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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 10th January 2013

No. 338—IR (ID)-63/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th December 2012 in Industrial Dispute Case No. 42 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Mahanadi Barrage Division, Cuttack and its Workmen Shri Bidyadhar Barik and Shri Benudhar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 42 OF 2011

Dated the 11th December 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
Executive Engineer,
Mahanadi Barrage Division,
Cuttack.

.. First Party— Management

And

Its Workmen
(1) Shri Bidyadhar Barik
(2) Shri Benudhar Sahoo,
At/P.O. D-988, Sector-6,
C.D.A., Cuttack.

.. Second- Party —Workmen

Appearances :

Abdul Kalam Khan, . . For the First Party —Management
Head Clerk.

Shri T. Lenka, Advocate. . . For the Second Party —Workmen

A W A R D

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12 (5) read with Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, 'the Act') have referred the following dispute to this Tribunal for adjudication vide their Order No.6559—ID-63/2011-L.E. ,dated the 30th July 2011 :—

“Whether the action of the Executive Engineer, Mahanadi Barrage Division, Cuttack in re-employing Shri Bilash Kumar Sahu and Shri Purna Chandra Dalei, retrenched N.M.R. workmen with effect from the 16th July 2007 ignoring the claims of Shri Bidyadhar Barik and Shri Benudhar Sahoo, retrenched N.M.R. workmen for re-employment is legal and/or justified ? If not, what relief Shri Barik and Shri Sahu are entitled to ?”

2. The story in the claim statement of the second party is not disputed to the extent that Bidyadhar Barik and Benudhar Sahoo (the two disputant workmen) joined on 1-3-1991 and 1-4-1991 respectively as N.M.R. Mates and they continuously worked in the first party establishment till 30-11-2001. Their services were terminated along with 254 N.M.Rs. with effect from the 1st December 2001 on the ground that they were surplus staff of the establishment. Subsequent to the said retrenchment the Government of Odisha in the Water Resources Department re-engaged 35 of the retrenched workmen vide Order No. 16156, dated 3-11-2007.

It is claimed by the disputant workmen but denied by the first party that amongst the 35 workmen who have been so re-engaged, Bilash Kumar Sahu and Purna Chandra Dalei are junior to the disputant workmen. Claiming that persons junior to them have been re-engaged in violation of the provisions contained in the Act, the disputant-workmen raised the dispute before the Labour machinery. Conciliation having failed, the dispute has been referred to this Tribunal for adjudication. In the claim statement, however, the workmen have further alleged that the management has violated the provisions of Section 25-F, 25-H and 25-N of the Act.

3. According to the first party management, out of the 256 retrenched N.M.Rs. 35 were re-engaged under the first party Executive Engineer and 22 were re-engaged under the Quality Control Division vide Order No. 16156, dated 3-11-2007. However, names of Purna Chandra Dalei and Bilash Kumar Sahu who are claimed to be persons junior to the disputant workmen are not there in the list containing the names of the re-engaged N.M.Rs. It is further contended that Bilash Kumar Sahu was retrenched by the Executive Engineer, M.C.I.I., Division-III, Manijanga with effect from the 31st January 2000 and was subsequently reinstated by an Award of the Labour Court, Bhubaneswar in I.D. case No. 53 of 2001. As regards Purna Chandra Dalei it is claimed that he was not retrenched in 2001. It is claimed that the retrenchment of the disputant workmen was effected in compliance with the statutory provisions of the Act.

4. In terms of the reference, the following issues have been settled :—

ISSUES

- (i) Whether the action of the Executive Engineer, Mahanadi Barrage Divisions, Cuttack in re-employing Shri Bilash Kumar Sahu and Shri Purna Chandra Dalei, retrenched N.M.R. workmen with effect from the 16th July 2007 ignoring the claims of Shri Bidyadhar Barik and Shri Benudhar Sahoo, retrenched N.M.R. workmen for re-employment, is legal and/or justified ?
- (ii) If not, what relief Shri Barik and Shri Sahu are entitled to ?

5. On behalf of the second party, one of the workmen has been examined as W.W. No.1. On behalf of the management the Head Clerk in the establishment of the first party is examined as M.W. No. 1. Exts.1 to 10 have been marked from the side of the workmen whereas Exts.A and A/1 have been marked from the side of the management.

FINDINGS

6. *Issue No. (i)*—Though the reference is with regard to the legality and/or justifiability of the re-employment of Shri Bilash Kumar Sahu and Shri Purna Chandra Dalei who are not before this Tribunal, the real dispute is with regard to the violation of the provisions contained in Section 25-H of the Act thereby ignoring the right of the disputant workmen to be re-employed on the ground of their seniority. Therefore, it is very much important to first find out to whether the management has contravened the provisions contained in Section 25-H of the Act, read with Rule 84 of the Odisha Industrial Disputes Rules, 1959 (for short, the Rules).

