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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th November 2013

No. 12709—IR(ID)-106/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th August 2013 in Industrial Dispute Case No. 56 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Animal Disease Research Institute, Phulnakhara, Cuttack and its Workman Shri Ramesh Kumar Paschimakabata was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 56 OF 2011

Dated the 24th 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
Animal Disease Research Institute,
Phulnakhara, Cuttack.

And

Its Workman, . . . Second Party—Workman
Shri Ramesh Kumar Paschimakabata,
S/o Jambeswar Paschimakabata,
At-Jagannath Vihar, Lane No. 5,
Plot No. 149, Baramunda,
Bhubaneswar.

Appearances :

For the First Party—Management	.. Shri A. K. Mishra, Auth. Rept.
For the Second Party—Workman himself	.. Shri R. K. Paschimakabata

A W A R D

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. 11343—IR(ID)-106/2011-LE., dated the 15th December 2011 with the following Schedule:—

“Whether the termination of services of Shri Ramesh Kumar Paschimakabata, N.M.R./Field Attendant by the management of M/s Animal Disease Research Institute, Phulnakhara, Cuttack with effect from the 1st March 2004 by way of refusal of employment is legal and/or justified ? If not, what relief Shri Paschimakabata is entitled to?”

2. The claim of the second party workman is that he has been working as an N.M.R. Field Attendant under the first party management with effect from the 1st June 1991 to 28th February 2004 and completed 240 days in a twelve calendar month. At the time of refusal of employment with effect from the 1st March 2004 the second party workman was getting monthly wages @Rs. 1,800. on 1-3-2004 while reporting to duty the first party management refused him employment without compliance of the provisions of Section 25-F (a), (b), 25-G and 25-H of the Industrial Disputes Act, 1947. He has further stated that due to non payment of wages for the period from 1-10-1993 to 1-9-1994 and from 1-3-1998 to 28-2-2004 the second party workman approached the Labour Court, Bhubaneswar in I.D. Misc. Case No. 233 of 1995 and 77 of 2006 in which the Presiding Officer, Labour Court, Bhubaneswar has directed for payment of the said dues. Due to the said reason the first party management has terminated his service with effect from the 1st March 2004. Hence, he rased the present dispute before the labour machinery, who in turn referred the matter to this tribunal for adjudication.

3. The first party management in its written statement refuting the claim made by the second party workman that he has been working as an N.M.R. Field Attendant with effect from 1st June 1991 to 28th February 2004 and completed 240 days in twelve calendar months has stated that the Animal Research Development Dpartment of the Government of Odisha is a welfare department in respect of Animal Research Disease Centre. The Animal Disease Research Institute, Phulnakhara, Cuttack is a Research Institute on animal disease diagnosis, survey and development of herbal remedies and it is not an “industry”. The Institute receives grant from the Government of India for various *ad hoc* research projects which are purely temporary in nature. The engagement of the employees made in Institute for such research work are co-terminated with the termination of such project. Since the N.M.R. Field Attendants are engaged purely on temporary basis no gradation list is maintained for the same. The second party workman has already received his claim from 1-10-1993 to 1-9-1994 as per the orders of the Labour Court in Misc. Case No. 233 of 1995. Regarding his claim from 1-3-998 to 28-2-2004, the second party workman has not worked from

1-4-2002 to 28-2-2004. It has denied the allegation of the second party workman that three of his junior counterpart employees have been engaged by the first party management ignoring his seniority. The second party workman was engaged on daily wage basis from 1-5-1991 from time to time with interruption till 31-3-2002. It is asserted that N.M.R. Field Attendants were engaged depending on the funds placed by the Government. Since there was want of fund the second party workman has not been engaged any further.

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

ISSUES

- (i) “Whether the termination of services of Shri Ramesh Kumar Paschimakabata, N.M.R./ Field Attendant by the management of M/s Animal Disease Research Institute, Phulnakhara, Cuttack with effect from the 1st March 2004 by way of refusal of employment is legal and/ or justified ? If not, what relief Shri Paschimakabata is entitled to ?
- (ii) Whether the first party is an “industry” ?”

