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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 30th October 2013

No. 12562—IR (ID)-138/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th September 2013 in I. D. Case No. 38 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of—(1) Director of Health Services, Odisha, Bhubaneswar, (2) Chief District Medical Officer, Cuttack and their daily wage workmen working in N.F.C.P., Cuttack, namely, Shri Babuli Naik and 11 others represented through the Malaria Nirodh Bibhag Mazdoor Sangha, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 38 OF 2012

Dated the 17th September 2013

Present :

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

Between :

The Management of— .. First Party—Managements
1. Director of Health Services, Odisha,
Bhubaneswar.
2. Chief District Medical Officer,
Cuttack.

And

Its Workmen working in N.F.C.P., .. Second Party—Workmen
Cuttack, namely, Shri Babuli Naik
and 11 others, represented through
the Malaria Nirodh Bibhag Mazdoor Sangha,
Pilgrim Road, Cuttack.

Appearances :

None	..	For the First Party No. 1
Dr. J. Pani	..	For the First Party No. 2
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Shri Amar Naik, Auth. Rept.	..	For the Second Party

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. 558—IR (ID)-138/2011-LESI., dated the 18th July 2012 with the following schedule :—

“Whether the services of Shri Babuli Naik and 11 other Anti Larva Workers/Workmen (as per list in Annexure-A attached to the order of reference) working in National Filaria Control Programme Unit, Cuttack need be regularized by the Director of Health Services, Odisha and the Chief District Medical Officer, Cuttack ? If so, what are the details ?”

2. The second party union which is registered under the Trade Union Act, 1926 having Registration No. 429, Dt. 14-8-1964 filed the case representing the workmen/members to the effect that they have been working as Anti Larva Workers on daily wage basis under the National /Filaria Control Programme under the C.D.M.O., Cuttack since long. Though they have rendered service continuously and uninterruptedly for more than twenty years, there is no rules to regulate their service conditions. Pursuant to the demand of Odisha Medical Workers Union regarding absorption of daily wagers in regular posts, the Government of Odisha in the Family Welfare Department vide Order No. 30536-H., Dt. 13-8-1991 issued order to the Director of Health Services, Director of Family Welfare, all Chief District Medical Officers and other officers stating the modalities of regular absorption of Inferior Field Workers appointed in Malaria and Filaria Programmes, in which in Para. 3 of page 2 it was clearly suggested that 10% of the Class IV vacancies under the C.D.M.O. in a year be filled up by adjusting the Inferior Field Workers from the Malaria and Filaria Programmes. Subsequently the Government of Odisha in Family Welfare Department vide Order No. 3189, Dt. 29-1-1992 clarified that the Director of Health Services is competent to take necessary action in the matter of absorption of persons on daily wages against the Class IV posts. But in spite of the said order since the Inferior Field Workers have not been absorbed on regular basis the second party union submitted a representation to the C.D.M.O., Cuttack on 13-9-2010 with copies to the Director of Health Services, Secretary, Health & Family Welfare and the District Labour Officer to consider their regular absorption against regular vacancies. Since the conciliation before the District Labour Officer has failed on such report ultimately this case has been instituted for adjudication.

In the claim statement the second party union claims for regularization of its members as per Government of Odisha, Health & Family Welfare Order No. 30536-H., Dt. 13-8-1991 with retrospective effect and back wages.

3. The first party management in its written statement has stated that the matter has been intimated to the Director of Health Services vide their office Letter No. 1531 and the matter has also been discussed in a meeting, Dt. 25-5-2010 under the Chairperson of the Commissioner-cum-Secretary, Government of Odisha in Health & Family Welfare Department for regularization of services.

4. The first party management No. 1 did not appear in the case and it has been set *ex parte*.

5. In the aforesaid premises, the issues framed are as follows :

ISSUES

- (i) “Whether the services of Shri Babuli Naik and 11 other Anti Larva Workers/ Workmen (as per list in Annex A) working in National Filaria Control Programme Unit, Cuttack need be regularized by the Director of Health Services, Odisha and the Chief District Medical Officer, Cuttack ?
- (ii) If so, what are the details ?”

6. To substantiate their respective case, while the second party union examined one witness and filed documents marked Exts. 1 to 12, the first party management No. 2 does not examine any witness.

FINDINGS

7. *Issue Nos. (i) & (ii)*—In this case the first party management has not disputed any of the averments or the evidence adduced on behalf of the second party union.

8. In the case of Gujarat Agricultural University Vrs. Rathod Labhu Bechar and others reported in AIR-2001 SC 706, their Lordships of the Hon'ble Supreme Court have held as follows :

“If work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularization for its financially gain as against employees legitimately claim, it is an unfair labour practice. Taking work, from daily wage worker or *ad hoc* appointee is always viewed to be only for a short period or as a stop gap arrangement, but we find new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with sword of Damocles hanging over their heads or to continue with favoured one”.

In another case between the State of Karnatak and others And M.L. Kesari and others reported in AIR-2010 SC 2587, their Lordships of the Hon'ble Supreme Court in Paras. 7 & 11 have held as follows :

“7. It is evident from the above that there is an exception to the general principles against ‘regularisation’ enunciated in Umadevi (AIR 2006 SC 1806 : 2006 AIR SCW 1991), if the following conditions are fulfilled. (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years. (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the

process of open competitive selection, such appointments are considered to be irregular.”

“11. The object behind the said direction in Para. 53 of Umadevi (AIR 2006 SC 1806 : 2006 AIR SCW 1991, Para. 44) is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or Tribunals, before the date of decision in Umadevi (2006 AIR SCW 1991) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons on daily wage/*ad hoc*/casual for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect for the direction is that all persons who have worked for more than ten years as on 10-4-2006 (the date of decision in Umadevi) without the protection of any interim order of any Court or Tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one-time measure.”

The Government of Odisha, in Health & Family Welfare Department vide Order No. 30536-H., Dt. 13-8-1991 (Ext. 2) issued order directing the Director of Health Services, Director of Family Welfare and all other Chief Medical Officers and other officers regarding modalities of regular absorption of Inferior Field Workers appointed in Malaria and Filariasis Programme.

9. In view of the principles decided by the Hon'ble Supreme Court, read with the circular of the Government (Ext. 2), referred to above, the members of the second party union are entitled to regularization in service at least as per the Government order, Dt. 13-8-1991. Hence, the Director of Health Services, Odisha, Bhubaneswar is directed to take necessary steps for regularization of their services within a period of three months hence.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
17-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
17-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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