

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1898 CUTTACK, TUESDAY, OCTOBER 1, 2013/ASWINA 9, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th September 2013

No. 11400—IR(M)-18/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th August 2013 in Industrial Dispute Misc. Case No. 01 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Indian Metals and Ferro Alloys Ltd. Shramik Sangha represented through its General Secretary, Therubali, Rayagada was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE MISC. CASE No. 01 OF 2009
Dated the 19th August 2013

Present :

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

Between :

IMFA Shramik Sangha .. Complainant
Represented through its General Secretary,
Therubali, Rayagada

And

The Vice-President (Operation), .. Opp. Party
M/s Indian Metals & Ferro Alloys Ltd.,
Therubali, Rayagada.

Appearances :

Shri Kamal Ray, Advocate .. For the Complainant

Shri N. K. Mishra, Advocate .. For the Opp. Party

AWARD

This case has been instituted on a complaint filed by the IMFA Shramik Sangha under Section 33-A of the Industrial Disputes Act, 1947.

2. The complainant's case is that during the pendency of I. D. Case No. 6 of 2006 before this Tribunal which was instituted at the instance of the complainant before the D. L. O. relating to revision of wages etc. the O. P. closed down its Plant No. 1 with effect from the 2nd September 2008 and Plant No. 3 with effect from the 1st November 2008 for which there is substantial reduction of incentive which amounts to change of service conditions of employees. The complainant submitted representation to the O. P. on the 29th November 2008 and the 23rd December 2008. Since the O. P. failed to reply the same this case has been instituted for a direction not to close down Plant Nos. 1 and 3 & to re-open the same till the disposal of I. D. Case No. 6 of 2006.

3. The O. P. in its show-cause challenging the maintainability of the application has stated that due to Global Financial Crisis which affects the Steel Industries and consequently the Ferro Alloys there was stagnation of sale for several months for which initially the Plant No. 1 was shut-down for maintenance job with effect from the 2nd September 2008 and Plant No. 3 with effect from the 1st November 2008 but all the workmen working in the said Plants are still in the Company's Roll and availing their wages and benefits as they used to receive before the said shut-down. The claim of incentive is not the subject matter of dispute in I. D. Case No. 6 of 2006 as it has already been finalized in a tripartite settlement dated the 18th November 2007 and since then there has been no whisper of any violation of such settlement by the complaint Union or any workman. It has been specifically stated that reduction of incentive is not part of wages. Since Plant Nos. 1 and 3 have not been closed down there is no necessity of obtaining any permission for the same. Further, during the pendency of this complaint in a joint discussion of the complaint union under the mediation of the Collector and the Superintendent of Police, Rayagada on the 18th June 2009, the issues like production linked incentive scheme and continuance of the minimum incentives to the workers during the shut-down of the plant have been decided. Hence, this case has become infructuous and liable to be dismissed.

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

ISSUES

- “1. Whether the complaint is not maintainable as bad ?
2. Whether the service conditions applicable to the workmen of the First Party immediately before the commencement of the proceeding in I. D. Case No. 6 of 2006 of this Tribunal have been altered by the alleged action of the management ?
3. Whether the workmen are concerned in the dispute in I. D. Case No. 6 of 2006 ?

4. Whether it is a case of closure or shut down for maintenance of the Plant Nos. 1 and 3 ?
5. Whether there is contravention of Section 33(1)(a) or Section 33(2)(a) of the I. D. Act ?
6. What relief ?”

5. In support of their respective case while the complainant has examined one witness and filed xerox copies of two documents marked Exts. 1 & 2, on behalf of the Opp. Party two witnesses have been examined and documents A to G have been marked as exhibits.

FINDINGS

6. *Issue Nos. 1, 2 & 3*— Fact remains that one I. D. Case No. 6 of 2006 initiated at the instance of the complainant which is subjudice in this Tribunal relates to revision of wages including bonus & allowances which also covers up incentives.

In the case of *Hindustan Steel Ltd. Vrs. State of Odisha and others* reported in 1968 (II) LLJ-526, the Hon'ble High Court of Orissa has held that Production Incentive Scheme is a Condition of Service. There is no dispute that Plant Nos. 1 & 3 of the Opp. Party at Therubali were shut down on the 2nd September 2008 and the 1st November 2008, respectively without approval of the Tribunal and notice to the complainant's Union and due to the said shut down there was reduction of production which affected the incentives.

Section 9-A of the Industrial Disputes Act followed by Rule 36 of the Odisha Industrial Disputes Rules envisage notice to the workmen to effect any change in the conditions of service applicable to them. Section 33 of the Industrial Disputes Act prescribes necessary permission from the Tribunal to effect any change in regard to any matter connected with the dispute. Therefore, on a conjoint reading of the aforesaid facts and law clearly speaks of the maintainability of the Case.

7. *Issue Nos. 4 & 5*—Admittedly, Plant Nos. 1 & 3 of the Opp. Party-management were shut down on the 2nd September 2008 and the 1st November 2008, respectively. There is no specific provision under Industrial Disputes Act relating to shut down of any production unit of a management. The word “Shut Down” is synonym to the word “Close Down” except that it may be for a temporary period. There is specific provision under Section 25-O of the Industrial Disputes Act relating to close down of any production unit. Since such a decision has been taken during pendency of I. D. Case No. 6 of 2006 without permission of the Tribunal, there is a clear violation of Section 33 of the Industrial Disputes Act.

While the claim of the complainant is that the Plants were closed down intentionally to harass the workman in order to deprive them of their incentive, the case of the Opp. Party is that the Plants were shut down for maintenance. On scrutiny of the materials on record, I find that the Opp. Party has failed to substantiate the so called maintenance of the Plants as both the witnesses failed to furnish any details thereof though they are holding responsible posts under the Opp. Party and

concerned with the maintenance and expenditure of the same. However, since the Opp. Party has stated in their pleading that the management has not deprived any of his workman from wages and paid minimum incentive due to shut down of the Plants and as per the settlement arrived at on the mediation of the Collector and Superintendent of Police, Rayagada minimum incentive have been paid to the workers during the said period and Plants have been reopened, I do not think any useful purpose would be served to unsettle the same which has been settled on the mediation of the Collector and Superintendent of Police, Rayagada.

8. *Issue No. 6*—In view of the aforesaid discussions the members of the complainant's Union are held entitled to minimum incentive for the period Plant Nos. 1 & 3 remained shut down as per the settlement arrived on the mediation of the Collector and Superintendent of Police, Rayagada on the 18th June 2009.

Dictated and corrected by me.

P. K. RAY

19-08-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. K. RAY

19-08-2013

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government