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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th July 2013

No. 6228—IR(ID)-12/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th June 2013 in Industrial Dispute Case No. 02 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Superintending Engineer, Drainage Circle, Cuttack and their Workman Shri Sanatan Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 02 OF 2012

Dated the 24th June 2013

Present :

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

Between :

The Superintending Engineer, . . . First Party—Management
Drainage Circle, Cuttack,
At./Post. Gandarpur, Cuttack.

And

Shri Sanatan Das, . . . Second Party—Workman
S/o Chakradhar Das,
At./Post. Babujang, Cuttack.

Appearances :

Shri Jayanta Ku. Mishra, Additional Govt. . . For the First Party—Management
Pleader, Bhubaneswar.

Shri S. Dash, Advocate . . . For the Second Party—Workman

AWARD

The Government of Odisha in the Labour & Employment 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. 1301—IR(ID)-12/2012-LE., dated the 21st February 2012.

“Whether the action of Superintending Engineer, Drainage Circle, Cuttack in providing re-employment to junior workmen, namely (i) Shri Raj Kishore Sahoo (Timekeeper), (ii) Shri Pankaj Bagarhi (Timekeeper) (iii) Shri Bijaya Kumar Acharya (Timekeeper) in violation of Section 25-H of the Industrial Disputes Act, 1947 with effect from the 30th November 2007, ignoring the claim of Shri Sanatan Das, retrenched workman is legal and/or justified ? If not, what relief Shri Das is entitled to ?”

2. The facts which led the workman to file claim statement in the present proceeding may briefly be stated as under :

The workman was engaged under the Management as an “N. M. R. Helper-Electrical” with effect from the 4th January 1984 and subsequently he was absorbed in the N.M.R. Timekeeper grade with effect from the 1st February 1988 in which post he continued to work till the 30th November 2001. In the gradation list prepared in the year 2001 he was placed at Sl. No. 2 and the names of his Juniors Shri Raj Kishore Sahoo, Pankaj Bagarhi and Bijaya Kumar Acharya were there just below him at Sl. Nos. 3, 4 & 5 respectively. It is stated that as per the decision of the Government all the surplus N.M.R. workers including him and his Juniors named above faced retrenchment with effect from the 30th November 2001.

The specific plea advanced in the claim statement with regard to the present dispute is that at a later stage in the year 2007 the Government took a decision to absorb 35 Nos. of retrenched workmen and accordingly the Management absorbed the retrenched employees but without following the procedures embodied in the Industrial Disputes Act, inasmuch as it violated the said provisions by re-engaging his Juniors and ignoring the case of the workman who was senior to them in the gradation list of the year 2001. It is alleged that repeated representations in the matter having proved futile, he raised the present dispute. It is averred that due to unemployment he is striving hard to sustain his livelihood. The workman in the circumstance has prayed for a direction to the Management to re-engage him from the date his Juniors named above, have been re-employed, i. e., from the 1st December 2007 with all back wages and consequential service benefits.

3. Admitting that the workman was working under it with effect from the 4th January 1984 as an N.M.R., the Management has filed its written statement contending therein, *inter alia*, that after retrenchment of the N.M.Rs. the Government fixed a modality for review of the retrenchment case in order to re-engage some of the N.M.Rs. and accordingly principles have been fixed that the

cases of the retrenched employees who had hold former post before coming over to the post they hold at the time of retrenchment shall be taken up for consideration for re-engagement. It is contended that since the workman entered into service on the 4th January 1984 and he had no past record of serving under the management prior to that date, his case was not considered for re-employment. Moreover, it is contended that at no point of time the workman has ever objected to his engagement under the Management with effect from the 4th January 1984. Claiming that persons re-employed after their retrenchment having joined the Management prior to the engagement of the workman, it is pleaded that there has been no infraction of the provisions of Section 25-H of the Industrial Disputes Act, as alleged by the workman and consequently the Management has prayed to answer the reference in the negative by disentitling the workman of the relief claimed.

4. Basing on the pleadings of the parties the following issues have been framed :—

ISSUES

“(i) Whether the action of Superintending Engineer, Drainage Circle, Cuttack in providing re-employment to Junior workmen, namely (i) Shri Raj Kishore Sahoo (Timekeeper), (ii) Shri Pankaj Bagarathi (Timekeeper), (iii) Shri Bijaya Kumar Acharya (Timekeeper) in violation of Section 25-H of the Industrial Disputes Act, 1947 with effect from the 30th November 2007, ignoring the claim of Shri Sanatan Das, retrenched workman is legal and/or justified ?

(ii) If not, what relief Shri Das is entitled to ?”

5. The workman in order to substantiate his stand has examined himself as W.W.No.1 and filed and proved documents which have been marked Exts. 1 to 6. The Management has examined its present Superintending Engineer as M.W. No. 1 but did not chose to file or prove any document in support of its plea.

FINDINGS

ISSUE No. 1

6. It is not disputed that the workman was employed under the Management with effect from the 4th January 1984. It is also admitted that pursuant to the Government decision he faced retrenchment along with others with effect from the 30th November 2001. It is also the admitted fact that upon a review by the Government the Management re-employed some retrenched personnel at a later stage in the year 2009. In connection with such re-employment, the grievance of the workman is that while such re-deployment the Management by overlooking his seniority has offered employment to his Juniors and thereby has violated the provisions of the Industrial Disputes Act. On the other hand, the Management takes the plea that taking into consideration the principles decided by the Government, the retrenched personnels, who had rendered services in their former post have been re-employed and as the workman could not able to satisfy the committee on his

engagement in the former post, his case for re-engagement could not be considered. For the reasons as above, the Management has stoutly denied to have violated any provisions of the Industrial Disputes Act. In view of the conflicting stand taken by the parties, it is necessary to quote the relevant provision of the Industrial Disputes Act and the Rules thereof in the matter of re-employment of retrenched workman. Section 25-H of the Industrial Disputes Act and Rule 84 of the Odisha Industrial Disputes Rules deal with that aspect and for better appreciation the same are reproduced hereunder :

“25-H. Re-employment of retrenched workman :—

Where any workmen are retrenched and the employer proposes to taken into his employment any persons he shall in such manner as may be prescribed, give an opportunity (to the retrenched workmen who are citizens of India to offer themselves for re-employment and such retrenched workman) who offer themselves for re-employment shall have preference over other persons.”

