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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th August 2013

No. 10584—IR(ID)-65/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th July 2013 in Industrial Dispute Case No. 06/2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s VISA Steel Ltd., Kalinga Nagar, Jakhapura, Jajpur and their Workman Shri Baman Charan Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 6 OF 2011

Dated the 24th July 2013

Present :

S.A.K.Z. Ahamed, o.s.j.s. (Jr. Branch),
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Managing Director,
M/s VISA Steel Ltd.,
Kalinga Nagar, Industrial Complex,
At/PO Jakhapura, Dist. Jajpur. First Party—Management

And

Shri Baman Charan Sahoo,
S/o Late Dukhiram Sahoo,
At/ Dahanahota, P.O. Chhatrapada,
Dist. Jajpur. Second Party—Workman

Appearances:

Shri A. K. Mohanty, Authorised . . . For the First Party—Management
Representative.

Shri Baman Charan Sahoo . . . For the Second Party—Workman himself

A W A R D

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. 7444—ID.-65/2011-LE., dated the 16th August 2011.

“Whether the action of the management of M/s VISA Steel Ltd., Kalinga Nagar Industrial Complex, Jakhapura, Jajpur in termination of the services of Shri Baman Charan Sahoo, Casual Cook by way of refusal of employment with effect from the 1st July 2007 is legal and/or justified ? If not, to what relief Shri Sahoo is entitled ?”

2. The case of the workman, in short, is that being employed as a Cook he had been working under the first party management in its Guest House at Chorda Bye-Pass since 1st December 2004 and he continued to work as such till June, 2007. He asserts that his employment under the management was continuous one and he used to get his monthly salary/wages @ Rs. 2500 from December, 2004 to March, 2006 and @ Rs. 3000 from April, 2006 onwards from the Accounts Department of the management. He alleges that on 1st July 2007 the management asked him to work under another company, namely R. K. H. S. and in that connection wanted his bio-data and photograph but on his denial to comply such direction he was refused employment. Further allegation of the workman is that while terminating his service by way of refusal of employment, the management had neither served on him any notice or in lieu thereof notice pay nor paid any retrenchment compensation as required under the provisions of the Industrial Dispute Act. It is further pleaded that his termination was also not as a result of any departmental action. Further plea of the workman is that since the management regularised the services of Shri Gayadhar Sethi, Rabi Rout, Jugal Naik, Prasanta Mallick and Rabindra Pradhan, who were employed on casual basis like him, the action of the management in terminating his service is not only arbitrary but also illegal and unjustified.

The stand of the management before the Conciliation Officer that the workman was although engaged under contractors is stoutly denied by the workman. According to him, the management has resorted to all falsehood and in order to deprive him of the legitimate claim has introduced a false story to the effect that he was employed under contractors. It is his specific stand that the Contract Agencies were only for the name sake but everything was being controlled and supervised by the management.

Lastly, it is pleaded in the claim statement that as the second party is unemployed from the date of his illegal termination, he may be granted the relief of reinstatement in service with full back wages.

3. Disputing the averments made in the claim statement, the first party filed its statement. First of all it has taken the stand that there exists no employer-employee relationship between it and the second party. The specific stand taken by the management with regard to the claim of the workman is that the workman was initially engaged as a Cook by one Mr. Subash Chandra Pahi , a Contractor from 1st December 2004 to 30th June 2005 and thereafter he was engaged by another Contractor Firm namely M/s B. B. G. & Co. where he worked from 1st March 2006 to 31st July 2007. It is further pleaded that the workman having got his full and final payment from M/s B. B. G. & Co., the Contractor, the present attempt of the workman to drag the management, who is in no way connected with his employment or non-employment, should not be entertained and the claim advanced on his behalf in this proceeding be rejected.

4. On the basis of the pleadings of the parties the following issues have been framed:—

ISSUES

- (i) “Whether the action of the management of M/s. VISA Steel Ltd., Kalinga Nagar Industrial Complex, Jakhapura, Jajpur in terminating the services of Shri Baman Charan Sahoo , Casual Cook by way of refusal of employment with effect from the 1st July 2007 is legal and or justified ?
- (ii) If not, to what relief is Shri Sahoo entitled ?”

FINDINGS

5. *Issue No. (i)* — Though the management has taken a specific stand that the second party was never engaged under it and as such there exists no employer-employee relationship between it and the second party, yet no issues to that effect has been framed. The second party has claimed that all along he was working under the management and the so called contract system, pleaded by the management, was a mere camouflage to deny him his legitimate benefit. In view of the controversy, therefore, it is considered just and proper to give a finding on the score and thereafter to proceed to examine the issue involved in the reference.

