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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 29th December 2012

No. 10834—li-1(B)-77/2004-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th October 2012 in Industrial Dispute Case No. 31 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the M/s B. B. Kar, Labour Supply Contractor's Establishment and the Management of Paradeep Phosphates Ltd., Paradeep and their Workman Shri Panchanan Pradhan, ex Pay Loader Operator was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 31 OF 2005

Dated the 12th October 2012

Present :

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

Between :

The Management of M/s B. B. Kar,
Labour Supply Contractor's Establishment
and the Management of
Paradeep Phosphates Ltd.,
Paradeep. . . First Party—Management

And

Their Contract Workman
Shri Panchanan Pradhan,
Ex PayLoader Operator. . . Second Party—Workman

Appearances :

Shri S. K. Mishra, Advocate and Shri J. J. Mallick, Advocate	. . For M/s B. B. Kar, Labour Supply Contractor.
Shri N. K. Mishra, Advocate, Shri N. K. Mohanty, Advocate, Shri A. K. Ray, Advocate and Shri A. Mishra, Advocate.	. . For Paradeep Phosphates Ltd.
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Miss Amulya Mohanty, Advocate	. . For the Second Party—Workman

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. 6238—li-1(B)-77/2004-LE., dated the 23rd July 2005.

"Whether the action of the management of M/s B. B. Kar, Labour Supply Contractor of M/s Paradeep Phosphates Ltd., Paradeep in refusing/not allowing work to Shri Panchanan Pradhan, Contract Labourer with effect from the 10th July 2000 is legal and/or justified ? If not, to what relief Shri Pradhan is entitled ?"

2. The case of the workman, in brief, as set out in his statement of claim is that he was engaged as a Pay Loader Operator since 1990 to 1999 under Nilachala Construction and Labour Supplier, Paradeep Phosphates Ltd. In the year 1995, the workman was engaged and worked under the management with utmost satisfaction of the authorities. He was working sincerely and regularly under the management. On 2-6-2000 when the workman was coming from J. T. side of the Port, the C.I.S.F. employees falsely implicated him in a theft case bearing G.R. Case No. 275/2000 and the learned Judicial Magistrate, First Class, Kujanga acquitted him vide its Judgment, dated the 21st December 2002. Thereafter when the workman repeatedly requested the management for his joining, the management did not pay any heed to it. At last, he was refused employment by the management. According to the workman, his disengagement from service is arbitrary and violation of the principle of natural justice. No departmental proceeding or domestic enquiry was conducted against the workman for any misconduct. Further according to the workman, when he was not removed or dismissed or retrenched from service as per the provisions of law, he should be allowed to continue in the post. In these backgrounds, the workman has prayed for his reinstatement in service with full back wages and other service benefits.

3. On the other hand, the management of M/s B. B. Kar, Labour Supply Contractor's Establishment (in short Contractor) appeared and filed written statement stating that the Contractor had been issued a work order by M/s Paradeep Phosphates Ltd., Paradeep (in short P.P.L.) to perform certain duties including supply of Pay Loader Operator in the year 1996, which was subsequently renewed till 2002. Thereafter the contract for supply of Pay Loader Operators was not given to the Contractor. So the Contractor has no knowledge about the engagement of the workman by any other Contractor. Therefore, the services of the workman was automatically terminated on expiry of the relevant work order. Further the case of the Contractor is that the Contractor's establishment and the workman as contract labourer during his tenure of engagement were governed under the provisions of the contract labour (Regulation and Abolition) Act and Rules framed thereunder. According to the Contractor, the workman remained absent unauthorisedly for

his personal reasons. As per the records, the workman voluntarily approached the Contractor for settlement of his full and final dues and in fact he was paid the entire amount due to him. Therefore, after voluntarily accepting the full and final settlement dues, the present dispute is not maintainable. Further according to the Contractor, the workman had violated himself under sub-clause (o) of Rule 12 of the Odisha Contract Labour (Regulation and Abolition) Rules, 1975 (Conditions of Service) and therefore, his services automatically got terminated under Clause 5 of the said Rules without notice by the Contractor. Further the case of the Contractor is that all the past service benefits accrued in favour of the workman was paid to him on closure of the respective period of contract. On these averments, the Contractor has prayed to pass a no dispute Award.

4. The management of Paradeep Phosphates Ltd. (in short P.P.L.) also appeared and filed written statement stating that there was no employer-employee relationship between the P.P.L. and the workman and in absence of any relationship, no industrial dispute can be raised impleading as a party. According to the P.P.L., it had issued a work order in favour of the Contractor to perform certain duties including supply of Pay Loader Drivers in the year 1996, which was subsequently renewed for one year each up to 2002. Thereafter the contract for supply of Pay Loader Operator was not given to the Contractor. The P.P.L. has no knowledge about the engagement of the workman by any other Contractor. Further the P.P.L. has averred that the period of service of the workman was co-terminable on expiry of the validity of the relevant work order. Therefore, the present dispute raised after the expiry of the work order is also not maintainable. As per the provisions of the Contract Labour (Regulation and Abolition) Act, the P.P.L. is limited to the provisions contained under Section 21 (4) of the above Act, i.e. regarding payment/short fall in payment of wages only. On these averments, the P.P.L. has prayed to pass a no dispute Award.