“84. Re-employment of retrenchment workmen :—

At least ten days before the date on which vacancies are not to be filled, the employer shall arrange for the display on a noticeboard in a conspicuous place in the premises of the industrial establishment details of those vacancies and shall also give intimation of those vacancies either personally or by post under certificate of posting to everyone of all the retrenched workman eligible to be considered therefor, to the address given by him at the time of retrenchment or at anytime thereafter :

Provided that where the number of such vacancies is less than the number of retrenched workmen, it shall be sufficient if intimation is given by the employer individually to the seniormost retrenched workmen in the list referred to in Rule 83 the number of such seniormost workmen being double the number of such vacancies :

(Provided further that if a retrenched workmen without sufficient cause been shown in writing to the employer, does not offer himself for re-employment on the dates specified in the intimation sent to him by the employer under this sub-rule, the employer may not intimate to him the vacancies that may be filled on any subsequent occasion) :

Provided further that where the vacancy is of a duration of less than one month there shall be no obligation on the employer to send intimation of such vacancy to individual retrenched workmen.

(2) Immediately after complying with the provision of sub-rule (1) the employers shall also inform the Trade Unions whether registered or not connected with the industrial establishment of the number of vacancies to be filled and names of the retrenched whom intimation has been sent under that sub-rule :

Provided that the provision of this sub-rule need not be complied with by the employer in any case where intimation is sent to everyone of the workman mentioned in the list prepared under Rule 83.”

7. According to the Management, the provisions of the Industrial Disputes Act, indicated above, were not adhered to because as per the guidelines issued by the Government the retrenched persons, who were holding former post under the Management were considered for re-employment and the workman having failed to establish such factum, the claim now made by him is not tenable. As it transpires from Ext. 4, the Government had issued such a guideline, but the Management seems to have not produced any document as to basing on which records it was satisfied that the persons named in the reference were found eligible for re-employment. When the stand of the workman is very much specific that as per the Gradation List of the year 2001 (enclosure to Ext. 2) he was senior to the persons named in the reference, the Management ought to have produced all records showing that they were all engaged under the Management much prior to the date of engagement of the workman, i. e., the 4th January 1984. Not a single paper is produced by the Management to substantiate its plea taken in the written statement. The evidence of M. W. No. 1 though available on record but it being the exact reproduction of the averments made in the written statement is of no help to the Management. In absence of documentary evidence, therefore, the plea advanced on behalf of the management is not sustainable.

8. In his attempt to establish that he was senior to the named persons in the reference the workman has relied on Ext. 1 which discloses that he having joined the Management on the 4th January 1984 his name was placed at Serial Number 2 and the persons named in the reference having joined later on their names find place at Serial Numbers 3, 4 and 5. Further, he has relied on an enclosure to Ext. 2 which also reflects the same thing. Reliance is also placed on the testimony of M. W. No. 1 who is the Superintending Engineer examined on behalf of the Management. He has admitted in Para. 2 of his cross-examination that the workman was retrenched from service on the 30th November 2001 along with the persons named in the reference. In Para. 1 of his cross-examination he has clearly stated that Timekeepers Raj Kishore Sahoo, Pankaj Bagarathi and Bijaya Kumar Acharya were junior to the workman. He feigned his knowledge as to whether any notice was issued to the workman under Section 25-H of the Industrial Disputes Act read with Rule 84 of the Odisha Industrial Dispute Rules.

The documentary evidence relied on by the workman read with the oral evidence adduced on his behalf and the materials elicited during cross-examination of M. W. No. 1 leave no room for doubt that the workman was senior to the persons named in the reference and denial of his re-employment ignoring the provisions of the Industrial Disputes Act, read with its Rules is neither legal nor justified. The admitted fact being that the Management while taking step for re-employment of the retrenched workman had not complied with the provisions of the Industrial Disputes Act and its Rules, the Issue No. 1 is answered in favour of the workman.

ISSUE No. 2

9. In view of the finding on Issue No. 1, the workman is held entitled to re-employment under the first party with effect from the date his juniors (named in the reference) have got such benefit and further he should be treated as senior for all purposes than the juniors named in the reference.

As regards back wages, the workman has stated in the claim statement as well as in his evidence that during the period the 1st December 2007, i. e., the date when his juniors were re-employed till date he has not been gainfully employed elsewhere and he is maintaining his family by working in his agricultural land. Though the Management has not disputed the aforesaid aspect, yet award of back wages, in my considered view is not at all appropriate because of his non-rendering any service under the Management during the period. A compensation to the tune of Rs. 60,000 (Rupees Sixty thousand) only in lieu of back wages is therefore considered appropriate to be awarded in favour of the workman and accordingly the Management is directed to pay such compensation to the workman within a period of one month from the date of publication of the Award in the official Gazette.

Dictated and corrected by me.

S. A. K.Z. AHAMED
24-06-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
24-06-2013
Presiding Officer
Labour Court, Bhubaneswar

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