

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1599 CUTTACK, MONDAY, AUGUST 19, 2013 / SRAVANA 28, 1935

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 7th August 2013

No. 10237—IR(ID)-47/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th June 2013 in Industrial Dispute Case No. 09 of 2012 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Sambalpur District Co-operative Central Bank Ltd., Bargarh and their 42 numbers of contingent basis temporary employees 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. 09 OF 2012

Dated the 29th June 2013

Present :

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

Between :

The Management of
Sambalpur District Co-operative
Central Bank Ltd., Bargarh, through
the Secretary, Sambalpur District
Co-op. Central Bank Ltd., Bargarh,
P.O./Dist. Bargarh.

.. First Party—Management

And

Their 42 numbers of contingent basis
temporary employees through their
Authorised Representative.

.. Second Party—Workmen

1. Dhabaleswar Meher,
At/P.O. Gudesira, Dist. Bargarh
and 41 others, namely :—
2. Manoj Kumar Dash
3. Ananta Prasad Dash
4. Subimal Dash
5. Sujit Kumar Pradhan
6. Dibya Lochan Banchhor
7. Sanjay Kumar Nayak
8. Ashish Kumar Pradhan
9. Ugresan Pradhan
10. Rupesh Kumar Pradhan
11. Dillip Kumar Pradhan
12. Jitendriya Sahu
13. Gajindra Behera
14. Susanta Kumar Sahu
15. Ashis Kumar Padhan
16. Satyanarayan Pattanaik
17. Manoj Kumar Dash
18. Biswadatta Dash
19. Dhaneswar Behera
20. Subash Ch. Behera
21. Prabhakar Majhi
22. Sudhansu Sekhar Mishra
23. Ranjit Ku. Podha
24. Jadumani Behera
25. Bhargabi Pradhan
26. Samir Kumar Sahoo
27. Nayan Sahu
28. Damodar Padhan
29. Jitendriya Kumar Mishra
30. Balaramdev Hota
31. Sadhu Charan Pradhan
32. Pravakar Kumar Majhi
33. Bhabani Sankar Dehury
34. Amiya Ranjan Dash
35. Bhubaneswar Meher
36. Srikanta Pradhan
37. Jitendra Kumar Pradhan
38. Amiya Ranjan Mahana
39. Jagyasen Padhan
40. Prabin Dixit
41. Pushpaja Pradhan
42. Manjit Pradhan

Appearances :

Shri D. Panda, Assistant Secretary	. . For the First Party—Management
Shri D. Meher, Authorised Representative	. . For the Second Party—Workmen

AWARD

This award arises out of a reference made by the Government of Odisha, in the Labour & E.S.I. Department, under the power conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide order under Memo. No. 6031(5), dated the 2nd August 2012. The dispute involved under the Schedule of reference is as follows :—

"Whether the action of the management of Sambalpur District Co-operative Central Bank Ltd., Bargarh in terminating the services of 42 numbers of contingent employees (as per list) with effect from the 15th December 2008 is legal and/or justified ? If not, what relief these workmen are entitled to ?"

2. The case of the second party members (42 in number) named above as per their statement of claim is that they were employed by the first party since Dt. 28-7-2008 pursuant to the decision dated the 17th July 2008 of the Appointment Committee of the first party management Bank with a consolidated pay of Rs. 4,000 to Rs. 5,000 per month as per their designation and work allotted. Their appointment was contingent as per the decision of the Committee for Appointment. It is the specific averment of the second party that during their functioning, there was change of management and the Collector-*cum*-District Magistrate, Bargarh remained as Management In-charge of the Bank on 25-10-2008. He took a decision to accept the service of one Shri B. C. Sethi, Deputy Registrar, Co-operative Societies, Sambalpur Division as Secretary In-charge of the Bank though his joining report was not accepted by the Committee of the Management. According to the second party members Shri B. C. Sethi, without having any authority, continued to work as Secretary In-charge of the Bank and he was trying to blame the earlier management. To satisfy his grudge, he targetted second party members and by adopting illegal means disengaged/terminated them from service by a decision, dated the 14th December 2008. According to the second party members, their termination from service is illegal, unjustified and contravenes the provisions of Section 25-F and 25-N of the I. D. Act, 1947. It is the case of the second party members that the first party retained the services of some junior workmen violating the Section 25-G of the I. D. Act. The second party members contend that they have remained unemployed since their date of termination and leading a miserable life. They pray to declare their retrenchment, dated the 14th December 2008 to be illegal and void, reinstate them in service and direct the first party to pay back wages from the date of the alleged illegal termination of service.

