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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th September 2013

No. 11126—IR(ID)-99/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th August 2013 in Industrial Dispute Case No. 65 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Odisha Power Generation Corporation Ltd. and its workmen represented by O.P.G.C. Employees Union and Odisha Tapaj Bidyut Nigam Karmachari Sangha was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 65 OF 2010

Dated the 20th August 2013

Present :

Shri P. K. Ray, o.s.j.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Management of
Orissa Power Generation Corporation Ltd.
Zone - A, 7th Floor, Fortune Towers,
Bhubaneswar - 751 023. First Party—Management

And

Its Workmen, Represented through O.P.G.C.
Employees Union, Plot No. 151,
Sahid Nagar, Bhubaneswar - 751 007. Second Party—Workmen

&

Odisha Tapaj Bidyut Nigam Karmachari Sangha
Plot No. - 550, Vivekananda Marg, Bhubaneswar - 2.

Appearances :

| | | |
|------------------------------------|-----|--------------------------------|
| Shri S. S. Rath, Authorised Rept. | . . | For the First Party—Management |
| <hr/> | | |
| Shri D. C. Sahoo, Authorised Rept. | . . | For the Second Party—Workmen |

AWARD

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & E.S.I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 7454—ID-99/2010-LE., dated the 4th September 2010 with the following schedule :—

“Whether the change in working hours by O.P.G.C. Ltd., vide its Circular No. 2360-OPGC., dated the 9th September 2009 without notice under Section 9-A of the I. D. Act, is legal and/or justified ? If not, what should be quantum of relief ?”

2. The claim of the second party-workmen is that the first party Corporation is a Company registered under the Companies Act, 1956 having its Corporate Office in Fortune Tower, Chandrasekharpur, Bhubaneswar and is engaged in generating thermal power at its Plant Site at Banaharpali, Jharsuguda and in its Mini Hydel Project Division at Berhampur. From the inception the Corporate Office has got the working hours from 10 A.M. to 5 P.M. inclusive of half an hour lunch break. On the 9th September 2009 the Senior Manager (P & A) issued a circular bearing No. 2360-OPGC., dated the 9th September 2009 rescheduling the office timing from 9 A.M. to 5 P.M. from Monday to Saturday except the last Saturday of the month with lunch break from 1-30 P.M. to 2 P.M. with effect from the 1st October 2009 thereby enhancing the working hours by one hour. Since the aforesaid change in the working hours by the first party-management without notice is a violation of the provisions of Section 9-A of the Industrial Disputes Act, on the complaint of the second party-workmen ultimately this reference has been made to decide the legality and justifiability of the Circular No. 2360-OPGC., dated the 9th September 2009.

3. The first party-management in its written statement has stated that due to administrative exigencies and within the statutory provisions of the Factories Act in order to bring uniformity in working hours the Management issued Circular dated the 9th September 2009 giving 21 days notice to bring about such change in office timing for its Corporate Office and in lieu of such increase in daily working hours the last Saturday of every month has been declared as holiday but the Union instead of raising any objection before the Management preferred to agitate the issue before the Labour Authorities alleging violation of the provisions of Section 9-A of the Industrial Disputes Act and simultaneously filed a Civil Suit No. 429 of 2009 in the Civil Court, Bhubaneswar for permanent

injunction prohibiting the unilateral implementation of the Circular No. 2360-OPGC., dated the 9th September 2009 and with a petition for ad interim injunction. It is clarified that the change in working hours do not in any manner affect the service conditions of the employees adversely nor it is a violation of the provisions prescribed under Section 9-A of the Industrial Disputes Act. It is also specifically asserted that the provisions of the Industrial Disputes Act is not applicable to the facts and circumstances of this case due to applicability of Shops & Commercial Establishment Act. Hence, the reference is not maintainable and liable to be rejected.

4. In the aforesaid premises the issues framed are as follows :—

ISSUES

- “1. Whether the employer by changing the working hours vide its circular No. 2360-OPGC., dated the 9th September 2009 has effected any change in the conditions of service applicable to the workmen in respect of a matter specified in fourth schedule ?
2. Whether such change has been effected without service of notice on the workmen as prescribed under the I. D. Act and the Rules framed thereunder ?
3. Whether the change of working hours is coming within the purview of Section 9-A of I. A. Act ?
4. What relief ?”

