

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No.2434 CUTTACK, THURSDAY, DECEMBER 12, 2013/MARGASIRA 21, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 3rd December 2013

No. 13660—IR(ID)-22/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th October 2013 in Industrial Dispute Case No. 30 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, W.R.C.P> Division (Now Irrigation Division) Kendrapara and its Workman Shri Manoranjan Sahoo 7 12 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 30 OF 2011

Dated the 19th October 2013

Present :

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

Between :

The Management of
Engineer, W.R.C.P. Division
(Now Irrigation Division),
Kendrapara

.. First Party—Management

And

Their Workman,
Shri Manaranjan Sahoo,
and 12 others, represented
through said Shri Manaranjan Sahoo,
S/o Keshab Chran Sahoo,
At/P.O. Purusottampur,
P.S./Dist. Kendrapara,

.. Second Party—Workman

Appearances :

For the First Party	. . Shri Pitambar Panda, Ex. Engineer
For the Second Party	. . Shri Susanta 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 & E.S.I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 3716—ID-22/2011-LESI., dated the 13th April 2011 with the following Schedule:—

“Whether the retrenchment of Shri Manoranjan Sahoo, Gopal Charan Nayak, Alekha Chandra Mathan, Prafulla Sethi, Harekrushna Ojha, Srikanta Patra, Dayanidhi Sahoo, Abhinash Das, Dilip Kumar Sukla, Prasanna Barik, Uttam Charan Ojha, Ratikanta Biswal and Smt. Basantilata Sethi vide Order No. 232 (68), Dt. 3-3-2003 of the Executive Engineer, Erstwhile Water Resources Consolidation Project Division, Kengrapara (Now Executive Engineer, Irrigation Division, Kendrapara) is legal and/or justified ? If not, to what relief the workmen are entitled ?”

2. The case of the second party workman is that they had been working as skilled, semi skilled and unskilled workers under the first party management as per the list submitted below :—

Sl. No.	Names of workmen	Date of engagement	Category
1.	Shri Manoranjan Sahoo	1-12-1989	Unskilled
2.	Shri Gopal Charan Nayak	6-3-1987	Unskilled
3.	Shri Alekha Chandra Mathan	17-3-1986	Skilled
4.	Shri Prafulla Sethi	1-11-1987	Semi-skilled
5.	Shri Harekrushna Ojha	12-11-1986	Semi-skilled
6.	Shri Srikanta Patra	1-1-1997	Semi-skilled
7.	Shri Dayanidhi Sahoo	17-3-1997	Unskilled
8.	Shri Abhinash Das	1-10-1997	Semi-skilled
9.	Shri Dilip Kumar Sukla	1-6-1996	Unskilled
10.	Shri Prasanna Barik	1-6-1996	Unskilled
11.	Shri Uttam Charan Ojha	5-7-1996	Unskilled
12.	Shri Ratikanta Biswal	1-8-1997	Unskilled
13.	Shri Smt. Basantilata Sethi	1-4-1996	Skilled

6. Since the date of their engagement they had been discharging their duties which were entrusted to them from time to time till 3-3-2003 and all of them had worked more than 240 days during the preceding calendar year as per the provisions of Section 25-B of the Industrial Disputes Act. During the tenure of their engagement when the Government of Odisha in the Water Resources Department issued a letter to the effect that the W.R.C.P. Division, Marshghai would be closed

with effect from the 31st October 2002, the disputant workmen approached the Hon'ble High Court in W.P. (C) No. 6964 of 2002 to quash the said decision. During the pendency of the aforesaid writ application all on a sudden vide its letter No. 232 (68), Dt. 3-3-2003 the first party management issued notice terminating the services of the workmen with effect from the 3rd March 2003 as their services were no more required beyond 12-4-1993. Being aggrieved by such order the second party workmen again approached the Hon'ble High Court in W.P. (C) No. 2081 of 2003 in which the Hon'ble High Court in an interim order that if work in other projects are available the disputant workmen be engaged in such work and to prepare a list in matter and finally the Hon'ble High Court vide its Order Dt. 29-6-2004 in Misc. case No. 5170 of 2002 arising out of W.P. (C) No. 6964 of 2002 reiterated the interim order which was passed in W.P. (C) No. 2081 of 2003 but in spite of the said order and availability of vacancies the first party management terminated the services of the second party workmen in violation of the provision of Section 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act. Hence, they have filed this case for their reinstatement with all back wages.

