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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 4th June 2013

No. 5256—IR(ID)-62/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th May 2013 in Industrial Dispute Case No. 06 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Drilling & Grouting Division, Berhampur-7 and their Workman Shri Chhabila Sahu, N.M.R. was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 06 OF 2012

Dated the 25th May 2013

Present :

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

Between :

The Executive Engineer, . . . First Party—Management
Drilling & Grouting Division No. 1,
Berhampur-7.

And

Shri Chhabila Sahu, . . . Second Party—Workman
S/o Maguni Ch. Sahu,
At Baraguja, P.S. Hindol,
Dist. Dhenkanal.

Appearances :

Shri A. K. Nayak, Authorised Representative	. . For the First Party—Management
Shri Chhabila Sahu	. . For the Second Party—Workman himself.

AWARD

The Government of Odisha, in the Labour & E.S.I. Department, in exercise of powers conferred upon them 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. 2369—IR(ID)-62/2011-LESI., dated the 27th March 2012 :—

"Whether the retrenchment from services of Shri Chhabila Sahu, N.M.R. workman with effect from the 10th April 2007 by the Executive Engineer, Drilling & Grouting Division, Berhampur is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. In the present dispute the second party has filed his claim statement which may succinctly be stated as follows :—

The second party was engaged as an N.M.R. under the first party and he continued in employment from 1-7-1991 till 10-4-2007, when the first party retrenched him from service. It is asserted by the workman that while in employment he faced an accident and thereafter the management did not pay him wages for which he knocked the door of the Hon'ble Odisha Administrative Tribunal in O.A. No. 1110(c)/2006 and only thereafter payment of wages was made to him as per the orders of the Hon'ble Tribunal. It is alleged that on receiving his wages he lodged a workman compensation case against the management as a result of which the management in a vindictive manner issued retrenchment notice on the 10th April 2007 which he received on 7-2-2008, i.e., after 10 months of issuance of such notice. Further, the workman alleges that the retrenchment amount was paid to him on 22-10-2008, i.e. after one and half year of the so-called retrenchment. According to him, the action of the management is not sustainable in the eye of law the same being in contravention of the provisions of Section 25-F of the Industrial Disputes Act, 1947. It is further alleged that juniors to him having been retained in job, the management has also violated the provisions of Section 25-G of the Industrial Disputes Act. With the averments the workman has prayed for his reinstatement in service with full back wages.

3. The first party by entering contest in the dispute has filed its written statement stating therein, *inter alia* that although the workman was working under it from 1-7-1991 but with effect from the 5th April 2005, he remained absent from duty till he was retrenched from service on the 10th April 2007. It has further taken the stand that such retrenchment became inevitable as the Government in Department of Water Resources decided to retrench all surplus N.M.R. workers due to reduced work load. It is stated in the written statement that in total 114 numbers of N.M.R. surplus workers were listed to be retrenched wherein the name of the workman finds place at Sl. No. 100. It is averred that out of such surplus 114 N.M.Rs., one Dasaratha Mahakud (Sl. No. 62) having expired and services of 68 others having been utilised in other divisions in the interest of Government work, there remained 45 surplus N.M.Rs. to face the retrenchment and the workman being the last man in the said list, i.e. Sl. No. 45 he was also retrenched. Stating that there has been proper compliance of the provisions of the I. D. Act while effecting the retrenchment, the management has asserted that one month's notice was given to the workman vide Letter No. 70, dated the 6th March 2007 and on the date of retrenchment though compensation was offered to him yet he denied to receive the same but ultimately he accepted the compensation on 22-10-2008 and as a token of receipt of the same he executed an acknowledgment on the same day.

Refuting the allegation of the workman that because of his filing W.C. Case No. 20/2005, the management retrenched him from service, it has taken the stand that the retrenchment of the workman has no nexus with his filing the aforesaid case, which has in the meantime been dismissed. His retrenchment having been effected by following the provisions of the Industrial Disputes Act and in consonance with the Government Orders, the management has prayed to answer the reference against the workman.