3. The management filed written statement stating therein that the second party members are not the workmen and since no industrial dispute exist between the parties the case is not maintainable. They have specifically stated that one of the second party (Manjit Pradhan) has filed W.P. (C) No. 19248/2008 before the Hon'ble High Court, Orissa relating to his termination and prayed for regularisation of service and since the said case is *sub judice*, the present case is not maintainable. The management admit the averment of the second party members that due to shortage of staffs the Appointment Committee of the Bank engaged the second party members as

Junior Assistant/Assistant Supervisor and Peon/Night Watcher on contingent basis with conditions (i) their engagement is purely temporary, (ii) their engagement was with consolidated pay of Rs. 5,000 and Rs. 4,000 for Junior Assistant and Peon respectively and (iii) they cannot claim any service right in future and can be terminated at any time without assigning any previous notice. It is the case of the management that engagement of the second party members was against the O.C.S. Act, 1962 and the instruction of the Registrar, Co-operative Societies, Odisha, so also the O.R.V. Act. The decision of the Appointment Committee, dated the 14th December 2008 was just and proper since no selection procedure was adopted and the provisions of O.R.V. Act was not followed for the engagement of the second party members. With such averments, the first party contend that the second party members are not entitled to any relief.

4. The second party members submitted a rejoinder wherein they narrated that the first party attempted to mislead the Court. They contend that the first party not only violated the provisions of law by terminating their service but also adopted unfair labour practice by employing fresh personnel and recruiting retired personnel without taking recourse to employ the terminated workmen.

5. On the basis of the pleadings of the parties, the following issues have been settled for adjudication :—

ISSUES

- (i) "Whether the action of the management of Sambalpur District Co-operative Central Bank Ltd., Bargarh in terminating the services of 42 numbers of contingent employees (as per list) with effect from the 15th December 2008 is legal and/or justified ?
- (ii) If not, what relief the workmen are entitled to ?"

6. The second party No. 1 was the sole witness examined on behalf of the workmen and the management examined only one witness who is the Assistant Secretary of the management Bank. From the side of the second party members, several documents were filed and marked Ext. 1 to Ext. 4. The management also filed volume of documents which were marked Ext. A to Ext. P.

FINDINGS

7. *Issue No. (i)*—There is no dispute that the second party members were engaged by the first party, pursuant to a decision of the Appointment Committee taken on 17-7-2008. During course of hearing, the management filed copies of orders regarding engagement of the second party members which were marked as Ext. A series. A copy of the proceeding of the Appointment Committee held on 17-7-2008 has also been marked as Ext. B. On perusal of the pleadings, evidence and the Exts. A and B, I find, out of the 42 second party members claiming reinstatement, the second parties namely Srikanta Pradhan and Amiya Ranjan Mahana were engaged as Computer Personnel with a consolidated pay of Rs. 10,000 per month. Six second party members namely, Dhaneswar Behera, Sudhansu Sekhar Mishra, Ranjit Kumar Podha, Sachidananda Singh, Jitendra Kumar Mishra and Damodar Pradhan were engaged as Peon/Night Watcher by the management Bank with a consolidated pay of Rs. 4,000 per month, all other second party members were engaged as Junior Assistant/Assistant Supervisor on a consolidated pay of Rs. 5,000 per month. It reveals

from the Ext. A series that the second party members were posted at different places in different branches of the Bank. The management admit that the second party members were disengaged from service with effect from the 14th December 2008. The management has also filed the copies of the letters of disengagement issued to all the 42 workmen which are marked Ext. C series. A copy of the proceeding of the Appointment Committee of the management Bank, dated the 14th December 2008 has been marked as Ext. D. In Ext. D, there is specific mention about the cause of disengagement of the persons engaged as per decision, dated the 17th July 2008.

