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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 15th November 2013

No. 13107—IR (ID)-59/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th September 2013 in I. D. Case No. 53 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Cuttack Municipal Corporation, Cuttack and its Workmen Shri Kalandi Barik & 5 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 53 OF 2012

Dated the 25th September 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 Commissioner,
Cuttack Municipal Corporation, Cuttack

And

Its Workmen .. Second Party—Workmen
1. Shri Kalandi Barik,
S/o Late Kulamani Barik,
At Jhanjirmangala, P.O. Telenga Bazar,
P. S. Badambadi, Dist. Cuttack.

2. Shri Rabindra Kumar Das,
S/o Nilakantha Das,
Vill./P.O./P.S. Naugaonhat,
Dist. Jagatsinghpur.
3. Shri Padmanav Behera,
S/o Mayadhar Behera,
Vill. Silpi Kumbharsahi, P.O. Buxibazar,
P.S. Purighat, Dist. Cuttack.
4. Shri Sukanta Behera,
S/o Late Madhab Behera,
Vill. Silpi Kumbharsahi,
P.O. Buxibazar, P.S. Purighat,
Dist. Cuttack.
5. Shri Ananta Charan Nayak,
S/o Damodar Nayak,
Vill. Arili, P.O. Naraj,
P.S. Barang, Dist. Cuttack.
6. Shri Ajay Ketan Das,
S/o Late Narayan Chandra Das,
Vill. Kadalipatana, P.O. Sanajaria,
P.S. Patamundai, Dist. Cuttack.

Appearances :

Shri P. K. Mohanty, Jr. Asst.	.. For the First Party—Management
Shri Kalandi Barik, one of the concerned workmen.	.. 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. 9620—IR (ID)-59/2012-LESI., dated the 23rd November 2012 with the following Schedule :—

“Whether the action of the Commissioner, Cuttack Municipal Corporation, Cuttack in terminating the services of Shri Kalandi Barik, Rabindra Kumar Das, Padmanav Behera, Sukanta Behera, Ananta Charan Nayak & Ajay Ketan Das, all N.F.C.P., Supervisor with effect from the 11th April 2000 is legal and/or justified ? If not, what relief these workmen are entitled to ?”

2. The case of the second party workmen is that they were appointed as (N.F.C.P.) Supervisors by the first party management vide its Letter No. 2349, dated the 30th October 1998 and Order No. 2982, dated the 31st December 1998 along with Shri Debasish Mohapatra and

Jyotiranjana Mohapatra, their co-workmen. While continuing as such they all had completed more than 240 days of continuous employment in twelve calendar months. On 11-4-2000 the first party management terminated the engagement of the second party workmen vide Order No. 344, dated the 11th April 2000 without compliance of the provisions of Sections 25-F (a) & (b), 25-G and 25-H of the Industrial Disputes Act, 1947 and without adhering to the principles of natural justice. At the time of termination of their engagement the second party workmen used to get Rs. 680 per month towards monthly wages. Though Shri Debasish Mohapatra and Jyotiranjana Mohapatra were appointed along with the second party workmen, their services were not terminated, rather they have been promoted as skilled workmen. It is stated that the services of the second party workmen have been terminated as the operation work of the N.F.C.P. was managed through service providers. Since the aforesaid action of the first party management is contrary to the principles decided by the Hon'ble Supreme Court of India in the case of Air India, reported in AIR 2000 (S.C.) 3527, they have raised the dispute challenging their termination, which is illegal and claiming for their reinstatement with back wages.

3. The first party management in its written statement challenged the appointment of the second party workmen on the ground that the said order of appointment has been issued by the Health Officer who did not have the jurisdiction to engage workers as Supervisors. With clarification that the case of Shri Debasish Mohapatra and Jyotiranjana Mohapatra being different than the present workmen, the first party management has stated that the Government of Odisha in the Housing & Urban Development Department vide its Order No. 36051, dated the 15th December 2000 directed to disengage all D.L.R./N.M.R. engaged after 19-5-1997. Since the present workmen were engaged without permission of the Government they were disengaged with immediate effect. Further, in O.J.C. No. 3564 of 2000 filed by the present workmen along with 26 others the Hon'ble High Court vide its order, dated the 22nd February 2001 directed the first party management to give option to the second party workmen to work as Coolies, if they so like, and in obedience to the said orders though option was given to the second party workmen they did not come forward to work as such. Hence, it was presumed they were not willing to work as such. However, the said second party workmen are now engaged as N.F.C.P. workers through service providers which does not confer any right upon them to continue as employees of the first party management nor for their reinstatement under the first party management with back wages.

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

ISSUES

- (i) "If the action of the first party management in terminating the services of Shri Kalandi Barik, Rabindra Kumar Das, Padmanav Behera, Sukanta Behera, Ananta Charan Nayak and Ajay Ketan Das, N.F.C.P., Supervisors with effect from the 11th April 2000 is legal and/or justified ?
- (ii) If not, what relief these workmen are entitled to ?"

5. In support of their respective case while the second party workmen have examined one of the concerned workmen and filed documents marked Exts. 1 to 16, the first party management examined its Establishment Officer and filed documents marked as Exts. A and B.

FINDINGS

6. *Issue No. (i)*—The second party workmen in support of their claim regarding appointment have filed documents marked Ext. 1 series which were issued by the Health Officer as per the orders of the Chairman. Thus, the dispute raised by the first party management to the effect that the order of engagement was passed by the Health Officer on the ground of jurisdiction is not correct. There is no dispute that the second party workmen had been engaged since 1-11-1998 and continued till 11-4-2000 and all of them have completed more than 240 days of continuous service in a calendar year prior to their termination of service.

Section 25-F of the Industrial Disputes Act, 1947 prescribes as follows :—

“25-F. Conditions precedent to retrenchment of workmen :—

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay (for every completed year of continuous service) or any part thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette.)”

As per the aforesaid provision the first party management was required to serve one month’s notice or in lieu thereof to pay them one month notice pay and compensation. But, in the present case the first party management has not complied the same. Therefore, the disengagement of the second party workmen who have worked for more than 240 days continuously in one calendar year that too with effect from the 1st November 1998 is in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 and thus the same is illegal.

7. *Issue No. (ii)*—The appointment order, Ext. 1 does not reveal the status of engagement of the second party workmen. Since under Issue No. (i) it has been held that termination of services of the second party workmen is illegal, the first party management is directed to re-engage them in the same terms and conditions of their appointment vide Ext. 1.

Regarding back wages, the second party workmen have failed to prove that they were unemployed during the period they remained disengaged from employment. Rather, the evidence on record shows that they have been engaged through service providers. In the aforesaid circumstances, I am not inclined to award any back wages in favour of the second party workmen from the date of their disengagement till the date of their re-engagement.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
25-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
25-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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