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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 12th February 2013

No. 1343—IR-(ID)-50/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2012 in Industrial Dispute Case No. 5 of 2010 of the Presiding Officer, Labour Court, Jeypore, Dist. Koraput to whom the industrial dispute between the Management of Chairman-*cum*-Managing Director, M/s Odisha Power Transmission Corporation Ltd., Bhubaneswar and their workman Shri Nilakantha Panigrahi, ex Head Clerk represented through Vice-President, Odisha Bidyut Sramik Mahasangha, Jeypore, Dist. Koraput was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 5 OF 2010

Dated the 31st December 2012

Present :

Shri D. C. Mishra, o.s.j.s. (Jr. Branch),
Presiding Officer,
Labour Court,
Jeypore,
Koraput.

Between :

1. The Chairman-*cum*-Managing Director, M/s Odisha Power Transmission Corporation Ltd., Bhubaneswar, Dist. Khurda. . . First Party —Management No.I
2. The Superintending Engineer (Elct.) SOUTHCO, Jeypore Electrical Division, At/P.O. Jeypore, Dist. Koraput. . . First Party—Management No.II

3. A.G.M. (Finance) . . . First Party—Management No.III
 Pension, OPTCL Ltd.,
 Bhubaneswar,
 At/P.O. Bhubaneswar,
 Dist. Khurda.

Versus

Its Workman, . . . Second Party —Workman
 Shri Nilakantha Panigrahi
 Ex Head Clerk,
 Represented through
 Vice-President, Odisha Bidyut
 Sramik Mahasangha,
 Jeypore, At/P.O. Jeypore,
 Dist. Koraput.

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

Shri M. Kurma Rao, . . . For the First Party—Management No. II
 Advocate, Jeypore.

Shri R. S. Padhi, . . . For the First Party —Management No. I & III
 Advocate, Jeypore.

Shri L. K. Panda, Shri N. Mohanty, . . . For the the Second Party—Workman
 Shri Satya Nayak and A. P. Mandal,
 Advocates, Jeypore.

Date of Argument . . . 29-12-2012

Date of Award . . . 31-12-2012

AWARD

The matter arises out of a reference made by the State Government in their Labour & Employment Department Odisha, Bhubaneswar, under Section 12 (5), read with Section 10 (1) of the I.D. Act, 1947, (14 of 1947), vide Memo. No.4696 (5)-LE., dated the 5th June 2010 for adjudication of the following dispute. :—

SCHEDULE

“Whether the demand of the Vice-President, Nikhila Odisha Bidyut Sramik Mahasangha, Jeypore, Koraput for Advancement Pay Scale to Shri Nilakantha Panigrahi (Retd. Head Clerk) in the post of Head Clerk is legal and/or justified ? If not, what should be the quantum of relief ?”

2. The workman’s case runs thus :—

That the second party workman Shri Nilakantha Panigrahi served as L.D. Clerk from the year 1964 under the Management and got promotion to the post of U.D. Clerk on 17-1-1970 and continued

in the post. While continuing as U.D. Clerk, the workman got promotion to the post of Circle U.D./ Head Clerk, with effect from the 15-1-1974 and continued in the promoted post up to 16-9-1976 but due to domestic reason, on his own request, he was reverted to his previous post, i.e. to U.D. Clerk with effect from the 17-9-1976 and his pay was refixed in the Divisional U.D. Clerk Scale, i.e. his previous Post Scale. It is averred that, while continuing as a Divisional U.D. Clerk, the workman again got promotion to the post of Head Clerk on 10-12-1979 and continued in that post till the date of superannuation, i.e. till 30-6-1993. It is pleaded by the workman that, if his service period from 15-1-1974 to 16-4-1976 as Circle U.D. Clerk will be added with his service period as a Head Clerk from 10-12-1979 to 30-6-1993 (date of retirement) then it will be more than 15 years and as per rules of the opposite party he is entitled to get Advancement Pay Scale from the date of completion of 15 years service on the promotional post. According to the workman, as per office Order No.9565, dt. 16-4-1988, the 15 years continuous service in one Grade required for grant of A.P.S. will be computed by calculating his service rendered in such Post/Grade in II or more spells. The workman has further averred that, since the opposite party did not pay his genuine demand he approached his Union and the Union approached to the labour authorities and the District Labour Officer, Jeypore tried for a conciliation which failed. So, the D.L.O., Jeypore, submitted a failure report. Hence the case.

3. The first party management Nos. 1 & 3 have contested the case by filing W.S. with prayer for dismissal of the case. The management No.2 has contested the case by filing separate W.S. with prayer to dismiss the case stating that the workman is not an employee under him for which he is not liable to pay anything. According to the Management No. 2, the workman was serving under the O.S.E.B. (Now Management Nos. 1 & 3) till the date of his retirement and Management No.2 has come into existence on 28-11-1998 by operation of law i.e. after the superannuation of the workman for which the claim of the workman against them is not maintainable :

4. In view of the rival pleadings of the parties and as per reference of the Government in its Labour & Employment Department the following issues have been framed for adjudication.

ISSUES

- “(i) Whether the demand of the Vice-President, Nikhila Odisha Bidyut Sramik Mahasangha, Jeypore, Koraput, for advancement Pay Scale to Shri Nilakantha Panigrahi (Retd. Head Clerk) in the post of Head Clerk is legal and/or justified ?
- (ii) If not, what should be the quantum of relief ?”