5. On perusal of the Order Sheet, I find that the 14th February 2012 this Tribunal on the petition filed by the first party management has passed an order to the effect that “this Tribunal is not in a position to decide as to whether the Civil Court has jurisdiction to entertain the Suit which allegedly arises out of the same cause of action. This Tribunal is also not in a position to stay the proceedings either before the Civil Court or before the Tribunal itself. No authority is cited in that regard. It is not the case of either side that this Tribunal has no jurisdiction to entertain the reference. The Tribunal is under an obligation to adjudicate on the reference. Therefore, no order can be passed in terms of the prayer made in the petition under consideration.” With great respect to my Predecessor on such order, since on the same cause of action a Civil Suit is pending in the Civil Court as well as a reference has been made to this forum, the preliminary issue to decide is as to whether this case is maintainable in view of pendency of a Civil Suit filed prior to this case. Accordingly, an additional issue over and above the issues stated above is framed to the following effect :—

- “5. Whether this Tribunal has got jurisdiction to decide the reference made by the State Government ?”

FINDINGS

6. *Issue No. 5*— Admittedly, the second party union has filed a Civil Suit bearing No. 429/2009 in the Court of Civil Judge (Junior Division), Bhubaneswar which is subjudice. The prayers in the said Suit are as follows :—

- (i) a decree for permanent injunction may be passed prohibiting the Defendants from unilaterally implementing the Circulars No. 2360-OPGC., dated the 9th September 2009, the Office Order No. 2553-OPGC., dated the 5th October 2009 and the Circular No. 2564-OPGC., dated the 6th October 2009.
- (ii) order of temporary injunction may be passed preventing the Defendants from implementing the Circular No. 2360-OPGC., dated the 9th September 2009, the Office Order No. 2553, dated the 5th October 2009 and the Circular No. 2564-OPGC., dated the 6th October 2009 pending disposal of the suit ;
- (iii) order of temporary injunction may passed restraining the Defendants from taking coercive action against the employees of the Corporation like resorting to ordering punitive transfers out of the Corporate Office, deduction of casual leave and earned leave of the employees, etc. pending disposal of the suit ;
- (iv) any other and further relief(s) as may be deemed proper be granted ; and
- (v) the suit be decreed with cost.

The prayer No. (i) in the Civil Suit No. 429/2009 is the same as that of the schedule of reference made by the State Government to this Tribunal. There is no provision under the Industrial Disputes Act, 1947 to bar the jurisdiction of the Civil Court to entertain a dispute arising out of the provision under the said Act. On the other hand Section 9 of the Code of Civil Procedure, 1908 prescribes as follows :—

“9. Courts to try all civil suits unless barred.— The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

Therefore in view of the provision of Section 9 of the Code of Civil Procedure, 1908, it can safely be said that the Civil Court has got jurisdiction to decide the aforesaid Dispute. Now both the forums have got concurrent jurisdiction and the case filed before the Civil Court is earlier to the institution of the present I. D. Case No. 65 of 2010. Section 10 C.P.C. prohibits the continuance of

the later suit. Though the provision of Section 10 C.P.C. by letters is not applicable to this case, since the provision under Section 10 C.P.C. is the fundamental principle to avoid any conflicting decision of two competent forums on the same issue, in the interest of justice it would not be proper to ignore the same. As the crux of the dispute in both the cases are same and the Civil Suit No. 429 of 2009 in the Court of Civil Judge (Jr. Divn.), Bhubaneswar filed earlier to the present one, this case is not maintainable.

7. *Issue Nos. 1, 2, 3 & 4*—In view of the findings on the preliminary issue, i. e. Issue No. 5, in the interest of justice it would not be proper to take up the above issue for adjudication.

Accordingly the reference is held to be not maintainable.

Dictated and corrected by me.

P. K. RAY

20-08-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. K. RAY

20-08-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government