

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2190 CUTTACK, FRIDAY, NOVEMBER 8, 2013/KARTIKA 17, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 28th October 2013

No. 12454—IR(ID)-83/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st August 2013 in Industrial Dispute Case No. 50 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Manager (Electrical), Jagatsinghpur Electrical Division, CESU, Jagatsinghpur and its Workman Shri Sahadev Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 50 OF 2010

Dated the 31st August 2013

Present :

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

Between :

The Management of .. First Party—Management
The Manager (Electrical),
Jagatsinghpur Electrical Division, CESU,
Jagatsinghpur.

And

Its Workman, .. Second Party—Workman
Shri Sahadev Behera,
S/o Late Bhramara Behera,
At Beleswar, P. O. Nuabazar, Cuttack - 4.

Appearances :

Shri R. N. Acharya & Associates, Advocate .. For the First Party—Management

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

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. 6807—ID-83/2010-LE., dated the 17th August 2010 with the following Schedule :—

“Whether the termination of services of Shri Sahadev Behera, N. M. R. by way of refusal of employment with effect from the 1st July 2000 by the management of Jagatsinghpur Electrical Division, Jagatsinghpur, (CESU) under erstwhile O.S.E.B. is legal and/or justified ? If not, what relief Shri Behera is entitled to ?”

2. The case of the second party workman is that he joined as a Casual Labourer under erstwhile O.S.E.B., Choudwar Electrical Division with effect from 1976 and was discharging the duty to the best satisfaction of his authorities. Thereafter he was transferred to Jobra Division, Cuttack with effect from the 1st April 1980 till 1981. As the Jobra Division was shifted to Jagatsinghpur he was shifted there and was performing his duty at Balikuda Section and covered under EPF Scheme bearing A/C No. OR-924/466. In the year 1995 while he was performing his duty, due to electric shock, he was hospitalized locally and then shifted to Cuttack. Due to such electric shock he lost his mental balance. Though for few months the then management paid him salary subsequently the same was stopped. As the erstwhile O.S.E.B. management was taken over by the first party management CESU after his recovery when he submitted his joining report on the 1st July 2000 the S.D.O., Electrical Division did not allow him for the same. Thereafter he made several representations to different authorities and lastly raised this dispute before the labour machinery which has referred this matter to this Tribunal for adjudication.

3. The first party management at the inception challenging the case as the dispute has been raised after lapse of 28 years from the date of his alleged termination in 1981, has stated that the second party workman might be performing duty as Casual Labourer in construction work under the first party management from 1976 to 1981. The records of S.D.O., Balikuda does not reflect the engagement of the second party workman at any point of time. Further, a Casual Labourer is only engaged through contractors and there is no relationship of master and servant between the first party management and the second party workman. As such the claim of the second party workman is fabricated and he is not entitled to the relief claimed for.

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

ISSUES

1. Whether there was any employer-employee relationship between the parties ?
2. Whether the termination of services of Shri Sahadev Behera, N.M.R. by way of refusal of employment with effect from the 1st July 2000 by the management of Jagatsinghpur Electrical Division, Jagatsinghpur (CESU) under erstwhile O.S.E.B. is legal and/or Justified ?
3. What relief ?

ADDITIONAL ISSUES

1. Whether the reference is not maintainable due to inordinate delay ?
2. Whether the termination of service is covered under Section 2(oo)(bb) of I. D. Act ?

5. *Issue No. 1*— The second party workman in support of his claim regarding his appointment under the O.S.E.B. produced one document Ext. 1 which speaks that he was N.M.R. under Balikuda Electrical Subdivision till 1990 and thereafter he was absconded from duty without any intimation. Thus, denial of the first party management that the second party workman never worked under the erstwhile O.S.E.B. is not correct. Therefore this issue has been decided in favour of the second party workman.

6. *Issue Nos. 2 & Additional Issue No. 2*—Admittedly, there is no termination of service of the second party workman. While the stand of the second party workman is that after recovery from electrical shock followed by mental imbalance when he joined his duty on the 1st July 2000 he was not allowed, his own document Ext. 1 shows that he was absconded since 1990 and all the N.M.Rs. engaged under O.S.E.B. since 1995 were regularised except the second party workman. In the aforesaid background when there is no intimation to the authorities by the second party workman the presumption would be that he has abandoned the service.

7. *Issue Nos. 3 & Additional Issue No. 1*—This dispute has been raised on the 4th April 2009. Ext. 1, the document filed by the second party workman shows that he was absconded since 1990. Therefore, in the aforesaid background after long lapse of time and the change of management it would not be proper to hold that the second party workman is entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
31-08-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. K. RAY
31-08-2013
Presiding Officer
Industrial Tribunal, Bhubaneswar

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