

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2419 CUTTACK, TUESDAY, DECEMBER 10, 2013/MARGASIRA 19, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 28th November 2013

No. 13513—IR(ID)-10/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd October 2013 in Industrial Dispute Case No. 18 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Plant Manager, Balasore Dairy, OMFED, Januganj, Balasore and its workmen Shri Ananta Barik and 11 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 18 OF 2010

Dated the 22nd October 2013

Present :

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

Between :

1. The Plant Manager, Balasore Dairy, OMFED, Januganj, Balasore. . . First Party—Management
2. The Managing Director, OMFED, Bhubaneswar.

And

Their workmen
Shri Ananta Barik,
S/o Narendra Barik,
At/P.O. Saragaon,
P.S. Sadar,
Dist. Balasore.

and 11 others namely, Prafulla Mohapatra, . . . Second Party—Workmen
 Subir Kumar Barik, Dolagobinda Panda,
 Santosh Kumar Bindhani, Achinta Kumar Chaudhury,
 Baburam Barik, Anadi Charan Panda,
 Sanatan Bindhani, Gajendra Nanda,
 Basanta Dwari, Narayan Nayak.

Appearances :

For the First Party—Management Nos.1 & 2	. . . Shri S. K. Mishra, Advocate
<hr/>	
For the Second Party—Workmen	. . . Shri P. K. Das, Advocate

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 & Employment Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 3373—ID-10/2010-LE., dated the 26th April 2010 with the following Schedule:—

“Whether the action of the management of OMFED in issuing the notice under Section 9-A of the I.D. Act, 1947 vide his Memo No. 1237, Dt. 2-3-2009 intending transfer of services of Shri Ananta Barik and 11 other workmen by withdrawing the Order No. 110/2008, Dt.17-6-2008 of the Managing Director, OMFED, Bhubaneswar from Balasore Dairy, OMFED, At/P.O. Januganj, P.S. Remuna, Dist. Balasore from BBAMUL Balasore is legal and/or justified ? If not, what relief Shri Ananta Barik and 11 other workmen are entitled to?”

2. The case of the second party workmen is that they joined in Balasore District Milk Producer Co-operative Union Ltd., Remuna, Dist. Balasore with effect from the 19th May 1981 which was subsequently named as Balasore-Bhadrak District Co-operative Milk Producers Union Ltd., known as BBAMUL. The Balasore Dairy, OMFED took over the BBAMUL with its workmen including the second party workmen with effect from the 8th December 1999. The management of OMFED vide its Office Order No. 110/2008 communicated vide Memo. No. 2047, dated 17-6-2008 brought the daily wage workers of Balasore-Bhadrak Milk Union who were deployed at Balasore Dairy to its pay roll with effect from the 1st December 1999 including the second party workmen. But the first party management vide its notice Dt. 24th February 2009 and Memo. No. 1237, Dt. 2-3-2009 intended to change the status of the present workmen after 21 days service of notice, by the withdrawing the Order No. 110/2008 Dt. 17-6-2008, on the basis of which the second party workmen raised the present dispute which has been referred for adjudication.

3. The first party management in its written statement challenging the maintainability of the case has stated that as per agreement Dt. 1-12-1999 the processing and marketing activities of Balasore Dairy of BBAMUL was taken over by OMFED on experimental basis leaving other activities at the discretion and disposal of BBAMUL. Initially 18 workers of BBAMUL were on deputaion to the OMFED but the management of BBAMUL being the parent employer of the second party workmen is responsible in respect of their claim. They are only on deputation to OMFED in terms of the agreement Dt. 1-12-1999. It is stated that one Mr. Bharati, the then Extension Overseer of AH and VS Department who was on deputation to BBAMUL while maintaining the wage registers relating to the second party workmen committed some clerical mistake in the wage register in the month of January 2005 wrongly showing them as highly skilled, skilled and semi-skilled instead of skilled, semi-skilled and unskilled and accordingly the incentive of Rs.10 declared by OMFED and VDA of