8. Admittedly, there is no disciplinary proceeding against any of the second party members and there was no allegation regarding their inefficiency in the working under the management during their period of service for about 4 to 5 months. It is the claim of the management that the appointment of the second party members was made violating the provisions of the O.C.S. Act and Rules and the provisions of O.R.V. and C.N.V. Act. On the contrary, it is the stand of the second party members that they are the victims under one Shri B. C. Sethi, the Secretary In-charge of the Bank who had a grudge upon the earlier management, who appointed them. The second party members contend that the appointment of Shri B. C. Sethi as the Secretary In-charge of the Bank is illegal as the same was not approved by the Management Committee. The said B. C. Sethi is a public servant and who, while discharging his duty as Deputy Registrar, Co-operative Societies was accepted to be the Secretary In-charge of the management Bank by the then Collector-*cum*-District Magistrate, Sambalpur, who was In-charge of management Bank. The question of legality of appointment of Shri B. C. Sethi as the Secretary of the management Bank cannot be raised by the present workmen who have no *locus standi* to raise the question in this forum. It reveals from a letter, dated the 23rd September 2008 issued by the Registrar, Co-operative Societies to the President, Sambalpur District Co-operative Central Bank Ltd., Bargarh marked Ext. E that the Registrar advised the President to accept the joining report of Shri B. C. Sethi which must have been complied. Under the provisions of Odisha Co-operative Societies Act and Rules made thereunder, the Registrar Co-operative Societies, Odisha has the authority to disqualify any official of the Co-operative Society who, in his opinion is responsible for the mismanagement of the Society [vide Section 33-2(1) and (5) of the O.C.S. Act]. In the present case one Shri Balaram Pradhan was the Secretary In-charge of the first party Bank by the time of engagement of the present 42 workmen. It reveals from the Ext. E that the Registrar of the Co-operative Societies, Odisha, Bhubaneswar found Shri Pradhan unfit to hold the post of Secretary particularly on the ground that 4 numbers of disciplinary proceedings were pending against him. The letter Ext. E further reveals that the Appointment Committee of the Bank exonerated Shri Pradhan from all the charges on 11-6-2008 which in the opinion of the Registrar was highly irregular. Under such circumstances, he advised the Bank to accept the joining report of Shri B. C. Sethi. In the aforesaid background, I am not inclined to accept the stand of the workmen that Shri B. C. Sethi had any grudge upon the management and for that reason he terminated the service of the present workmen.

9. The representative of the workmen cited several decisions and relying upon Section -27 of the O.C.S. Act, submitted that the Registrar, Co-operative Societies is not superior authority of the management and the general body of the members of a Co-operative Society is its final authority. There is no dispute in such position of law but the Registrar, Co-operative Societies is undoubtedly a higher authority having specific right to interfere in the matter of smooth running of a Society and

therefore his advice in the matter of the Management of Society can be adhered to by the management. The workmen cannot take any benefit of irregular or improper advice to the management by the Registrar, Co-operative Societies.

10. Now, the core question arises as to whether the termination of services of the 42 workmen was legal or justified. The management has taken a positive stand that the appointment of the workmen was illegal on the ground that there was no advertisement for filling up of the posts and there was no interview to engage the present workmen. The sole witness examined on behalf of the management during cross-examination stated that there was paper publication in respect of the employment but he is unable to say about the name of the concerned newspaper or the date of paper publication. When it is specific stand of the management that there was no publication calling for employment in different posts under the management, it was obligatory on the part of the workmen to file the copy of paper publication, if any. On perusal of the documents relied upon the parties I find the Ext. B is the only basis of appointment/engagement of the workmen. This document is a recording of proceedings held by the Appointment Committee of the Sambalpur District Co-operative Central Bank Ltd., Bargarh on 17-7-2008. As per proceeding vide Agenda No. 7 of the proceeding, the Appointment Committee considered the filling up of vacancies on the ground of shortage of staffs resulting adverse effect of regular work for audit and recovery and decided to appoint some staffs on contingent basis. There was no mention about publication of notification for the proposed appointment and straightway 39 persons were enlisted for appointment as Junior Assistant/Assistant Supervisor, 5 persons in the post of Peon/Nigh Watcher and 2 persons as Computer Personnel. There is nothing in the Ext. B to show that any interview was conducted to appoint the enlisted persons. Besides it has been specifically mentioned under the discussion on Agenda No. 7 that the Appointment Committee resolved to go for contingent appointment which will be reconsidered after receipt of guidelines from the Registrar, Co-operative Societies, Odisha. Therefore, it is a case where the Appointment Committee without calling candidates for employment and without conducting any interview appointed the present workmen and others under different posts to work at different branches of the Bank. Their appointment was subject to reconsideration as per the guidelines to be issued by the Registrar, Co-operative Societies. In the letter, dated the 23rd September 2008 of the Registrar, Co-operative Societies, Odisha, Bhubaneswar vide Ext. E, the President of the Bank was requested to refer to the Directorate Letter No. 13441, dated the 9th June 2008 wherein it was specifically instructed not to go for any appointment in any manner whatsoever till statutory guidelines are issued in consultation with NABARD but in the meeting the Appointment Committee resolved to appoint 74 numbers of persons in different posts without approval of the R.C.S., Odisha. Such action, according to the Registrar contravenes the circulars, guidelines of R.C.S., Odisha, O.R.V. Act and C.N.V. Act. The Registrar further observed that the appointments may be treated as cancelled and terminated forthwith. The management further proved a copy of letter, dated the 29th November 2008 issued by the District Welfare Officer, Bargarh from the office of Collector and District Magistrate, Bargarh to the D.R.C.S.-cum-Secretary, S.D.C.C. Bank, Bargarh which was marked as Ext. E. In this letter the Welfare Officer intimated the Secretary about the violation of O.R.V. Act in direct appointment and promotion of personnels in the first party Bank and he pointed out that all such promotions and appointment made vide Order, dated the 25th July 2008 should be treated as void and the services of the persons so appointed should be terminated. It appears from record that considering the letter of the Welfare Officer and the Registrar of Co-operative Societies the

