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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 7th December 2013

No. 13828—IR (I.D.)-45/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th September 2013 in I. D. Case No. 22 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of Manager (Electrical), Kendrapara Electrical Division No. I, CESU, At/P.O./Dist. Kendrapara and Chief HRD Officer, CESU, IDCO Tower, Bhubaneswar and its workman Shri Ajamber Samal was filed by the above named workman under Section 2-A(2) of I. D. Act. 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 22 OF 2012

Dated the 12th September 2013

*Present :*

Shri P. K. Ray, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of  
Manager (Electrical), Kendrapara Electrical  
Division No. I, CESU, At/P.O./Dist. Kendrapara.

.. First Party—Management

&

Chief HRD Officer,  
CESU, IDCO Tower,  
Bhubaneswar.

And

Its Workman,  
 Shri Ajamber Samal,  
 S/o Late Anandi Charan Samal,  
 At Govindpur, P.O. Rajkanika,  
 Dist. Kendrapara-754 220.

.. Second Party—Workman

*Appearances :*

Shri Sushanta Dash, Advocate .. For the First Party—Management

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Shri Dhaneswar Mohanty, Adv. .. For the Second Party—Workman

## AWARD

This case has been instituted on the basis of claim statement filed by the second party workman under Section 2-A(2) of the I. D. Act, 1947 for a declaration that his termination with effect from the 31st December 2010, the stipulation of time period in the service agreement, dated the 26th October 2009 are illegal, not binding on the second party workman and for his reinstatement in service with full back wages.

2. The claim of the second party workman is that as an ex serviceman having requisite qualification he was engaged as an Authorized Squad Personnel with effect from the 26th March 2005. Thereafter he was appointed as a Meter Reader in Rajnagar No. I Section with effect from the 1st May 2005 and discharged his duties continuously till retrenchment with effect from the 31st December 2010. It is stated that initially he was paid wages by the first party management through some outside agency, thereafter directly with effect from the 1st January 2009 through AGM, Electrical, AED-I, Kendrapara. His last drawn salary was Rs. 4,700 per month and after deduction of EPF he was getting Rs. 4,350 per month. On 26-10-2009 the second party workman was compelled to sign and accept contractual engagement as customer service representative in gross violation of the provisions of the I.D. Act, 1947 in which the management illegally put the alleged commencement of contractual engagement of the second party workman retrospectively with effect from 1st January 2009 though initially he was engaged to work under the direct control and supervision of the first party management without any contractual stipulation. As per the stipulation of the said agreement after completion of two years of his service on 31-12-2010 his service was illegally terminated though the duty of the said post is perennial in nature and still is in existence. Being aggrieved by such termination without any notice and violation of the provisions of Sections 25-G, H and N of the Industrial Dispute Act, the second party workman has filed this case.

3. The first party management in its written statement has stated that in the year 2002 around 850 ex servicemen were deployed in CESCO, which is now discharged by CESU for dehooking and disconnection work and subsequently utilized for meter reading and bill distribution work through different outside agencies. In the year 2006 those ex servicemen forming an Union in the name of CWSCO Ex servicemen Employees Union demanded for permanent absorption in CESU as well as enhancement of their wages. In November 2006 when CESU floated a tender for meter reading and bill distribution, the CESCO Ex servicemen Employees Union raised a dispute before the

Labour Commissioner, Odisha and ultimately approached the Hon'ble High Court in W.P. (C), No. 6641 of 2007 in which the Hon'ble High Court while disposing the Writ Petition vide Order, Dt. 5-10-2007 allowed the CESU to complete the tendering process with an observation that the successful bidder is to consider the employment of existing employees on preferential basis taking into account their experience, competency and fitness. As the said agency did not find the said ex servicemen suitable to be engaged for meter reading and bill distribution work and engaged their own employees for the said job the CESU Ex Servicemen Employees Union again approached the Hon'ble High Court. In a meeting, Dt. 9-9-2008 it was mutually agreed by the management and the union that the ex servicemen will continue to work for meter reading in 13 distribution divisions under the CESU and both the parties will abide by the order of the Joint Labour Commissioner-*cum*-Conciliation Officer, Bhubaneswar. The management of the Board of CESU in its 15th meeting on 5-11-2008 decided to consider the case of ex servicemen working through different agencies for direct engagement under CESU for a period of two years and accordingly a settlement was signed between the management of CESU and the representatives of CESCO Ex servicemen Employees Union on 27-3-2009 before the Joint Labour Commissioner, Bhubaneswar. As per the terms of the said settlement the ex servicemen who fulfilled the eligibility criteria and found suitable were provided with contractual engagement as AIOs, CSRs and SOPs for a period of two years with effect from the 1st January 2009 subject to the condition that they can be removed before expiry of the contract if their performance was not found satisfactory and his continuance on contractual appointment is detrimental to the interest of CESU. Accordingly, the petitioner in the present case entered into an individual agreement with the management on 26-10-2009, besides submitting an affidavit on 16-10-2009 not to raise any dispute against CESU challenging the settlement arrived between CESCO Ex servicemen Employees Union and the CESU. When the management of CESU sought for performance report of ex servicemen from 1-1-2009 to 31-10-2010 from the field units, and basing on the performance appraisal report the management decided to extend the contractual engagement for a period of one/two years with effect from the 1st January 2011 with enhanced monthly emolument, the contractual engagement of the ex servicemen whose performance was satisfactory were given extension for a period of one/two years with effect from the 1st January 2011. Since the performance of Shri Ajamber Samal, the second party workman was not found satisfactory he was not given extension for any further period. In the aforesaid background, the claim of the second party workman has got no basis and is liable to be rejected.