3. The first party management in its written statement has stated that as the Government of Odisha in the Water Resources Department created a time bound project namely, Marshaghai Division to renovate and repair the canals which is purely temporary and casual nature. The first party management employed the local people in informal way without following the proper procedure in the year 1996. After the project came to an end in the year 2003 the first party management in due compliance of the Notification made by the Water Resources Department vide letter No. 2387 Dt. 27-2-2003 retrenched the services of the D.L.Rs., who were engaged after 12-4-1993, with effect from the 3rd March 2003 after payment of one month notice pay and compensation through registered post with A.D. in compliance of Section 25-F of the Industrial Disputes Act but the same was returned with the postal remark that "addresses were absent". However, subsequently they received the said compensation through Bankers Cheque. After closure of the project the second party workmen approached the Hon'ble High Court in W.P. (C) No. 6964 of 2002. Though the Hon'ble High Court did not intervene in the matter, directed to consider the individual representation of the workmen taking into account the period of service, qualification, experience. Subsequently, the Engineer-in-Chief, Water Resources Department rejected the said individual representation being devoid of any merit. Again some of the workmen along with others approached the Hon'ble High Court in W.P. (C) No. 16269 of 2009 in which the Hon'ble Court vide its order dated 1-2-2009 disposed of the same giving liberty to the second party workmen to pursue their remedy before the State Administrative Tribunal. It has specifically stated that the provisions of Chapter V-B of the Industrial Disputes Act is not applicable to the present case for which there was no necessity of compliance of Section 25-N of the Industrial Disputes Act. Moreover, the provisions of Section 25-F of the Industrial Disputes Act having been complied the claim of the second party workmen is devoid of any merit and they are not entitled to any relief prayed for.

ISSUES

- (i) "Whether the retrenchment of Shri Manoranjan Sahoo, Gopal Charan Nayak, Alekha Chandra Mathan, Prafulla Sethi, Harekrushna Ojha, Srikanta Patra, Dayanidhi Sahoo, Abhinash Das, Dilip Kumar Sukla, Prasanna Barik, Uttam Charan Ojha, Ratikanta Biswal and Smt. Basantilata Sethi vide Order No. 232 (68), Dt. 3-3-2003 of the Executive Engineer, Erstwhile Water Resources Consolidation Project Division, Kengrapara (Now Executive Engineer, Irrigation Division, Kendrapara) is legal and/or justified? If not, to what relief the workmen are entitled?"
- (ii) If not, to what relief the workmen are entitled?

5. To substantiate their respective case, while the second party workmen have examined two witnesses and filed and proved documents marked Exts. 1 to 7, the first party management examined one witness on its behalf and did not adduce any documentary evidence.

FINDINGS

6. *Issue Nos. (i) & (ii)*—In this case there is no dispute over the appointment and retrenchment of the second party workmen. After conclusion of hearing both the parties have filed a joint petition praying to pass an Award in terms of the document marked Ext.7. The contents of the letter, Ext. 7 reveals that the Water Resources Department through the Engineer-in-Chief asked the first party management to furnish the list of NMR employees of the defunct Kendrapara W.R.C.P. Division, Marshaghai for preparation of their interse seniority and the list furnished by the first party reflects the names of the second party workmen involved in the present reference. Obviously Ext.7, the letter the first party management is meant for re-engagement of the second party workmen. In the aforesaid circumstances, in view of the understanding between the parties, I do not find any reason to deviate from the same. Hence, the reference is disposed of in terms of the letter Ext.7 and the joint petition filed by the parties on 3-10-2013.

Dictated and corrected by me.

P. K. RAY
19-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
19-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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