6. The management witness No.2, who is the Senior Manager, P. & IR of the management reiterating the plea advanced in the written statement has deposed that the second party was employed by one Mr. Subash Chandra Pahi, a Contractor engaged by the first party and under him he worked from 1st December 2004 and thereafter he was employed by another contractor establishment from 1st March 2006 to 31st July 2007. It is therefore to be presumed that he was engaged initially on 1st December 2004 and worked till 28th February 2006 under the so called

Contractor Mr. Subash Candra Pahi. To support his version, M. W. No.2 has not placed on record neither the Contract Labour Licence of Shri Pahi nor the Work Order issued by the management in favour of Shri Pahi to engage Contract Labourers to execute the work of the first party. Even the management did not choose it proper to examine the said Contractor, who could have thrown light in the matter and supported the plea of the management. The documents filed and proved as Ext. A series cannot be considered to be the document of the Contractor Shri Pahi, in absence of his examination. Had Shri Pahi been examined the second party would have got a chance to cross-examine him on the authenticity of the documents. Rather, the seal affixed on Ext. A Series gives an impression that it was being maintained by the first party. For the reasons assigned above, this Court holds that during the period from the 1st December 2004 till 28th February 2006 the second party was working under the management and further on perusal of Exts. 1 & 2 it can be said that he was being paid his wages by none-else than the management. Therefore the stand of the management that the second party was a Contract Labourer during the period fails.

Now, it is to be seen as to whether the second party had rendered services under the Contractor Establishment namely M/s B. B. G. & Co. for the period from 1st March 2006 to 30th June 2007 or during that period also he had worked under the management. In this connection, the evidence of M. W. No. 1 may be referred to M. W. No. 1, Shri Braja Bhusan Jha is the Proprietor of M/s B. B. G. and Co. (Contractor). He deposed that during the period in question the second party was working under its Establishment and he had received his monthly wages by acknowledging the same in the Wage Register marked Ext. D series. But, during cross-examination, he admitted that he has no document such as Hazira Card, Photograph, Gate Pass or Bio-data of the second party to produce in this proceeding. To establish his plea of working under the management the second party during cross-examination of M. W. No. 1 confronted him Token No. 53 marked M. O. I. and he admitted that the said token was issued by the management. Although the management has filed M. O. 2 stating it to be the Gate Pass issued in favour of its employees, but in view of the clear admission of M. W. No. 1 that Token No. 53 marked M. O. I. was also of the management it is not safe to rely on the evidence of M. W. No. 2 and discard the assertion of the second party that M. O. I. was handed over to the second party for his entry into the Factory Premises. That apart, the Register of Wages, marked Ext. D series filed and proved in this case are the documents of the contractor and he is supposed to prove the same. But, it is seen from the record that such documents have been filed a proved on behalf of the management through M. W. No. 2 and further the documents (Ext. D series) bears the seal of the management. It therefore creates a doubt as to how Ext. D series, which are the documents of the Contractor, came to the possession of the management. True it is that during the relevant period M/s B. B. G. & Co. was working as a Contractor under the management but in view of his clear admission during cross-examination that he has no document such as Hazira Card, Photograph, Bio-data, Gate Pass etc. of the second party to produce in this proceeding,

the conclusion is inevitable that the Contractor Establishment namely M/s B. B. G. & Co. was functioning under the management only as a namesake to avoid the rigours of law. It is therefore held that the second party was working during the relevant period under the management and not under M/s B. B. G. & Co., the so-called Contractor Establishment.

In view of the discussions held above, this Court is of the considered view that there has been relationship of employer and employee between the management and the second party and thus the second party is held to be a workman working under the management.

7. The workman has rendered services for more than 240 days, his employment being from the 1st December 2004 to the 30th June 2007. There having admitted non-compliance of the provisions of Section-25-F of the Act, the action of the management cannot be said to be either legal or justified. Hence, the termination of services of the workman is held to be illegal as well as unjustified.

8. *Issue No. (ii)* — In view of the findings on Issue No. I the workman is entitled to get some relief. It is found from record that at present the workman is aged about 40. He had worked under the management for a short period about two and half years and that too on casual basis. He failed to show that he entered into such job by facing any interview/test. Taking into consideration the aforesaid aspect, therefore, this Court does not find it to be a fit case to award reinstatement with back wages in favour of the workman. However, for the illegal termination of his service in the year, 2007 it is felt appropriate to award some compensation in his favour and accordingly the management is directed to pay him a compensation of Rs. 1,00,000 (Rupees one lakh) within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. Ahamed
24-7-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. Ahamed
24-7-2013
Presiding Officer
Labour Court, Bhubaneswar

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