is that he joined as L.D.C. in the erstwhile O.S.E.B. on 27-10-1969 and then he was promoted to the post of Gr.-I Assistant on 24-5-2000 and while holding the post of Gr.-I Assistant, he was asked to perform the work of Section Officer with effect from 30-5-2000 by successive orders of the authorities of the management and he discharged his duty till his retirement i.e., till 30-9-2005. According to the second-party workman, he is entitled to the officiating pay and allowances in the post of Section Officer from 30-5-2000 to 30-9-2005. The first-party management, on the other hand, resisted the claim of the second-party workman and contended that since the second-party workman was continuing in the post of Gr.-I Assistant and was only directed to look after the establishment matters after retirement of Shri Dasarathi Panda, Ex-Section Officer, he was never allowed officiating promotion to the post of Section Officer and accordingly he is not entitled to the officiating pay and allowances for the said period. Nowhere the first-party management has uttered a single word that the second-party workman has never do the work of Section Officer except stating that he was never allowed to officiate in the post of Section Officer. No doubt, promotion is to be recommended by the appropriate authority as per Rule and Regulations of the organisation, but the facts remain that the second-party workman was discharging the responsibility of the Section Officer from 30-5-2000 till his retirement i.e., 30-9-2005. It is not that it was only a stop gap arrangement for few days as a temporary measure. But on the other hand, the workman was discharging the functions of the Section Officer for the long period of five years without any break as a regular incident rather than as a stop gap arrangement. The management has never raised any doubt regarding his suitability to the post of Section Officer till his retirement. If the second-party workman was not suitable to the post, then the management should have been relieved much earlier. In this view of the matter, if the second-party workman was not given the officiating pay and allowances for the said period, then certainly it will cause injustice to him. After careful consideration, of all the materials, I am of the view that it is just and fair that for the relevant period the second-party workman should be given officiating pay and allowances in the post of Section Officer on the principle

of 'equal pay for equal work'. Hence, the second-party workman is entitled to get the officiating pay and allowances in the post of Section Officer from 30-5-2000 to 30-9-2005.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
15-11-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED  
15-11-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
M. R. CHOUDHURY  
Under-Secretary to Government