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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 2nd December 2013

No. 13602—IR(ID)-92/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th October 2013 in Industrial Dispute Case No. 61 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1) M/s. Piramal Health Care Ltd., At D. Mart Building, Gurgaon, Mulund Link Road, West Mumbai-80 (erstwhile M/s. Nicholas Piramal India Ltd., Field Office for Cuttack jurisdiction at Cuttack), presently at Pahal, Bhubaneswar and Its Corporate Office at Nicholas Piramal Tower, Lower Parel, Mumbai-13, (2) M/s. Abbott Health Care Pvt. Ltd., 4, Corporate Park, Sion Trambe Road, Mumbai-400 071 and its Workmen Shri Subrat Kumar Mishra and Shri Ashok Kumar Mishra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 61 OF 2010

Dated the 15th October 2013

Present :

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

Between :

The Managements of—

1. M/s. Piramal Health Care Ltd., . . . First Party—Managements
At D. Mart Building, Gurgaon,
Mulund Link Road, West Mumbai-80
(erstwhile M/s Nicholas Piramal India Ltd.,
Field Office for Cuttack jurisdiction at Cuttack),
presently at Pahal, Bhubaneswar and its
Corporate Office at Nicholas Piramal Tower,
Lower Parel, Mumbai-13.

2. M/s. Abbott Health Care (P) Ltd.,
4, Corporate Park, Sion Trambe Road,
Mumbai-400 071.

And

Their Workmen—

- | | |
|---|--------------------------------|
| <p>1. Shri Subrat Kumar Mishra,
S/o Chandrasekhar Mishra,
At Samir Niwas, Hindol Kothi,
Tulsipur, Cuttack-8.</p> <p>2. Shri Ashok Kumar Mishra,
S/o Prafulla Kumar Mishra,
Plot No. 3E/368, Sector-9,
C.D.A., Markat Nagar,
Cuttack-14.</p> | <p>.. Second Party—Workmen</p> |
|---|--------------------------------|

Appearances :

- | | | |
|------------------------------------|----|--------------------------------------|
| Shri D. B. Shelatkar, A/R. | .. | For the First Party—Management No. 1 |
| Shri J. M. Patnaik, A/R. | .. | For the First Party—Management No. 2 |
| <hr/> | | |
| Shri S. K. Mishra and A. K. Mishra | .. | Second Party Workmen themselves |

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. 7151—ID-92/2010-LE., dated the 26th August 2010 with the following Schedule :—

SCHEDULE

"Whether the alleged illegal change of designation of Shri Subrat Kumar Mishra and Shri Ashok Kumar Mishra, Medical Representatives to Business Development Manager and subsequently to Territory Business Manager by the management of M/s. Piramal Health Care Ltd., West Mumbai-80 (erstwhile M/s. Nicholas Piramal India Ltd., for Cuttack jurisdiction field office at Cuttack), presently at Pahal, Khurda (Odisha) and its Corporate Office at Nicholas Piramal Tower, Lower Parel, Mumbai-13 is legal and/or justified case of change of classification of grades in compliance with item No. 7 of fourth schedule appended to Section 9-A of the I. D. Act, 1947 read with Rule 36 of the Odisha I. D. Rules ? If not, what are the relief the workmen are entitled to and from which date ?"

2. The case of second party workmen is that Shri Subrat Kumar Mishra, workman No. 1 was initially appointed under Boehringer Knoll Ltd. on Dt. 1-9-1987 as a Medical Representative. The Boehringer Knoll Ltd. was merged with Nicholas Piramal India Ltd. which was subsequently named as M/s. Piramal Health Care Ltd. The employees of Boehringer Knoll Ltd. were treated as the employees of M/s. Nicholas Piramal India Ltd. with the same terms and conditions. Accordingly, the workman No. 1 becomes a Medical Representative under M/s. Piramal Health Care Ltd.