While adducing evidence M.W. No.1 has stated that no persons belonging to N.M.R.-Mate category who are junior to the disputant workmen have been re- employed by the management. He has clarified that the disputant workmen's name appear at Sl. Nos.140 and 141 of the seniority list whereas persons up to Sl. No. 132 of the seniority list pertaining to N.M.R. Mate category have been given re-employment. He has further clarified that the above-named Bilash Kumar Sahu and Purna Chandra Dalei come within N.M.R. Watchmen category and, therefore, their seniority or juniority is not to be taken into consideration while giving re-employment to retrenched persons pertaining to N.M.R. Mate category. In cross-examination M.W. No.1 admits that said Bilash Kumar Sahu and Purna Chandra Dalei had joined as N.M.Rs. On 1-11-1991 and 1-4-1999, respectively and that they were reinstated on 1-12-2007. He has further admitted that N.M.Rs. engaged as Watchman, Mate, Khalasi and Helper get the minimum wages fixed for an unskilled workman. He also admits that there is no minimum educational qualification prescribed for N.M.Rs. engaged as either Watchman, Mate, Khalasi or Helper.

In course of hearing it has come to light that while the management claims that N.M.Rs. Working as Watchman, Mate, Khalasi, Helper etc. belong to different categories, the second party claims that all the N.M.Rs. for whom no minimum educational qualification is prescribed and who get minimum wages prescribed for workers belonging to 'unskilled' category, belong to one category, irrespective of their engagement as Mate, Watchman, Helpers etc. Exts.9 and 10 are the seniority

lists of N.M.R. employees of the first party. A perusal of the lists discloses that the same has been maintained treating Mates, Watchmen, Choukidars, Helpers etc. as belonging to different categories of workmen of the first party establishment. The list marked Ext.9 was prepared in 2001 and the other list (Ext.10) in 2008. It is not shown that the categorisation of N.M.Rs. made in the seniority list has been disputed by the workmen or their Union. Nor any authority has been cited to support the contention that the categorisation made by the management as per the seniority is invalid and that all the NMRs belonging to unskilled category belong to a particular category of workmen as contemplated under Section 25-G of the Act. Therefore, the dispute as to the categorisation of the NMRs seems to be unresolved and the same cannot be decided in the present reference as it cannot be said to be incidental to the dispute under reference.

7. If the date of joining of all the N.M.Rs. belonging to unskilled category is made the basis of fixation of their seniority, then the disputants are undisputedly senior to Shri Bilash Kumar Sahu and Shri Purna Chandra Dalei. Because, it is not disputed that the disputants Bidyadhar Barik and Benudhar Sahoo joined on 1-3-1991 and 1-4-1991, respectively whereas Shri Bilash Kumar Sahu and Purna Chandra Dalei joined on 1-11-1991 and 1-4-1999, respectively (vide Exts.9 and 10). It is also not in dispute that the disputants were N.M.R.-Mates whereas Bilash Kumar Sahu was an NMR- Night Watchman and Purna Chandra Dalei was a D.L.R. -Watchman. Since they were working as Watchmen their names do not find place in the seniority list marked Ext.9 which is exclusively meant for N.M.Rs. Working as Mates. The names of the disputants appear at Sl. Nos. 140 and 141 of the seniority list, Ext.9. M.W.No.1 has stated that the management has re-engaged NMR Mates up to Sl. No. 132 of the said list. Thus, it is found that according to the categorisation of NMRs made by the management, which does not appear to have been disputed by the concerned workmen, the management while making re-employment of the retrenched workmen, who used to work as Mates, has given respect to their seniority. Had Shri Bilash Sahu and Purna Chandra Dalei belonged to Mate category, then the position would have been different. So far re-employment of retrenched Mates are concerned, there is no violation of the principle laid down in Rule 84 of the rules which contemplates that where the number of vacancies is less than the number of retrenched workmen then the senior most retrenched workman in the list shall be given preference while giving re-employment.

When it is not shown that the seniority list maintained by the management was never before challenged by the NMR employees of the first party establishment and in the absence of seniority lists based on the date of appointment of all the NMR employees of the establishment treating them as belonging to one category of workmen, it is not possible on the part of this Tribunal to hold that while giving re-employment to Bilash Kumar Sahu and Purna Chandra Dalei the management ignored the seniority of the disputants.

8. That apart, the dispute covered by the reference does not appear to be an 'individual dispute'. As already stated, the real dispute is over the alleged non-observance of the principle laid down in rule 84 of the Rules. Thus, it is not a dispute covered under Section 2A of the Act. As a result, the disputants could not have raised the dispute in their individual capacity. Even though it is not an individual dispute covered under Section 2A of the Act, the Union of the employees of the establishment or an appreciable number of employees of the establishment has not supported or

taken-up the dispute. The disputants in their individual capacity lodged a complaint before the Assistant Officer, Cuttack. Thus, the dispute is not espoused by any Trade Union or an appreciable number of employees of the establishment. Hence, the reference seems to be not maintainable.