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

ISSUES

- (i) Whether the action of the management of M/s B. B. Kar, Labour Supply Contractor of M/s Paradeep Phosphates Ltd., Paradeep in refusing/not allowing work to Shri Panchanan Pradhan, Contract Labourer with effect from the 10th July 2000 is legal and/or justified ?
- (ii) If not, to what relief Shri Pradhan is entitled ?

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved the copy of driving licence, copy of E.S.I. Card, copy of E.P.F. Slips, copy of Wage Slips, copy of certified copy of Judgment in G.R. Case No. 275/2000 passed by the learned Judicial Magistrate, First Class, Kujang and the copy of application of workman to the District Labour Officer, Jagatsinghpur under the cover of Exts. 1 to 6 respectively. On the other hand, the Contractor has examined himself as M.W. 1 and proved the copy of money receipts, copy of wage registers and copy of work order under the cover of Exts. A to F respectively.

FINDINGS

7. *Issue Nos. (i) and (ii)* Both the issues are taken up together for the sake of convenience.

It is pertinent to mention here that this Court vide Order No. 41, dated the 30th June 2002 deleted the management of M/s Paradeep Phosphates Ltd., Paradeep, the principal employer from this present proceeding.

8. The factual aspect which are not in dispute is that the management is a Contractor of M/s Paradeep Phosphates Ltd., Paradeep and the workman is a contract labourer employed under

the management till 10-7-2002. While the workman challenged such refusal as stated above from employment as termination of service, but at the same time, the management took the plea that the former service has been terminated as Clause 12 (o) of the Odisha Contract Labour (Regulation and Abolition) Rules, 1975 (in short 'the Rules'). In view of such contracting stand, it is to be found out whether it is a case of refusal of employment as claimed by the workman or it is an action as a result of the misconduct as claimed by the management.

9. On perusal of the evidence of W.W. 1 read with Ext. 5, the xerox copy of the Judgment passed in G.R. Case No. 275 of 2000, it appears that the workman while working as Driver under the management was involved in a case of theft on 2-7-2000 for which Paradeep Police Case No. 66 of 2000 was registered against him under Section 379 I.P.C., M.W. 1 in this context in Para. 6 of his affidavit evidence has stated that on 6-7-2000 the workman was released on bail. On the above score, it can be presumed that the management was aware of the facts about the absenteeism of the workman from 3-7-2000 onwards. But without asking for a show cause on the incident and conducted an enquiry into the matter, it took recourse of the provisions of the rules and did away with this services of the workman by the management in terminating the services of the workman as per Clause 12(o) of the Rules is not tenable. Rather, the action of the management comes under Clause 12(4) of the Rules which provides as follows :—

"No order of punishment for misconduct shall be made except after holding a domestic enquiry against the workman following the principles of natural justice and finding him guilty, while awarding punishment, the gravity of the misconduct and past records of the workman shall be taken into consideration."

10. It is an admitted fact that no notice had been issued to the workman for his unauthorised absence from duty. Ext. 4 series filed and proved on behalf of the workman discloses that he was working as a Driver under the management since 1995 and despite of such long employment under the management, a letter did not choose to get the matter, i.e. the alleged theft properly investigated before doing away the job of the workman. The workman since to have not been offered with a reasonable opportunity to put forth his stand before the management. Hence the refusal of employment of the workman with effect from the 10th July 2000 amounts to termination of his service for misconduct and the same is not tenable in the eye of law of interaction Clause 12(4) of the Rules.

11. In view of the findings on the above issues, the workman is entitled to be reinstated in service under the management, i.e. the management of M/s B. B. Kar, Labour Supply Contractor of M/s Paradeep Phosphates Ltd., Paradeep. The workman being a skilled worker, it is not believable that he has not been gainfully employed elsewhere during the period of out of employment. Hence, while declaring to award full back wages in favour of the workman, this Court considered it proper to grant him some compensation in lieu of back wages and accordingly a sum of Rs. 15,000 is awarded in favour of the workman as compensation in lieu of back wages. Both the issues are answered accordingly.

12. Hence ordered :

That the action of the management of M/s B. B. Kar, Labour Supply Contractor of M/s Paradeep Phosphates Ltd., Paradeep in refusing/not allowing work to Shri Panchanan Pradhan,

Contract Labourer with effect from the 10th July 2000 is neither legal nor justified. The workman Shri Pradhan is entitled to be reinstated in service under the above named Contractor with a compensation of Rs. 15,000 in lieu of back wages. The abovenamed Contractor is directed to implement this Award within a period of two months from the date of its Notification, failing, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
12-10-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
12-10-2012
Presiding Officer
Labour Court, Bhubaneswar

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