4. The second party workman in his rejoinder has stated that the agreement dated the 26th October 2009 and the affidavit were made by practicing fraud and undue influence at the instance of the first party management, thus is illegal and not binding upon him.

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

#### ISSUES

- (i) "Whether the retrenchment of Ajamber Samal, Customer Service Representative, vide order with effect from the 31st December 2010 vide Memo. No 9431, Dt. 31-12-2010 of the Manager (Electrical), Kendrapara Electrical Division No. I is legal and/or justified ?
- (ii) If not, what relief the workman Shri Samal is entitled to" ?

6. *Issue No. (i)*—In this case the second party workman who has challenged his termination was appointed contractually with effect from the 1st January 2009. Prior to that the CESCO Ex servicemen Employees Union approached the Hon'ble High Court due to non-compliance of

the observation made by the Hon'ble High Court in W.P. (C) No. 6641 of 2007 and as per the conciliation between the management and the union before the Joint Labour Commissioner on 9-9-2008 the management appointed the ex servicemen on contractual basis with effect from the 1st January 2009 including the second party workman. As per the conciliation the representative of CESCO Ex servicemen Employees Union entered into a settlement in Form-K with the management before the Joint Labour Commissioner, Bhubaneswar and individual workman including the second party workman entered into an agreement, Dt. 26-10-2009 and prior to that submitted an affidavit on the 16-10-2009. Though the second party workman challenged the said agreement and affidavit as unfair labour practice he remained silent in his pleading as well as in evidence relating to the conciliation, Dt.9-9-2008 before the Joint Labour Commissioner. Therefore, such terms and conditions which have been made by the second party workman with the first party management subsequent to his joining in service on contractual basis cannot be said to be unfair labour practice as defined under Section 2 (ra) of the I. D. Act.

7. As per the terms and conditions of the agreement, Dt. 26-10-2009, the terms of contractual appointment was for a period of two years and it is expired on 31-12-2010. In the case of Director, Institute of Management Development Vrs. Smt. Pushpa Srivastava, reported in AIR 1992 SC 2070, the Hon'ble Supreme Court has held that when the appointment is purely on *ad hoc* basis and is contractual by efflux of time the appointment comes to an end, the person holding such post can have no right to continue in the post. This is so even if a person is continued from time to time on *ad hoc* basis for more than a year. He cannot claim regularization in service on basis that he was appointed on *ad hoc* basis for more than a year. Moreover in the same context Hon'ble High Court in W.P. (C), No. 6641 of 2007 allowed the CESU to proceed on for tendering the advertisement in the process of contractual appointment through outsourcing agencies only with an observation to consider the claim of the CESCO Ex servicemen Employees Union on preferential basis taking into their experience, competency and fitness. In the aforesaid background it is not correct that the second party workman has been retrenched from service vide order, dated the 31st December 2010 by the Manager, Kendrapara Electrical Division No. I. It is only a lapse of contract and the second party workman has got no right to claim for renewal.

8. *Issue No. (ii)*—In connection with the relief for the second party workman, the stand of the first party management is that the performance appraisal report in respect of the second party workman reveals that the same is not satisfactory. There is no dispute that the work which the second party workman was discharging is perennial in nature. But considering the adversity of his performance it will not be proper to grant him any relief sought for.

The reference is answered accordingly

Dictated and corrected by me.

P. K. RAY  
12-9-2013  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. K. RAY  
12-9-2013  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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