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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 12th June 2013

No. 5454—li/1 (SS)-33/2001 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December 2012 in I. D. Case No. 77 of 2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Vishal Enterprises, Contractor, C/o. M/s O.C.L. India Ltd. (Refractory Works), Rajgangpur, Dist. Sundargarh and its workman Shri Raj Kumar Naik was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 77 OF 2002

Dated the 27th December 2012

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of
M/s Vishal Enterprises, Contractor,
C/o. M/s O.C.L. India Ltd.,
(Refractory Works), Rajgangpur,
Dist. Sundargarh.

.. First Party—Management

And

Its workman,
Shri Raj Kumar Naik,
At Bhatapara, P.O. Rajgangpur,
Dist. Sundargarh.

.. Second Party—Workman

Appearances :

None	.. For the First Party—Management
None	.. For the Second Party—Workman

AWARD

This Award arises out of a reference made by the Government of Odisha, Labour & Employment Department under Section 10 (1) (c) of the I. D. Act, 1947 vide their Notification No. 11080— li/1 (SS)-33/2001-L.E., dated the 24th September 2002 for adjudication. The schedule of reference is as follows :—

“Whether the termination of services of Shri R. K. Naik by M/s Vishal Enterprises, Rajgangpur with effect from the 17th October 1996 by the management is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The second party workman Shri Raj Kumar Naik, filed his statement of claim wherein he asserted that he was engaged in the O.C.L. India Ltd., Rajgangpur through the Contractor R. K. Enterprises on 25-5-1995 as Mazdoor on daily wages @ Rs. 48 per day. He continued as such till 31-8-1995 and during this period, an ESI Card was issued in his favour. The ESI and PF amount were paid by the O.C.L. India Ltd. From 24-10-1995 to 16-10-1996, he worked through M/s Vishal Enterprises (first party as per reference). He worked for the O.C.L. India Ltd., through M/s Jaya Krishna Enterprises. The second party claimed that his service was permanent and perennial in nature even though there was change of one Contractor to another by the O.C.L. India Ltd. According to the second party workman, the first party refused service to him illegally and unlawfully which amounts to retrenchment. With such averments he prays for reinstatement in service with full back wages for the period of unemployment and all other service benefits.

3. The first party filed written statement challenging the maintainability of the reference. According to the first party it is a registered Contractor Establishment and undertakes jobs basing on the work order issued by its Principal. M/s O.C.L. India Ltd., Rajgangpur placed a work order on Dt. 1-4-1996 to execute various jobs in their Basic Plant for the period 1-4-1996 to 31-3-1997 in which the second party was engaged. He did not turn up for work on and from 17-10-1996 without any reason and his service was never terminated.

4. Before hearing was taken up, the workman filed a petition on 7-6-2004 seeking to implead the Executive Director, O.C.L. India Ltd. as a party in this proceeding and after hearing the petition on merit, his prayer was rejected vide Order, Dt. 4-10-2004 and both the parties were directed to come ready for hearing. On the next date fixed for hearing i.e, 5-11-2004, a letter, Dt. 12-10-2004 of the second party was received wherein he expressed his dissatisfaction on the Order, Dt. 4-10-2004 and he also made some wild allegations against one Clerk of this office that he refused to receive same petition from him. In the letter, he prayed to take action against the concerned staff and dispose of the case early. It reveals from the Order, Dt. 7-2-2005 that the then Presiding Officer felt that the workman has lost faith in this Court and therefore he requested the State Government, Labour & Employment Department for transfer of this case to any other Court for adjudication. Since then the parties remained absent and the case was adjourned from time to time awaiting order of the Government regarding transfer of the case. In the meantime, several correspondence have been made with the Government in the matter of transfer but no order has

been received as yet. On 22-8-2012 this Court finding this case to be an year old one directed to both parties to appear before this Court and take part in this proceeding. The parties were informed by Regd. Post. This notice issued to the workman returned undelivered and second notice was issued on 10-10-2012 as per Order, Dt. 4-10-2012. The said notice returned back undelivered with postal remark "Not Claimed". This workman however sent a letter, Dt. 18-10-2012 by Regd. Post furnishing his official and residential address intimating that he is working in Indian Navy at INS, Kadamba, Naval Base, Karwar in the State of Karnataka. In the said letter, he intimated that many letters sent to him in connection with this case, have been returned as he is not residing in the earlier address. On receipt of this letter, notices were issued to him by Regd. Post in his residential address as given in the letter but the said notice returned unserved. Under such circumstances, this Court was constrained to pass necessary Orders/Award.

5. It reveals from the case record that the workman who raised the industrial dispute did not intend to participate in the proceeding soon after his petition for impleading the O.C.L. India Ltd., as a party, was rejected by this Court vide Order, Dt. 4-10-2004. In the meantime, he got a favourable job under the Indian Navy. As per his correspondence with this Court, notice was issued to him that the case has been posted to 20-12-2012 for hearing. It appears that the workman deliberately failed to attend the Court on the date fixed for hearing. It further appears that he is no more interested to establish his claim before this Court. Since the workman has continuously remained absent and is not taking any steps in the case for a period of about 8 years, this Court is unable to record any finding on the issues referred to it vide Reference No. 11080—li/1 (SS)-33/2001-L.E., Dt. 24-9-2002 and in the facts and circumstances, the proceeding needs be dropped. My such view is supported by the decision of the Hon'ble Apex Court reported in (2002) 9 SCC 104 (Virendra Vandari Vrs. Rajasthan State Road Transport Corporation).

Hence the following Award.

AWARD

The proceeding is dropped due to non-cooperation of the second party workman on whose representation, the dispute was referred to this Court vide the Reference No. 11080—li/1 (SS)-33/2001-L.E., Dt. 24-9-2002.

Dictated and corrected by me.

SRIKANTA MISHRA
27-12-2012
Presiding Officer
Labour Court
Sambalpur

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27-12-2012
Presiding Officer
Labour Court
Sambalpur

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