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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 26th November 2013

No. 13383—IR (ID)-96/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th October 2013 in I. D. Case No. 47 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha Forest Development Corporation Ltd., Bhubaneswar and its workman Shri Kartik Chandra Mangaraj was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 47 OF 2012

Dated the 5th October 2013

Present :

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

Between :

The Management of
M/s Odisha Forest Development
Corporation Ltd., Bhubaneswar. .. First Party—Management

And

Its workman
Shri Kartik Chandra Mangaraj,
At Harikeshar, P.O. Bankoi,
Dist. Khurda. .. Second Party—Workman

Appearances :

Shri A. K. Swain, Law Officer	..	For the First Party—Management
Shri P. K. Swain, Auth. Rept.	..	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. 8365—IR (ID)-96/2012-LESI., dated the 3rd October 2012 with the following Schedule :—

> "Whether the action of the management of M/s O.F.D.C. Ltd., Bhubaneswar in terminating the services of Shri Kartik Ch. Mangaraj, Peon with effect from the 1st August 2001 is legal and/or justified ? If not, what relief Shri Mangaraj is entitled to ?"

2. The case of the second party workman is that he joined as a Watcher on 9-12-1988 under ex S.F.D.C. which was subsequently merged with the O.F.D.C. with effect from the 1st October 1990 and continued till 31-7-2001. It is stated that as per the Rules he is entitled to regularization of service on completion of two years on 9-12-1990. In the year 1991 besides new appointments, daily wagers have been regularized but the case of the second party workman has not been considered without any reason. When he demanded for his regularization he was appointed on *ad hoc* basis in the scale of pay of Rs. 750—940 vide Order No. 1811, dated the 15th October 1992 but the said order was subsequently cancelled vide Order No. 1953, dated the 5th November 1992 and later on he was issued notice vide letter No. 18590, dated the 9th July 2001 for termination of his engagement. Though he has made representation on 19-7-2001 his case has not been considered. He has further stated that the Hon'ble Supreme Court has held that the O.F.D.C. is an 'Industrial establishment' and as such he was entitled for three month's notice or pay in lieu thereof before his retrenchment but in his case he was paid only thirty days notice pay and compensation which is contrary to the provisions of Sections 25-N, 25-G and 25-H of the Industrial Disputes Act. Hence, on the basis of his complaint the present reference has been made for adjudication of the dispute.

3. The first party management in its written statement challenging the maintainability of the reference after more than ten years has further stated that the second party was engaged on daily wage basis with effect from the 1st May 1989 without following the due procedure of recruitment. He was not engaged against any sanctioned post. In the year 1990 after the merger of Odisha Forest Corporation S.F.D.C. and O.P.D.C. to eradicate the loss sustained by the Organisation on the recommendation of an Expert Body namely, M/s Tata Consultancy Services the service of the second party workman was terminated being a surplus employee along with others and accordingly he was paid one month's notice pay and compensation to the tune of Rs. 10,395.50 paise in toto as

per the provisions of Section 25-F of the Industrial Disputes Act. It has specifically denied regarding continuance or regularization of any of his juniors and the averment of the second party workman that O.F.D.C. is an "industrial establishment".

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

ISSUES

(i) "Whether the action of the management of M/s O.F.D.C. Ltd., Bhubaneswar in terminating the services of Shri Kartik Ch. Mangaraj, Peon with effect from the 1st August 2001 is legal and/or justified ?

(ii) If not, what relief Shri Shri Mangaraj is entitled to ?"

5. In support of their respective case while the second party workman have examined himself and filed documents marked Exts. 1 to 5, the first party management examined one witness and filed documents marked Exts. A to H.

FINDINGS

6. *Issue No. (i)*—On behalf of the second party workman it is raised that the first party management is one 'industrial establishment' having more than 100 workmen and any retrenchment by the management in such 'industrial establishment' requires compliance of Section 25-N of the Industrial Disputes Act. But in the case in hand the first party management instead of Section 25-N has complied the provisions of Section 25-F of the Industrial Disputes Act. On behalf of the first party management the aforesaid contention has been strongly objected on the ground that the first party management is not an 'industrial establishment' nor any document has been filed by the second party workman to that effect. With reference to the case of Uttaranchal Forest Development Corporation *Vrs*. Jabar Singh, reported in 2007 (II) LLJ 95, on which the second party workman bank upon to the effect that Uttaranchal Forest Development Corporation is an 'industrial establishment', it is submitted that the U.P. Government by way of notification made the provisions of Section 25-N applicable to all industrial establishments of the State of U.P. under Industrial Dispute (Uttar Pradesh) Rules, 1976 but the said privilege is not available to the second party workman in this case. In support of its claim the first party management has referred to the decision reported in AIR 2009 SC 3004 (Jagbir Singh *Vrs*. Haryana State Agricultue Marketing Board and another).

