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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 4th March 2013

No. 2274—li-1(S)-14/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th December 2012 in Industrial Dispute Case No. 12 of 2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Sambalpur Electrical Division, WESCO, Sambalpur and M/s. Phoenix I.T. Solutions Ltd., Sambalpur and their Workmen Shri Narayan Saraf, Shri Pradeep Kumar Dash, Shri Shiba Prasad Moharana and Shri Sarat Ch. Bahidar, ex Meter Readers was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 12 OF 2007

Dated the 4th December 2012

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of
Sambalpur Electrical Division, WESCO,
Sambalpur through :—

.. First Party—Managements

1. The Executive Engineer,
Sambalpur Electrical Division,
WESCO, Ainthapali,
Sambalpur.
2. The Regional Co-ordinator,
M/s. Phoenix I.T. Solutions Ltd.,
Unit-I, SDF Block-I, VSE-2,
Visakhapatnam-530 046.

3. The Regional Co-ordinator,
M/s Phoenix I.T. Solutions Ltd.,
Customer Care Centre, WESCO,
Budharaja, Sambalpur-768 004.

And

Their Workmen . . . Second Party—Workmen

1. Shri Narayan Saraf,
2. Shri Pradeep Ku. Dash,
3. Shri Shiba Prasad Moharana, and
4. Shri Sarat Ch. Bahidar, ex Meter Readers, workmen of Sunaripada (in front of U.P. Girls School), Badabazar, Sambalpur, Dist. Sambalpur.

Appearances :

Shri H. C. Dani, Advocate	. . . For the First Party—Management
Shri B. K. Purohit, Advocate	. . . For the Second Party—Workmen

AWARD

This award arises out of a reference made by the Government of Odisha in the Labour & Employment Department under Section 10 (1) (c) of the I. D. Act, 1947 vide their Notification No. 2920—li/1(S)-14/2006-LE., dated the 31st March 2007 for adjudication. The Schedule of reference is as follows :—

"Whether the action of the management of Sambalpur Electrical Division, WESCO, Sambalpur and its agency M/s. Phoenix I.T. Solutions Ltd., Sambalpur in terminating the services of the workmen Shri Narayan Saraf, Shri Pradeep Kumar Dash, Shri Shiba Prasad Moharana and Shri Sarat Chandra Bahidar with effect from the 10th February 2006 by way of refusal of employment is legal and/or justified ? If not, to what relief these workmen are entitled ?"

2. The aforesaid workmen except Sl. No. 4, filed a joint statement of claim claiming that they were appointed as Meter Readers under the first party management. The workmen Nos. 1 and 2 were initially appointed in the year 1998 by the Grid Corporation of Odisha Limited and continued under the said Corporation till April, 2001. The workman No. 3 was initially appointed by the Odisha State Electricity Board in the year 1995 and the said Board being transferred to Grid Corporation of Odisha Limited (GRIDCO), he continued in the post of Meter Reader under the said Corporation till April, 2001. The GRIDCO was taken over by the Western Electric Supply Company of Odisha Limited (WESCO) and all the workmen continued in the same post till the month of September, 2005 under the first party management No. 1. They were allotted the work of meter reading, distribution of energy bills of domestic and commercial consumer on piece rate basis. Besides they were also allotted the work of Electrical Helper, Meter Installer on contract basis at different places under the control and supervision of the first party management No. 1. Their wages on piece rate basis was also being revised from time to time. With effect from October, 2005, the first party management No. 1 decided to outsource the work of meter reading, billing and collection of

consumer data, etc., to a private entity namely, M/s. Phoenix I.T. Solutions Limited (Represented by first party No. 2 and 3) and the first party No. 1 put the second party workmen to work under them under its direct supervision. According to the second party workmen, the first party No. 1 only to eliminate the workmen from their role and to escape from the clutches of law adopted the aforesaid practice. The workmen allege that the first party No. 1 has not paid their statutory dues like Bonus, Leave Salary, Provident Fund and ESI benefits though they were in continuous service from the year 2001 and when they demanded for the same, they were illegally terminated/refused employment. The workmen further alleged that the first party No. 1, after terminating their employment, has employed new persons having no extra qualification or experience, in violation of the provisions of Industrial Law. They approached the District Labour Officer, Sambalpur who directed the first party to take back the retrenched workmen but the workmen were only permitted to continue service under the first party Nos. 2 and 3. With such averment, the workmen pray for a direction to the first party management No. 1 to take back them into its regular cadre of Meter Readers providing all statutory benefits from their original date of joining.

