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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th December 2013

No. 13748—IR(ID)-89/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st October 2013 in Industrial Dispute Case No. 23 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s Hindalco Industries Ltd., Hirakud and their workmen represented through General Secretary, Hindalco Staff Association, Hirakud was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 23 OF 2010
Dated the 31st October 2013

Present :

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

Between :

M/s Hindalco Industries Ltd.,
Hirakud. . . First Party—Management

And

Their workmen
represented through
General Secretary,
Hindalco Staff Association,
Hirakud, At/P.O. Hirakud,
Dist. Sambalpur. . . Second Party—Workmen

Appearances :

For the First Party—Management . . . Shri B. P. Tripathy, Advocate

For the Second Party—Workmen . . . Shri S. K. Mishra, 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. 3672—IR(ID)-89/2011-LESI., dated the 10th May 2012 with the following Schedule:—

“Whether the demand of the Hindalco Staff Association for declaration of protected workmen to (1) Shri Prafulla Kumar Nayak, (2) Shri Sachidananda Behera, (3) Shri Rajanikant Samal, (4) Shri Ajaya Prasad Mohanty, (5) Shri Narendra Tripathy, (6) Shri Bhaskar Rana, (7) Shri Ranjeet Kumar Mohanty under the Industrial Disputes Act, 1947 is legal and/or justified? If so, what should be the details?”

In this case this Tribunal after hearing both the parties passed a reasoned order on Dt. 10-10-2013 which is as follows :—

“This order arises on the basis of two petitions, one filed by the second party union on 3-8-2012 for return of the reference instead of filing of the claim statement and another filed by the management on 21-12-2012 for preliminary hearing on the issue of maintainability.”

The first party management filed the petition to the effect that the constitution and membership of the second party association, who are the employees of the first party management was never brought to its notice. The charter of demands relating to the second party association includes the employees of Mines of the first party management. It claims in respect of the present dispute, the appropriate Government is the Central Government and not the State Government. In the circumstance, the State Labour Machinery does not have any competency to entertain such disputes and refer the matter to the Industrial Tribunal.

The second party union in its objection refuting the averments of the first party management has asserted that on the basis of charter of demands given by the disputant union on 11-3-2010 which was subsequently revised on 14-3-2011 conciliation proceeding was initiated and after it failed the State Government has made the present reference. The first party management, a Private Company is having its Smelter Plant, Captive Power Plant and Mines to get raw materials for the said industry with its field of operation at Hirakud in Sambalpur district. Though each Unit has got its own Administrative Office, the accounts of the Company is being maintained centrally under one roof at Hirakud. In the aforesaid circumstance, the State Government is the appropriate Government to make the reference and not the Central Government. The first party management has filed the petition falsely just to harass the second party union by lingering the proceeding. Hence, it claims for rejection of the same.

Section 2(a) (i) of the Industrial Disputes Act, 1947 defines “appropriate Government”. In the case of *Tata Memorial Hospital Workers' Union Vrs. Tata Memorial Centre* and another, reported in AIR 2010(SC) 2943, the Hon'ble Supreme Court has held that as per Section 2 (a) (i) of the Industrial Disputes Act the industrial dispute concerning the industries specified in sub-section(i) and for the industries which are carried on or under the authority of the Central Government, the Central Government is the appropriate Government. As per Section 2(a)(ii) of the Industrial Disputes Act in relation to any other industrial dispute the State Government is the appropriate Government. Further the Hon'ble Supreme Court clarifying the phrase 'under the authority' has held that it means 'pursuant to the authority' such as where an agent or servant acts under authority of his principal or master

which obviously cannot be said to be a Company incorporated under the Companies Act. Therefore, in view of the aforesaid principle decided by the Hon'ble Supreme Court since the first party management is a Private Company having its field of operation at Hirakud in Sambalpur district in Odisha it cannot be said that the Central Government is the appropriate Government.