7. In order to attract the provisions of Section 25-N it must be an industrial establishment in which not less than 100 workmen were employed in an average per working day for the preceding twelve months. The industrial establishment as defined under Section 25-L of the Act means—

(I) "a factory as defined in Clause (m) of Section 2 of the Factories Act, 1948 (ii) a mine as defined in Clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952, (iii) a plantation as defined in Clause (f) of Section 2 of the Plantations Labour Act, 1951. As per Section 2 (m) of the Factories Act, 1948 'factory' means any premises including the precincts thereof—

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed."

In the case in hand the witness examined on behalf of the first party management during the cross-examination has stated that O.F.D.C. engages contractors for cutting of tree till lifting of the timber to the Depot for sale. The Saw Mill at Cuttack, previously functioning under the O.F.D.C. now has been functioning on hire basis. During the cross examination in Para. 20 he has admitted that the second party workman was given notice under Section 25-F of the I. D. Act and no permission was obtained from the Government relating to retrenchment of the second party workman as it was not necessary. Further emphasis has been given on the designation of the second party workman who was appointed as a Watchman and converted to a Peon on daily wage basis. On this score, the relevant provision, i.e., Section 2 (s) of the I. D. Act envisages that workman means any person employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In the case of Uttaranchal Forest Development Corporation *Vrs*. Jabar Singh and others (supra) while discussing the definition of Section 2 (m) of the Factories Act, Hon'ble Supreme Court has observed as follows :

29. Xxx In our view, the process of cutting by axe and changing the shape by saw both squarely fall within the definition of the first part of the manufacturing process as cutting would be included in the processes of "making" and "breaking up" included in the said definition. Further. the changing of shape by saw would be included in the processes of "altering" and "adapting" of the trees. Admittedly, trees and logs both fall within the meaning of "any article or substance", the second part of the definition. Lastly, the conversion of trees into logs is admittedly for the purpose of sale, disposal, use and last but not the least for transport, all of which fall within the third part of the definition.

It is further observed by their Lordships in Para. 31 of the aforecited decision as follows :—

"31. xx xx Thus, the establishment of the appellant Corporation would, in our opinion, fall within the definition of industrial establishment as contained in Section 25-L and therefore, Section 25-N would be applicable to the establishment of the appellant Corporation. xx."

In view of the aforesaid factual and legal position, O.F.D.C. is an industrial establishment and as per Section 25-K, the provision of Section 25-N is applicable for retrenchment of any employee. Section 25-N prescribes as follows :—

"25-N- Conditions precedent to retrenchment of workmen—

(1) No workman employed in any industrial establishment to which this Chapter applies 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 three months' 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 ; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.".

In the case in hand admittedly the aforesaid provisions have not been followed and instead the first party management has followed the provision of Section 25-F of the Act which is contrary to the provisions of law.

8. *Issue No. (ii)*—The second party workman claims for his reinstatement in service with all back wages. The second party workman was terminated from service with effect from the 31st July 2001 being a surplus staff as per the policy decision of the first party management for smooth functioning of the organization which was running in loss. Though the second party workman has claimed that juniors to him are still allowed to continue in their respective services he failed to substantiate the same after merger of the four organizations on creation of O.F.D.C. Ltd., Bhubaneswar. The second party workman has raised the aforesaid dispute after lapse of about ten years but has not justified any ground for such abnormal delay. In 2013 (139) FLR 125 (Assistant Engineer, Rajasthan State Agriculture Marketing Board, Subdivision Kota *Vrs*. Mohan Lal) the Hon'ble Supreme Court has observed as follows :—

> "In a subsequent decision in Balbir Singh (supra), this Court observed that Ajaib Singh (supra) was confined to the facts and circumstances of that case. It is true that in Balbir Singh (supra), the delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh (supra), where it was said : 'Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case'. No doubt the discretion is to be exercised judicially."

It has further been observed by their Lordships in the aforecited decision as follows :

> "We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I. D. Act but delay in raising industrial dispute is definitely

an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh (supra), that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground or on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.".

In the aforesaid background considering the appointment of the second party workman which was made in an irregular manner without following the principles of law, he being retrenched being a surplus staff along with others even though such retrenchment was made contrary to the provisions of law as envisaged under Section 25-N of the I. D. Act due to abnormal delay in approaching for redressal of his grievance without any reason he is not entitled to reinstatement in service. However, in view of the principle decided by the Hon'ble Supreme Court in the aforesaid case it would be just and proper to compensate him on payment of a sum of Rs. 20,000 (Rupees twenty thousand) only.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
5-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
5-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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By order of the Governor

J. DALANAYAK
Under-Secretary to Government

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