Shri A. K. Mishra, workman No. 2 was appointed as a Medical Representative with effect from the 1st November 1993 under the first party management No. 1.

On Dt. 1-7-2003 the management offered all the Medical Representatives for the post of Business Development Manager (B.D.M.) which was subsequently treated as Territorial Business Manager (T.B.M.). Both the workmen opposing such change did not accept the terms and conditions of the post and wrote to the management that they were not willing to accept such management cadre post but the management forcibly treated both of them as B.D.M., subsequently T.B.M. and asked them to submit their expenses statement and other reports, etc. in the format meant for B.D.M./T.B.M. But although they have been discharging the work of Medical Representatives without managerial functions and come under the purview of the definition 'workman' as per Section 2(s) of the Industrial Disputes Act and in violation of the provisions of Section 9-A of the I. D. Act, they have been placed as B.D.M./T.B.M. though they refused to accept the same.

It is stated that when the workmen refused to accept the managerial posts the first party management with an intention to harass the workmen stopped their salary from April, 2009 in respect of S. K. Mishra and from May, 2009 in respect of Shri A. K. Mishra. Being aggrieved by such action both the workmen raised a dispute on the basis of which this reference has been made to this Tribunal for adjudication. Pending the reference made in this case M/s. Piramal Health Care Ltd. sold its undertaking to M/s. Abbott Health Care Pvt. Ltd. and accordingly the services of the workmen were placed under the said management. Hence, it is also a necessary party to this case.

3. The first party management No. 1 in its written statement challenging the maintainability of the case both in facts and law has stated that in the year 2003 on the approach of the Medical Representatives they have been promoted to the post of B.D.M. and then T.B.M. with effect from the 1st July 2003 and given benefit thereof. Both the workmen accepted the offer including the terms and conditions issued to them vide its letter, dated the 30th July 2003 and the 4th August 2003. Hence the dispute raised by both the workmen has got no basis. Both the workmen while working under the first party management No. 1 it was taken over by M/s. Abbott Health Care Pvt. Ltd. Since the promotion to the post of B.D.M./T.B.M. is beneficial to both the workmen and they accepted the offer, there is no cause of action for the present dispute alleging breach of the provisions of Section 9-A of the I. D. Act. Moreover the workman Shri S. K. Mishra having not accepted the offer to serve under M/s. Abbott Health Care Pvt. Ltd. has received the compensation in full and final settlement in lieu of such termination.

4. The first party management No. 2 in a separate written statement reiterated the stand taken by the first party management No. 1.

5. In the aforesaid premises the issues framed in this case are as follows :—

ISSUES

- (i) "Is the reference maintainable ?"
- (ii) "Is the Odisha Sales Representatives' Union competent to espouse the cause of the second party members ?"
- (iii) "Whether the second party members have *locus standi* to file claim statement on the ground that the dispute raised is not covered under Section 2-A of the I. D. Act ?"
- (iv) "Whether on account of change of designation and consequent changes of other service conditions, if any, the second party members ceased to be 'workmen' as defined under the I. D. Act ?"

- (v) "Whether the change of designation of the second party members is legal and/or justified?"
- (vi) "What relief(s)?"

ADDITIONAL ISSUES

- (1) "Whether the present reference is maintainable as against M/s. Abbott Health Care Pvt. Ltd.?"
- (2) "Whether M/s. Abbott Health Care Pvt. Ltd. is a necessary and proper party to the present reference?"
- (3) "Whether M/s. Abbott Health Care Pvt. Ltd. can be held liable for the alleged change of service condition/designation and violation of Section 9-A of the I. D. Act?"

6. To substantiate their respective stand, parties to the dispute have adduced oral as well as documentary evidence. While both the workmen have examined themselves as W.W. No. 1 and W.W. No. 2 and filed documents marked Exts. 1 to 11, the first party management No. 1 examined two witnesses on its behalf and filed documents marked Exts. A to R and the first party management No. 2 examined one witness and filed documents marked Exts. A-1 to Q-1.