management terminated the service of the present workmen particularly when there was no advertisement or interview for their appointment. It is true that the Appointment Committee of the management Bank has the authority to make appointment of persons in different posts for smooth running of the business of the Society but since the appointment involves the right of general public, the same cannot be made in an arbitrary manner. In the case of National Fertilizers Limited and others *Vrs. Somvir Singh* reported in 2007(1) All India Services Law Journals 151, the Hon'ble Apex Court found the Respondents before them were appointed without any advertisement issued in any newspaper and without any intimation to the Employment Exchange regarding existence of vacancies. Under such circumstances, the Hon'ble Apex Court held that the concerned Appointing Authority was bound to comply with constitutional requirements as adumbrated in Articles 14 and 16 of the Constitution of India. The Hon'ble Court further held that although the Respondents had been working for a long time, the same by itself was not a ground for directing regularisation of their service nor they were held to be entitled to salary on regular scale of pay. Considering the facts and circumstances of the present case and the above decision of the Hon'ble Apex Court, I am constrained to hold that the appointment/engagement of the present workmen was not legal and they had no right to continue in service particularly when there was specific mention in their appointment orders that their services can be terminable at any time without assigning any reason or previous notice. Besides, it was the specific resolution of the Appointment Committee before engagement of the second party members that their appointment was purely contingent and was subject to reconsideration after receipt of the guidelines from the Registrar, Co-operative Societies, Odisha. Under the above circumstances, the decision taken by the management in terminating the services of the workmen cannot be found fault with. The issue is accordingly answered against the second party members.

11. *Issue No. (ii)*—Since in my earlier discussions, I have observed that the appointment of the second party members was illegal and the decision of the management in terminating their services is legal and justified, the second party members are not entitled to any relief in this case.

12. All the 42 workmen as noted above jointly filed the statement of claim with their signatures therein. However, it is found that the second party No. 42 namely, Shri Manjit Pradhan preferred a Writ in the Hon'ble High Court of Orissa, vide W.P. (C) No. 12948(8) relating to his termination of service and has prayed for regularisation of service. The said Writ Petition is said to be *sub judice* before the Hon'ble Court. The management contend that the present case is not maintainable in view of the pendency of the Writ Petition but the workmen contend that since this Court has authority to decide the question under reference, the pendency of the Writ Petition is no bar to proceed with the case. Considering the rival submissions, I feel the reference in this case needs be answered in respect of the second party members except the second party SI. No. 42.

Hence, the following Award.

AWARD

The reference is answered on contest against the second party members No. 1 to 41 but without cost. The action of the management of Sambalpur District Co-operative Central Bank Ltd., Bargarh, in terminating the services of the said 41 second party members of contingent employees

with effect from the 15th December 2008 is held to be legal and justified. The said workmen are not entitled to any relief in this case. So far as the second party No. 42 is concerned the decision in this reference shall be only applicable to him unless any relief is granted in his favour by the Hon'ble High Court in W.P. (C) No. 12948 (8).

Dictated and corrected by me.

SRIKANTA MISHRA
29-6-2013
Presiding Officer
Labour Court, Sambalpur.

SRIKANTA MISHRA
29-6-2013
Presiding Officer
Labour Court, Sambalpur.

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