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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 31st May 2013

No. 5136—li-I-342/1990 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th March 2013 in I. D. Case No. 198 of 1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Balasore Chips and Metal Manufacturing Co. and M/s L.P.G. Bottling Plant and its Workman Shri Manmath Kumar Patra and Shri Dambarudhar Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 198 OF 1991

Dated the 20th March 2013

Present :

S. A. K. Z. Ahamed, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

- (1) M/s Balasore Chips and Metal Manufacturing Co., At/P.O. Kuruda, Dist. Balasore. .. First Party—Management No. 1
- (2) M/s L.P.G. Bottling Plant, Kuruda, Balasore. .. First Party—Management No. 2

And

- (1) Shri Manmath Kumar Patra, Vill. Bangara, P.O. Khannagar, Dist. Balasore. .. Second Party—Workman
- (2) Shri Dambarudhar Patra, Vill. Purusottampur, P.O. Khannagar, Dist. Balasore.

Appearances :

None	.. For the First Party—Management No. 1
Shri P. K. Ray	.. For the First Party—Management No. 2
Authorised Representative.	
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Shri M. K. Patra and	.. The Second Party—Workman themselves
Shri D. Patra.	

AWARD

The Government of Odisha in the Labour & Employment Department 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 following dispute to this Court for adjudication vide Order No. 12385—li-I-342/1990-LE., dated September, 1991.

“Whether the refusal of employment of Shri Manmath Kumar Patra and Shri Dambarudhar Patra with effect from the 19th March 1990 by M/s Balasore Chips and Metal Manufacturing Co. and M/s L.P.G. Bottling Plant is legal and/or justified ? If not, to what relief are they entitled ?”

2. The case of the second party workman, namely Shri Manmath Kumar Patra and Shri Dambarudhar Patra, in short, is that both of them were working under the L.P.G. Bottling Plant, Balasore (first party No. 2) being employed through its Contractor M/s Balasore Chips and Metals Manufacturing Co. (first party No. 1) with effect from the 22nd January 1988 and 2nd January 1988, respectively. It is alleged that although both of them were working continuously and with utmost sincerity all of a sudden the management terminated their services by way of refusal of employment with effect from the 19th March 1990 without any notice or assigning any reason for such illegal termination. According to the second party, during their continuance under the management, they were never charge shoted for any misconduct. Further assertion of the workman is that after their termination from service, juniors to them have been retained in employment and only with a view to victimise them, they have been ousted from the establishment. There having violation of the provisions of the Industrial Disputes Act, it is pleaded that both of them are entitled to reinstatement in service with full back wages with all consequential benefits. It is pleaded that from the date of their unemployment, both the workman have not been gainfully employed elsewhere and they have been maintaining their family by incurring loan from different sources.

With the averments as above, the workman have prayed to answer the reference in their favour.

3. In view of non-filing of written statement and non-appearance of the management, earlier this Court had passed an *ex parte* award on 19-3-2002 and at a later stage, the first party No. 2 having carried the matter to the Hon’ble High Court in W.P. (C) No. 20 of 2003. the Hon’ble Court have observed as follows :—

“Keeping in view the entirety of the case, this Court comes to the conclusion that the matter should be reconsidered/retried by opposite party No. 1 after affording reasonable opportunity of hearing to the petitioner by filing written statement and by adducing such evidence as deemed necessary.

In the result, the writ petition is allowed. The award dated the 19th March 2002 passed by Opposite party No. 1 in the aforesaid case is hereby quashed. xxx xxxx)”

Pursuan to the above Order of the Hon’ble Court, the first party No. 2 entered contest in the proceeding and filed its written statement. The first party No. 1, however neither appeared nor filed any written statement.

4. Out of the first parties/Managements, the first party No. 2 has filed its written statement stating therein *inter alia* that the claim laid as against it is not maintainable, inasmuch as, the workman involved in the reference being contract labourers it has nothing to do with their employment/non-employment and for that reason the first party No. 2 has neither participated in the conciliation proceeding nor any direct allegation was made against it by the concerned workers of the Contractor. The specif stand of the first party No. 2 is that there does not exist any employer employee relationship between the first party No. 2 and the second party workman. Referring to Clause 21 (4) of the CL & RA Act, it is pleaded by the contesting management that except to check whether the minimum wages was being paid to the contract labourers, it has no other liability to shoulder in respect of the Contract Labourers. Since at no point of time, the first party No. 2 has ever engaged the second party, it is pleaded in the written statement that the reference be answered disallowing the claim advanced by the second party as against it.

5. Basing on the pleadings as aforesaid, the following issues have been framed :—

ISSUES

“(i) Whether the refusal of employment of Shri Manmath Kumar Patra and Shri Dambarudhar Patra, with effect form the 19th March 1990 by M/s Balasore Chips and Metal Manufacturing Co. and M/s L.P.G. Bottling Plant is legal and/ or justified ?

(ii) If not, to what relief are they entitled ?”

6. Both parties in order to substantiate their respective stand have adduced oral as well as documentary evidence. Shri Dambarudhar Patra, one of the concerned second party has examined himself, who deposed on behalf of both the workmen. He has filed and proved two documents which have been marked as Exts. 1 and 2. One Shri P. K. Ray working as Senior Manager (ER) is examined on behalf of first party No. 2 and documents marked Exts. A to D have been filed and proved by him. The Other Management, i.e. first party No. 1 neither appeared in the proceeding nor has placed on record any oral as well as documentary evidence during hearing of the proceeding.