9. A plain construction of the terms of the reference discloses that the dispute is with regard to the legality or justifiability of the re-employment of Bilash Kumar Sahu and Purna Chandra Dalei with effect from 16-7-2007 on the sole ground that while doing so the management ignored the rights of the disputants. In the considered view of this Tribunal such a dispute cannot be adjudicated upon in the absence of Shri Bilash Kumar Sahu and Shri Purna Chandra Dalei. The disputants workman claim that they should be reinstated in service. If the seniority of all the retrenched NMRs is to be determined on the basis of their date of joining, then it is quite possible that there might be other retrenched workmen who are senior to the disputants. In that case the reinstatement of the disputants would result in ignoring the seniority of some of the retrenched N.M.Rs. Even the seniority list marked Ext.9 discloses that the retrenched workmen vide Sl. Nos. 133 to 139 of the said list are senior to the disputants and according to M.W. No.1, the retrenched N.M.R.- Mates only up to Sl. No. 132 of the list have been re-engaged. It appears from the evidence of M.W. No.1 that re-engagement is being given to the retrenched employees according to vacancies available. If the disputants are given the relief of re-employment, then it would amount to ignoring the seniority of those whose names find place at Sl. Nos. 133 to 139 of Ext.9 and may be many others who on the basis of the date of joining are senior to Shri Bilash Kumar Sahu and Purna Chandra Dalei. Thus, it is found that an Award made in favour of the disputants will definitely affect a large number of retrenched N.M.Rs. who are neither parties to the reference nor represented by their Trade Union.

10. Coming to the factual aspect on the alleged re-employment of Bilash Kumar Sahu and Purna Chandra Dalei, it is found from the written statement that the management has not admitted that these two persons were retrenched along with the 256 N.M.R. Workmen who were retrenched on 1-12-2001. The management has specifically pleaded that Bilash Kumar Sahu was retrenched with effect from the 31st January 2000 and not with effect from the 1st January 2001. As regards his reinstatement, it is pleaded that his retrenchment was challenged by him which gave rise to an industrial dispute and it was adjudicated by the Presiding Officer, Labour Court, Bhubaneswar in I.D. Case No. 53 of 2001 and on the basis of an Award passed in that case Bilash Kumar Sahu was reinstated. As regards Purna Chandra Dalei, it is claimed by the management that he was never retrenched from service during the year 2001 meaning thereby he was also not one of the 256 workmen who were retrenched with effect from the 1st December 2001.

In view of such denial the burden was on the second party to establish that Bilash Kumar Sahu and Purna Chandra Dalei were amongst the 256 retrenched N.M.R. workmen and that after such retrenchment these two persons were reinstated with effect from 16-7-2007. Because, they have raised the dispute on the footing that while they are senior to said Bilash Kumar Sahu and Purna Chandra Dalei the management while giving re-employment to the retrenched N.M.R. Workmen ignored their (disputant's) seniority. But, no evidence has been adduced by the second party showing that Bilash Kumar Sahu and Purna Chandra Dalei were retrenched on 1-12-2001

and, subsequently, re-employed with effect from the 16th July 2007. In the absence of such evidence their seniority cannot be compared with that of Bilash Kumar Sahu and Purna Chandra Dalei to find out whether their seniority was illegally ignored by the management while giving re-employment to the retrenched workmen.

11. As already stated, the disputants have alleged violation of the Statutory provisions of Section 25-H and 25-N of the Act for the first time while presenting the claim statement before this Tribunal. Such a dispute was not raised before the Conciliation Officer. Therefore, that dispute is not referred to this Tribunal for adjudication. By no stretch of imagination the dispute with regard to alleged violation of the provisions of Section 25-F or Section 25-N of the Act can be said to be incidental to the dispute which has been referred to. Therefore, it is beyond the scope of the reference to decide as to whether the retrenchment of the disputants is illegal or unjustified.

12. Thus, it is held that basing on the seniority list maintained by the first party it cannot be held that the re-employment of Shri Bilash Kumar Sahu and Purna Chandra Dalei with effect from the 16th July 2007 is in ignorance of the seniority of the disputants and therefore, it cannot be held to be either illegal or unjustified. That apart, the reference itself is held to be not maintainable on the ground of non-espousal of the cause of the disputants by their Union

13. *Issue No. (ii)*—In view of the findings on Issue No.i, the disputants are not entitled to any relief.

The reference is disposed of accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
11-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
11-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government