Rs.5 declared by the appropriate Government were wrongly included in the minimum wages notified by the Government. Basing upon the said mistake the second party workmen demanded minimum basic wages as per the category reflected in the said register and demanded before the Assistant Labour Officer for payment of wages as per the schedule and the G.M., incharge of BBMUL without having any authority acceded to the said demand and intimated the Balasore Dairy, OMFED on which the management of OMFED on 7-7-2008 apprised the ALO, Balasore to reconsider the case and to maintain *status quo* of categorization and rate of wages. In view of the aforesaid wrong conception the second party workmen demanded implementation of the minutes of discussion Dt. 13-6-2008. On the aforesaid matter the management of OMFED raised industrial dispute regarding legality and validity of the minutes of discussion Dt. 13-6-2008 and 4-10-2008 entered into between the BBAMUL and its workmen. During the pendency of the dispute pertaining to categorization and wages the then General Manager, In-charge, BBAMUL transferred its workers to the pay roll of OMFED Office Order No. 110/2008, dated 17-6-2008. Since similarly placed employees of various Dairy Units/Union raised demands for parity and equal treatment in all aspects and discontentment was brewing up amongst the workers employed in other establishment, it was decided to recall the order dated 11-5-2008 for withdrawal of Office Order No. 110/2008, Dt. 17-6-2008. Hence, for abundant precaution a notice dated 2-3-2009 was issued for recalling Order No. 110/2008, dated 17-6-2008. In the aforesaid circumstances, there is no illegality in the order passed by the first party management.

4. The first party No.2 i.e., The Managing Director, OMFED by filing a Memo. on 20-1-2012 has adopted the written statement filed by first party No.1.

5. The second party workmen in their rejoinder reiterating their stand taken in the claim statement has stated that the case is maintainable both in facts and law and the said notice of withdrawal Dt. 2-3-2009 is whimsical, arbitrary, illegal, unjustified and *mala fide* and is in violation of Section 9-A (a) (b) read with Rule 36 and Section 33 of the Industrial Disputes Act, 1947 and also amounts to unfair labour practice.

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

ISSUES

- (i) "Whether the action of the management of OMFED in issuing the notice under Section 9-A of the I.D. Act, 1947 vide his Memo No. 1237, dated 2-3-2009 intending transfer of services of Shri Ananta Barik and 11 other workmen by withdrawing the Order No. 110/2008, dated 17-6-2008 of the Chairman-*cum*-Managing Director, OMFED, Bhubaneswar from Balasore Dairy, OMFED, At/P.O. Januganj, P.S. Remuna, Dist. Balasore from BBAMUL, Balasore is legal and/or justified ?
- (ii) If not, what relief Shri Ananta Barik and 11 other workmen are entitled to ?
- (iii) Whether the I.D. Case is bad for non-joinder of BBAMUL as a party to this proceeding ?
- (iv) Whether the reference is bad in law inasmuch as non-espousal of the dispute by a trade union or by a number of workmen concerned in the establishment of the first party?"

7. On behalf of the second party workmen though evidence in affidavit of two witnesses have filed since they did not turn up for cross-examination the same has been expunged. The management has also not adduced any evidence.

FINDINGS

8. *Issue Nos. (i) & (ii)*—In this case there is no dispute about initial engagement of the second party workmen under BBAMUL and subsequently their transfer to OMFED as per the agreement dated 1-12-1999 and brought to its pay roll as per its Order No. 110/2008, dated 17-6-2008. Admittedly the status of the second party workmen were casual in nature. The first party management No.1 vide its Order No. 110/2008, dated 17-6-2008 issued notice under Section 9-A of the I.D. Act relating to its intending transfer. Section 9-A of the Industrial Disputes Act, 1947 envisages as follows :

“9-A. Notice of change—No employer, who proposes to effect any change in the condition of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change—

(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b) within twenty-one days of giving such notice

xx xx xx xx xx xx xx”

There is no material on record as to any steps taken by the first party management No.1 consequent upon the said notice. There is no stipulation under law to issue such notice under Section 9-A of the I.D. Act. In absence of such stipulation it cannot be said that there is any cause of action for this reference. Therefore, the aforesaid reference is not maintainable.

In view of the aforesaid finding on issue No.1 when there is no cause of action the second party workmen are not entitled to any relief.

9. *Issue Nos. (iii) & (iv)*—In view of the findings arrived at on issue Nos.1 & 2, the findings on additional issues, i.e., Nos. 3 and 4 become redundant.

The reference is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
22-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
22-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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