FINDINGS

7. *Issue No. (i)*—A glimpse over the pleadings of the parties would reveal that both the second party workmen were working under the first party No. 2 being employed by first party No. 1. In spite of such admitted fact, the second party while adducing evidence has introduced a new fact to the effect that both of them were engaged to work under the first party No. 1 with effect from January 1988 and their work was being directly controlled and supervised by the first party No. 2. The second party have strongly opposed the averments made in the written statement of the first party No. 2 and have advanced argument that to frustrate their legitimate claim the so called outside agency was introduced by the management for name shake. In view of the contradictory stand, it is first to be found out whether the second party workmen were the employees of the first party No. 2 or they were the Contract Labourers of the first party No. 1.

In their attempt to succeed and establish that they were the employees of first party No. 2, the second party has exhibited xerox copy of a Gate Pass (Ext. 1) having the logo of the first party No. 2. It does not reveal therefrom as to who had issued such Gate Pass and the period for which it was valid. The signatory in the Gate Pass also cannot be said to be an authorised employee of the first party No. 2. Since Gate Pass is considered to be a document without which one can not enter into the factory premises, possession thereof does not in any way help the second party to claim that they were the employees of first party No. 2. Except Ext. 1, no other documents such as any interview letter, appointment letter, Pay Slip etc. issued by the first party No. 2 in favour of the second party have been filed which could have indicated that the first party No. 2 is really the employer of the second party workmen. Rather, the first party No. 2 has filed and proved certain documents which disclose that the second party workman were engaged as contract labourers under the first party No. 1. Ext. B is xerox copy of a letter, Dt. 15-5-1990 of the D.L.O., Balasore which reflects that both the workmen were working under one Shri Sanjib Kumar Nanda, Handling Contractor of the first party No. 2. Exts. A and C are the documents which reflect that the first party No. 2 had engaged first party No. 1 as its Handling Contractor upon certain terms and conditions. In view of such documentary evidence, it cannot be presumed that the second party workman were ever engaged by the first party No. 2 to work directly under its establishment like other permanent employees. In such view of the matter, it is held that the second party workmen have failed to establish that there subsists employer-employer relationship between the first party No. 2 and the second party.

8. Despite the above findings, it is next to be seen whether the second party workmen were working uninterruptedly for more than a year under the first party No. 1 and for that the first party No. 1 was duty bound to comply with the provisions of the Odisha Contract Labour (Regulation and Abolition) Rules, 1975. In this connection, it is found admitted by first party No. 2 that both the second party members were employed by first party No. 1. The evidence of W.W. No. 1 that both he and the other workman were working continuously under the management with effect from January 1988 till 19-3-1990 and that they were terminated from employment without due compliance of the provisions of law remained unassailed, inasmuch as, in absence of first party No. 1 W.W. No. 1 was not at all cross-examined on this aspect by first party No. 2. It can therefore be reasonably concluded that both the second party members were in employment under the first party No. 1 for a continuous period of more than one year. Since the second party workmen have failed to establish that the first party No. 1 had employed more than 50 workers in its establishment, the provisions of Section 25-F of the Industrial Dispute Act cannot be applied in the present proceeding and in its place, the provisions contained in the Odisha CL (R & A) Rules, 1975 would govern the field. Point No. 12 (1) of the Conditions of Service prescribed under the Odisha CL (R & A) Rules, 1975 provides as follows :—

“12. Procedure for termination of Services :—

(1) No contractor shall without reasonable cause, terminate the services of a workman who has been in his employment continuously for a period of 30 days or more without giving such workman at least 3 days notice in writing or wages in lieu thereof except for acts of misconduct.”

The annexure to Ext. C is a document which shows that under the first party No. 1 less than 50 workmen were employed during the period from October 1989 to August 1992. The above

provision is, therefore, squarely applicable to the case in hand. In absence of material that the first party No. 1 at the time of doing away with the services of the second party members had complied with the provisions as noted above, it is held that their refusal of employment amounts to termination of service with effect from the 19th March 1990 and the same is illegal and unjustified being in contravention of the provisions of the Odisha CL (R & A) Rules, 1975.

9. *Issue No. (ii)*—In view of the findings on Issue No. 1, the first party No. 1 is held liable for terminating the services of the second party members. Since more than twenty two years have passed in the meantime, it is not considered appropriate to give a direction for reinstatement of the second party members. Hence, in lieu of such reinstatement, the first party No. 1 is directed to pay each of the second party members a sum of Rs. 25,000 as compensation. No back wages is, however, awarded in favour of the second party members in view of the testimony of W.W. No. 1 that even after refusal of employment with effect from the 19th March 1990, they were retained in job of Management till 2005. Since the first party No. 1 was/is a Contractor establishment of the first party No. 2, the latter is directed to take further step in the matter for implementation of the Award as against the first party No. 1, because under the CL (R & A) Act, it owes certain responsibilities with regard to payment of wages and other amenities to the contract labourers.

The Issue is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
20-3-2013
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
20-3-2013
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government