5. In order to substantiate the case, the workman Shri Nilakantha Panigrahi has examined himself as workman witness No.1 documents marked Exts 1 to Ext. 6 have been proved from workman side. Ext. 1 is the office note sheet of the Superintending Engineer of Electrical Circle, Jeypore (Management No.2) and Ext. 2 is the office Order No. 75/2005-2006 vide No. 511, dt. 4-2-2006 of the Superintending Engineer, Electrical Circle, Jeypore. Ext. 3 is the office Order No. 604, dt. 20-3-2008 of the Superintending Engineer, Electrical Circle, Jeypore and Ext. 4 is the representation of the workman dt. 28-5-2008. Ext. 5 is the L. No. 1288 (4), dt. 31-5-2008 of the Superintending Engineer, Electrical Circle, Jeypore and Ext. 6 is the xerox copy of office Order No.9565, dt. 16-4-1988 of O.S.E.B., Bhubaneswar.

None has been examined from the management side but management Nos. 1 & 3 have proved the xerox copy of the relevant portion of the Service Book of the workman as Ext. A.

Issue Nos. (i) & (ii)—The workman, i.e. W.W. No.1 has given evidence that he has served as Circle U.D. Clerk for more than 15 years in two(2) spells, i.e. first from 15-1-1974 to 16-9-1976 and again from 10-12-1979 to 30-12-1979 to. This evidence of the workman witness No. 1 has gone unchallenged. According to him, since he has completed 15 years of service in two spells, that should be taken into consideration for granting Advancement Pay Scale. In support of his claim, the workman has relied on Ext. 6, i.e. office Order No. 9565 dt. 16-4-1988 of O.S.E.B., Bhubaneswar (Management Nos. 1 & 3). Rule No. 3 of Ext. 6 is extracted below for reference which is as follows :—

The period of 15 years service shall be computed taking into account the period of service of the employees in the officiating, temporary and substantive capacity in the particular post/grade for which the Advancement Pay Scale has been prescribed where the period of service rendered in such a post/grade have been broken into two or more spells, all such spells of service shall be taken into account for computing the total period if the break(s) have been condoned for the purpose of increment in the ordinary scale of pay of the post/grade in the same/identical time scale of pay.

The main question is whether the service period of the workman in the promotional post in two spells can be calculated for computing the period of 15 years to make an employee eligible to get A.P.S. Para. 3 of Ext. 6, as quoted above reveals that all such spells of service shall be taken into account for computing the total period if the break(s) have been condoned for purpose of increment in the ordinary scale of pay of the post/grade in the same/identical time scale of pay. There is no material or evidence in record to come to a conclusion that the break period (reversion period) have been condoned by the authority. Admittedly the workman was reverted to the U.D. Clerk post from the promotional post on his own request. Clause No. (1) Rules 3, i.e the illustrations reveals that if an employee officiated as U.D. Clerk and again reverted to L.D. Clerk then he will get the Advancement Pay Scale as L.D. Clerk. In the present case the workman was promoted to Circle U.D. Clerk but on his own request he has been reverted to Divisional U.D. Clerk Post. Thus, the workman has not recognised the promotion for the period from 15-1-1974 to 16-9-1976. In the above premises and as per Ext. 6 the first promotional service period of the workman, i.e. from 15-1-1974 to 16-9-1976 can not be taken into consideration for computing the total period of 15 years for sanction of A.P.S.

The Management Nos. 1 & 3 vehemently argued that the workman has filed this case after long delay without any suitable explanation for which it should be dismissed as a stale claim. The workman has mentioned in his claim statement that, he had filed Misc. case No. 35/2007 before this Court but this Court rejected the claim as it was not referred under Sections 10 & 12 of the I.D. Act. As per claim of the applicant, he is entitled to get A.P.S. increments from the date he completed 15 years service in Circle U.D. Clerk post. Thus, his claim is of the year 1991-1992 but he had filed Misc. case No. 35/2007 after about 15 years of due. Though limitation Act does not apply to I.D. cases but in the decision reported in “management of M/s Indian Iron and Steel Co. Ltd., Vrs. Prahlad Singh, 2001-LLR-157”, it has been held that :—

An employee raising dispute after 13 years about his termination will not be tenable.

In the decision reported in “Satpal Vrs. Presiding Officer, Labour Court, Gurdaspur and Ors. 2001-I-LLJ-1337 (P & H)” it has been held that :—

Delay In raising Industrial Dispute, no reason given for delay. Though Art.137 of Limitation Act may not apply, lapse of long time, held rendered dispute stale and not entertainable.

In the decision reported in “Haryana State Co-op. Land Development Bank Vrs. Neelam, 2005 -LLR 483”, it has been held that :—

“Having no limitation period in I.D. Act does not mean that any stale claim must be entertained “.

In the decision reported in “U.P. State Road Transport Corporation Vrs. Babu Ram, 2006 - LLR- 896,” it has been held that :—

Delay in raising dispute is to be justified by workman. In the present case the workman has claimed that he was entitled to get A.P.S. increments from the year 1991-1992 but he had filed the Misc. case No.35/2007 in the year 2007, i.e after 15 years of the claim. Thus it is a stale claim and not entertainable.

From the fore going discussions it is found that the workman failed to prove by any cogent or documentary evidence that his first promotional period should be added with the second time promotion period for computing the period of 15 years to get A.P.S. increments. Also it is found that the case has been filed after about 15 years of the claim due and no suitable explanation has been assigned by the workman as to why such long delay was caused for making the claim. So the claim is stale one and not intertainable. Hence the workman is not entitled to get any benefit in this case. Hence Order.

ORDER

The reference is answered on contest against the workman and in favour of the management but without costs. The workman is not entitled to get A.P.S. increments (benefits) in this case.

Dictated and corrected by me.

D. C. MISHRA
31-12-2012
Presiding Officer
Labour Court
Jeypore

D. C. MISHRA
31-12-2012
Presiding Officer
Labour Court
Jeypore

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