5. In support of the case while the second party workman has examined himself as W.W.1 and filed documents marked Exts. 1 to 3, on behalf of the first party management one Specialist of Animal Disease Research Institute has been examined as M.W.1.

FINDINGS

6. *Issue No. (i)*—The claim of the second party workman is that he was refused employment with effect from the 1st March 2004 but that of the management is that he has worked up to 31-3-2002. In support of his claim regarding engagement, the second party workman has filed the wage slips vide Ext. 3 which consists of twelve sheets. The said wage slips reveal his engagement up to March 2002. Another document Ext.2 i.e. the copy of the order of the Labour Court, Bhubaneswar in I.D. Misc. Case No. 77 of 2006 has been filed to show that he was awarded arrear up to 28-2-2004. But in this Tribunal neither the so called wage slips reveal his engagement up to 28-2-2004 nor any other document has been filed or called for to substantiate the same. When there is no document in support of his claim to have been engaged up to 28-2-2004 and the first party management specifically says that the second party workman has not been engaged beyond 31-3-2002, it is best known to the Presiding Officer, Labour Court, Bhubaneswar as to how he has awarded wages for the said period.

The schedule of reference is whether refusal of employment is legal and justified. First of all the second party workman was not engaged till 28-2-2004 and as such the said statement is a fabrication. So, there is no scope for refusal of employment on 1-3-2004. Moreover, the the second party workman having not come to the Court of Law in clean hand, he does not deserve any sympathetic consideration.

7. Besides there is no evidence on record that the N.M.R. Field Attendants were appointed on regular basis. Rather, the wage slips produced by the second party workman reveal that such engagement has been made irregularly with interruption in different years. On behalf of the first party management evidence has been led to the effect that the engagement of such casual labourers depends on allotment of funds. Further the management has adduced evidence that since the

project under which the second party workman was engaged did not continue the second party workman has not been engaged. The aforesaid statement of M.W.1 has not been controverted by the second party workman. Therefore, there is nothing to disbelieve or discard the version of M.W.1 to the effect that the engagement of the second party workman was discontinued due to want of funds for the project. In the aforesaid background, there is no scope for the second party workman to claim for continuity of his engagement as the aforesaid scheme does not provide any protection under Section 25-F of the Industrial Disputes Act.

8. Regarding his claim for protection under Section 25-G & H of the Industrial Disputes Act, the second party workman has not adduced any evidence to substantiate such claim. Hence, in the absence of any evidence it is not possible to hold that there is any deviation on the part of the first party management on that score.

9. *Issue No. (ii)*—The first party management in its written statement has asserted that the Animal Disease Research Institute is concerned with the research activities on animal disease diagnosis, survey and development of herbal remedies and thus is not an “industry”. The definition of “industry” has been widely discussed in *Bangalore Water and Supply & Sewerage Board Vrs. A. Rajappa*, reported in 1978 (2) SCC 213. In the case of *Physical Research Laboratory Vrs. K.G. Sharma*, reported in 1997 (76) FLR-212 the Hon’ble Supreme Court has held as follows :

“PRL is not an industry even though it is carrying on the activity of research in a systematic manner with the help of its employees as it lacks that element which would make it an organization carrying on an activity which can be said to be analogous to the carrying on of a trade or business because it is not producing and distributing services which are intended or meant for satisfying human wants and needs as ordinarily understood.”

Except the assertion of the first party management in its written statement which has been rebutted by the second party workman, no evidence has been led in support of its stand. Therefore, in absence of sufficient evidence to exclude the first party management from the definition of “industry” it would not be proper to exempt it from the purview of Clause 2 (j) of the Industrial Disputes Act.

Dictated and corrected by me.

P. K. RAY
24-8-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
24-8-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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