4. Basing on the pleadings of the parties, the following issues in terms of the reference have been framed :—

ISSUES

- (i) Whether the retrenchment from services of Shri Chhabila Sahu, N.M.R. workman with effect from the 10th April 2007 by the Executive Engineer, Drilling & Grouting Division, Berhampur is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?

5. The workman in order to substantiate his case, has examined himself as W.W. No. 1 and filed and proved documents which have been marked as Exts. 1 to 5. On the other hand, Shri A. K. Nayak, Executive Engineer (Mech.) has been examined on behalf of the management as M.W. No. 1. Ext. A, a xerox copy of the Money Receipt executed by the workman on the 22nd October 2008 is filed and proved by him.

FINDINGS

6. *Issue No. (i)*—This being an admitted case of retrenchment it is first to be seen whether such retrenchment was effected following the provisions of the Industrial Disputes Act. In the context, it is worthwhile to quote the provisions of Section 25-F of the Industrial Disputes Act, which reads as under :—

"25-F. Conditions precedent to retrenchment of workmen :—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen day's average pay (for every completed year of continuous service) or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government (for such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

Keeping in mind the requirement of the provisions of Section 25-F of the Industrial Disputes Act, it is to be scrutinised as to whether the management has complied with the provisions of the said Act to bring about a valid retrenchment.

As to the compliance of the requirements of Section 25-F of the Industrial Disputes Act, the management through M.W. 1 brings it on record that one month's notice pay along with compensation was paid to the workman. True it is that the workman by furnishing a receipt vide Ext. A had received the retrenchment benefit on the 22nd October 2008. But his retrenchment having taken place on 10-4-2007 it was incumbent upon the management to pay such benefit on 10-4-2007 itself and not

thereafter. No evidence is adduced on behalf of the management that despite its attempt to pay such retrenchment benefit on 10-4-2007 the workman did not receive the same. Rather, M.W. No. 1 has admitted in his evidence that no notice was sent to the workman nor the same was published in any local newspaper. It is therefore transparent that though the management has paid the retrenchment benefit to the workman but the transaction having taken place much after the retrenchment, it cannot be said that the management had complied with the requirements of Section 25-F of the Industrial Disputes Act while effecting retrenchment of the second party workman.

7. The other aspect of the case on which the workman has put much emphasis is that juniors to him namely, G. Gouda, S. Dalai, N. Choudhury, B. Jena, P. K. Mohanty and J. K. Sahoo, who were engaged much after his engagement under the first party, have been retained in employment overlooking his seniority and thereby the management has violated the provisions of Section 25-G of the Industrial Disputes Act. The workman has named his juniors and their dates of engagement under the first party in Para. 5 of his affidavit evidence. Such evidence of the workman is not at all controverted although he has been cross-examined by the management. There is also reason to believe such evidence of the workman because M.W. No. 1 in his Chief Examination has admitted at Para. 4 that the procedure for retrenchment prescribed under Section 25-G of the Industrial Disputes Act was not followed while terminating the services of the workman. In the context the management has also failed to file the categorywise gradation/seniority list of the N.M.Rs., which could have shown the *bona fideness* of the management in the matter of retrenchment of its N.M.R. workers. There having admitted infraction of the provisions of Section 25-G of the Act, the action of the management cannot be said to be either legal or justified.

8. *Issue No. (2)*—In view of the findings on issue No. (i), the workman is held entitled to reinstatement in service. As regards back wages, he is not entitled to the same in absence of any pleading or evidence to the effect that he was not gainfully employed elsewhere during the period of his unemployment. However, this Court considers it appropriate to award some compensation in favour of the workman for his suffering due to the illegal action of the management. Accordingly, it is considered just and proper to award a compensation of Rs. 20,000 in favour of the workman and it is made clear that the amount of Rs. 13,520 already received by the workman as per Ext. A be deducted therefrom. The direction, as above, be implemented within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
25-5-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
25-5-2013
Presiding Officer
Labour Court, Bhubaneswar

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