FINDINGS

7. *Issue Nos. (i), (iv), (v) and (vi)*—The admitted position in this case is that both the second party members were Medical Representatives under the first party management No. 1 and in the year 2003 both of them were given promotion to the cadre of Business Development Manager (B.D.M.) which was subsequently designated as Territory Business Manager (T.B.M.). While the second party members claim that the aforesaid promotion/change of designation which affects the terms and conditions of service has been made in violation of Section 9-A of the I. D. Act and specifically when they refused to accept the same, the stand of the first party management No. 1 is that such promotion to the cadre of B.D.M./T.B.M. has been given to the Medicine Representatives on their approach and only to those Medicine Representatives who have given their consent for such managerial post as well as the terms and conditions of their service including the second party members vide letters, dated the 3rd July 2003 and the 4th August 2003. On perusal of record it is found that the second party Shri A. K. Mishra signed below the word 'I accept' on Ext. C on Dt. 3-7-2003 in one letter and under the sentence "I thank the management for providing me an opportunity for my growth and accept all the terms and conditions mentioned above and in the appendices attached in "toto" on Dt. 4-8-2003 on another letter marked Ext. D. Similarly, Shri S. K. Mishra put his signature on Dt. 3-7-2003 and Dt. 4-8-2003 on two letters issued by the first party management No. 1 vide Exts. K and L, respectively. Though both the second party members deposed that they had sent their refusal of consent vide Exts. 4, 4/1, 4/2 and 4/3 respectively, which have been refuted by the first party management No. 1, both the second party members failed to substantiate the same by any document or evidence. When the first party management No. 1 denied to have received any such letter sent by the second party members in the absence of such documentary evidence it would not be proper to presume that the said refusal letters regarding the promotion to the post of B.D.M./T.B.M. had been sent by the second party members. Since both the second party members are literate and no circumstances put forth by them to have signed the said letters, dated the 30th July 2003 and the 4th August 2003 under any duress, the presumption would be that both the second party members voluntarily signed the said letters understanding the effect

thereof and accepted the said promotion as well as the terms and conditions. Once they have accepted the promotion as well as the terms and conditions which is for their benevolence the plea of the second party members that the change of their service conditions by the first party management No. 1 without 21 days prior notice is a violation of Section 9-A of the I. D. Act. On the other hand once they have accepted the same vide Exts. C & D, and Exts. K & L they are estopped to raise any dispute regarding the same subsequently.

The stand of the second party members is that even if they are treated as B.D.M./T.B.M. there was no change of nature of their work as that of Medicine Representative hence they continue to be workmen as defined under Section 2(s) of the I. D. Act. On behalf of the first party management it is submitted that even Medicine Representatives are not workmen and in support of such contention reference has been made to the decision reported in 1994 SCC(L&S) 1283 between H. R. Adyanthaya etc. and Sandoz (India) Ltd. and others. But irrespective of the aforesaid contention the nature of work of B.D.M./T.B.M. has been described as managerial post which in no circumstance comes within the purview of 'workmen' as defined under Section 2(s) of the I. D. Act. On this aspect though the second party members contended that virtually there was no change of status in their service as Medicine Representatives or B.D.M./T.B.M. the same is prevaricating to their own stand for which they have raised the dispute and is not acceptable. In the aforesaid background the dispute raised on behalf of the second party members is not maintainable under this Act and the second party members are not entitled to any relief sought for.

8. *Issue Nos. (ii), (iii) and Additional Issue Nos. (1), (2) & (3)*—In view of the findings arrived at on the above issues, the findings on Issue Nos. (ii), (iii) and so also on Additional Issue Nos. (1), (2) and (3) become redundant.

Dictated and corrected by me.

P. K. RAY
15-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
15-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
B. PRADHAN
Additional Secretary to Government