Further, this matter was also raised before the Hon'ble High Court of Orissa in W.P. (C) No. 6352 of 2010 and as per the direction of the Hon'ble High Court the State Government after being failed in its effort for conciliation referred the matter to the Industrial Tribunal. The said verdict of the Hon'ble High Court has not been challenged by the first party management before the higher forum. Thus, it loses its stand to raise it before this Tribunal.

In view of the aforesaid discussion the preliminary issue on maintainability as raised by the first party management does not have any merit and is thus rejected.

On behalf of the second party union a petition has been filed to the effect that in pursuance of the direction passed by the Hon'ble High Court in W.P. (C) No. 6352 of 2010, the Labour Commissioner, Odisha being the Conciliation Officer notified vide Notification No.1082–li/1(B)-1/1994-LE.(vide *Odisha Gazette* No. Pt.III, No.7), Dt. 18-2-1994 directed the management of M/s Hindalco Industries Ltd. to recognize Shri Prafulla Kumar Nayak, Sachidananda Behera, Rajanikant Samal, Ajaya Prasad Mohanty, Narendra Tripathy, Bhaskar Rana and Ranjeet Kumar Mohanty as 'protected workmen'. It is contended on behalf of the second party union that the aforesaid dispute having attained its finality there is no need of a subsequent reference on the same point for adjudication by this Tribunal, hence prayed for return of the same.

On behalf of the first party management objection has been filed to the effect that once a reference has been made, the Tribunal is required to pass necessary Award on the same. Hence, the petition filed on behalf of the second party union is not sustainable. It has further stated that the aforesaid seven persons recommended for recognition as 'protected workmen' are 'non-workmen' and are supervisory category of employees. Therefore, they cannot be declared as 'protected workmen' under Section 33(4) of the Industrial Disputes Act.

On perusal of the record, I find that the schedule of reference made by the State Government vide letter No. 3672– IR(ID)-89/2011-LESI, Dt. 10-5-2012 is as follows :

“Whether the demand of the Hindalco Staff Association for declaration of protected workmen to (1) Shri Prafulla Kumar Nayak, (2) Shri Sachidananda Behera, (3) Shri Rajanikant Samal, (4) Shri Ajaya Prasad Mohanty, (5) Shri Narendra Tripathy, (6) Shri Bhaskar Rana, (7) Shri Ranjeet Kumar Mohanty under the Industrial Disputes Act, 1947 is legal and/or justified ? If so, what what should be the details ?”

The Hon'ble High Court in W.P. (C) No. 6352 of 2010 has passed orders as follows :

“16. Since the writ petition is dismissed relating to charter of demands and also the issue regarding grant of recognition to the seven office bearers as 'protected workmen' mentioned in Annexure-I can be taken by opposite parties 1, 2 and 3 and proceed further in the matter taking necessary legal action in accordance with the provisions of the I.D. Act, 1947 as expeditiously as possible.”

In pursuance of the aforesaid direction, the Labour Commissioner, Bhubaneswar passed orders as follows :

“As regards declaration of 7 members of the Hindalco Staff Association as protected workmen since they being members of the executive qualify to be as such. The management of Hindalco Industries Ltd., Hiralakud, Dist. Sambalpur is hereby directed to recognize Shri Prafulla Kumar Nayak, Shri Sachidananda Behera, Shri Rajanikant Samal, Shri Ajaya Prasad Mohanty, Shri Narendra Tripathy, Shri Bhaskar Rana and Shri Ranjeet Kumar Mohanty of Hindalco Staff Association, Hiralakud as protected workmen under Section 33(4) of the I.D. Act, 1947 and communication thereof be communicated to all concerned.”

Since the aforesaid direction of the Labour Commissioner, Odisha, Bhubaneswar was passed in pursuance of the orders passed by the Hon'ble Court in W.P. (C) No. 6352 of 2010 and such order has not been challenged in any competent forum, the same has attained its finality. Therefore, pending such position the schedule of reference made by the State Government to adjudicate the aforesaid issue is not maintainable.

In view of the aforesaid order, an Award is passed accordingly.

Dictated and corrected by me.

P. K. RAY
31-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
31-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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