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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 7th December 2013

No. 13833—IR(I.D.)-52/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd October 2013 in Industrial Dispute Case No. 45 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of the Executive Engineer, Prachi Division, Unit-8, Bhubaneswar and their Workmen (1) Shri Arun Kumar Behera, (2) Shri Akshaya Kumar Jena, (3) Shri Srikanta Sethi and (4) Shri Manoj Kumar Dash was filed by the above named workmen under Section 2A(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. 45 OF 2012

Dated the 3rd October 2013

Present :

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

Between :

The Management of . . . First Party—Management
The Executive Engineer,
Prachi Division, Unit-8,
Bhubaneswar.

And

Their Workmen :—

- | | |
|--|--------------------------------|
| <ol style="list-style-type: none"> 1. Shri Arun Kumar Behera,
S/o Late Radhu Behera,
At Sana Patasundarpur,
P.O. Patasundarpur, P.S. Govindpur,
Dist. Cuttack. 2. Shri Akshaya Kumar Jena,
S/o Khetramohan Jena,
Village/P.O. Sailo Jharpada,
P.S. Govindpur, Dist. Cuttack. 3. Shri Srikanta Sethi,
S/o Sarat Sethi,
Village Balikana,
P.O. Jagannathpur Sasan,
P.S. Rajnagar, Dist. Kendrapara. 4. Shri Manoj Kumar Dash,
S/o Late Gourahari Dash,
Village Amarpada, P.O. Sithal,
P.S. Niali, Dist. Cuttack. | <p>.. Second Party—Workmen</p> |
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Appearances :

None	.. For the First Party—Management
Shri T. Lenka, Advocate	.. For the Second Party—Workmen

AWARD

This case under Section 2-A (2) of the Industrial Disputes Act, 1947 has been filed by the above named workmen challenging their illegal termination and claiming for their reinstatement in service with full back wages, continuity of service and other consequential service benefits.

2. The case of the second party workmen is that the first party management appointed the second party workmen, namely, Shri Arun Kumar Behera and Shri Akshaya Kumar Jena under the Executive Engineer, Puri Investigation Division with effect from 1992 and continued till Dt. 31-12-1999. Subsequently, on Dt. 1-1-2000, they were transferred to the Executive Engineer, Puri Irrigation Division and continued there till Dt. 16-12-2000. Thereafter, they were transferred to the Executive Engineer, Prachi Division, Bhubaneswar vide their Letter No. 3895, dated the 16th December 2000 and continued there till the 31st December 2003. The other two second party workmen, namely, Shri Srikanta Sethi and Shri Manoj Kumar Dash initially joined as N.M.Rs. under the Executive Engineer, Puri Irrigation Division with effect from the 1st January 2000 and continued till the 16th December 2000 and then transferred to the Executive Engineer, Prachi Division, Bhubaneswar vide Letter No. 3895, dated the 16th December 2000 and continued there till the 31st December 2003. On Dt. 1-1-2004, the then concerned Junior Engineer Shri H. K. Dalai of Prachi Division intimating their retrenchment from service did not allow them to perform their duties though

no retrenchment order was served upon them. But the services of another N.M.R. Shri Pramod Kumar Pradhan who was working with the second party workmen has been regularised. On the representation made by the second party workmen for their reinstatement with copy to the District Labour Officer though the first party management assured to consider their case, no action was taken thereon. It is stated that though the Director, Personnel, Office of the Engineer-in-Chief, Water Resources, Odisha, Secha Sadan, Kesari Nagar, Bhubaneswar directed all the Chief Engineers and Basin Manager/Chief Engineer/Chief Construction Engineer/Superintending Engineer and Director, Research/Hydrometry/S.S.&D.S. vide his Letter No. 14972—CSL-W/C-Rev-2/2009, dated the 25th November 2011 for preparation of panel for re-engagement of the retrenched workmen, the first party management did not insert the names of the second party workmen in the said panel. It is contended that the second party workmen were continuously working under the first party management since their joining in the organisation. At the time of termination, they were getting Rs. 1,500 per month as wages. During tenure of their service, there was no allegation nor any adverse remarks against them. Therefore, it is pleaded that their aforesaid termination of service is a clear violation of the provisions of Section 25-F of the Industrial Disputes Act. In the aforesaid background, this case has been filed for a adjudication of the dispute with a prayer for their reinstatement with all back wages and consequential service benefits.

3. The first party management did not appear in the case and hence it was set *ex parte*.

4. The issues framed in this case are as follows :

ISSUES

- (i) "Whether the termination of services by way of refusal of employment of Shri Arun Kumar Behera, Shri Akshaya Kumar Jena, Shri Srikanta Sethi and Shri Manoj Kumar Dash, N.M.Rs. with effect from the 1st January 2004 by the Executive Engineer, Prachi Division, Unit-8, Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief the workmen are entitled to ?"

5. In support of their case, the second party workmen examined one witness namely, Shri Arun Kumar Behera and filed documents marked Exts. 1 to 12.

FINDINGS

6. *Issue Nos. (i) and (ii)*—In absence of any contest the evidence adduced on behalf of the second party workmen remained unchallenged. The Muster Roll Ext. 3 and the Letter, dated the 25th November 2011, Ext. 1 reveal that the second party workmen were working as N.M.Rs. under the first party management. The statement of the second party workmen reveals that they have been engaged continuously for a period of 240 days in the preceding calendar year. In the aforesaid circumstances, their termination of service requires compliance of Section 25-F of the Industrial Disputes Act, 1947. But the material on record does not reveal so. Hence, such termination is bad in law.

Ext. 1, the copy of the letter of the Director, Personnel reveals that the authority is seeking for the list of N.M.Rs. for preparation of seniority list to avoid any litigation. This shows that the authority was having intention is to regularise the services of the N.M.Rs. In the aforesaid background,

the first party management is directed to enlist the names of the second party workmen as per Ext. 1, if they are eligible for so. In case they are not eligible, they be paid compensation of Rs. 25,000 each in lieu of their termination of service in contravention of Section 25-F of the Industrial Disputes Act, 1947.

The application is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
03-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
03-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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