3. The first party No. 1 filed written statement wherein it submitted that the second party workmen were engaged in the capacity of individual employment and were not under any contract of service and as such they cannot be termed as employees of the first party No. 1. It denies to be the employer of the second party members and according to it, the dispute is not maintainable in this forum. According to this first party the engagement of the second party workmen were depending upon requirement as exigencies and extension of the contractual period of service does not carry the liability of employment on regular basis. The first party No. 1 submit that no relief can be granted in favour of the second party workmen.

4. The first party No. 2 in his written statement submitted that the second party members were engaged by GRIDCO in providing energy bills, etc., through its own workers and the WESCO did not transfer any worker. There was no agreement between the first party Nos. 2 and 3 with the WESCO in the matter of absorbing its workers. In the meantime, the first party Nos. 2 and 3 have shivered all business ties with the first party No. 1. They have neither appointed/employed the second party workmen nor they have terminated their service by refusal of employment to them. With such averments, the first party No. 2 submits that the proceeding against the first party Nos. 2 and 3 is unwarranted and should be dropped.

5. The first party No. 3 has not filed any written statement.

6. The second party workmen have filed a rejoinder in which they alleged that the first party management is providing regular permanent employment to the same category of workmen and have absorbed some of previous workmen as per their Office Order, dated the 22nd November 2006 and 7th May 2008 and therefore, they are also entitled to be absorbed in service.

ISSUES

7. On the basis of the pleadings of the parties, the following issues have been settled for adjudication :—

- (i) "Whether the action of the management of Sambalpur Electrical Division, WESCO, Sambalpur and its agency M/s. Phoenix I.T. Solutions Ltd., Sambalpur in terminating the services of the workmen Shri Narayan Saraf, Shri Pradeep Kumar Dash, Shri Shiba Prasad Moharana and Shri Sarat Chandra Bahidar with effect from the 10th February 2006 by way of refusal of employment is legal and/or justified ?

(ii) If not, to what relief these workmen are entitled ?"

8. The second party members examined themselves as witnesses and from their side, some documents were marked as Ext. W-1 to Ext. W-21. The first party No. 1 examined as sole witness from the side of the management and through him several documents were marked as Ext. M-1 to Ext. M-7.

FINDINGS

9. *Issue No. (i)*—It is the claim of the second party members that they were employees of the first party management and have been illegally terminated from service with effect from the 10th February 2006. The workman No. 1 deposed that in the year 1998 he was appointed as a Meter Reader by the GRIDCO Odisha Limited. The second party No. 2 deposed that he was appointed as a Meter Reader by the GRIDCO in the month of January, 1995 and the second party No. 3 deposed that he was appointed as a Meter Reader by the GRIDCO in the year 1998. The three workmen have deposed that GRIDCO Limited was taken over by WESCO and they continued to work as Meter Reader under the WESCO till September, 2005. There is no dispute that the Odisha State Electricity Board (O.S.E.B.) was functioning in the State having recruited employees and subsequently GRIDCO came into operation and most of the employees working under the O.S.E.B. were absorbed in the said Corporation. The management witness deposed that the O.S.E.B. was divided into 4 parts and WESCO is one of them. He further deposed that GRIDCO and WESCO are absolutely two different Companies having different authorities and management. He, however, during cross-examination admitted that WESCO is creature of administrative order and after abolition of the O.S.E.B., transmission and distribution of electrical energy was handed over to the GRIDCO. It reveals from the evidence of the witness of the management that the employees engaged in WESCO were appointed/engaged through the GRIDCO. During cross-examination, the management witness has clarified that the management of WESCO at present is dealt with by the Reliance Energy which is a private sector. Although the workmen claimed that they were regular employees under the O.S.E.B., then absorbed by GRIDCO and subsequently by WESCO, they have not filed any letter of appointment issued by either of the three authorities. As per the own admission of the workmen in their statement of claim, they were engaged as Meter Readers and they were being paid on piece work basis. During course of hearing, the workmen deposed that they were getting fixed salary but as a matter of fact, there has been no order for fixation of their salary under the O.S.E.B., GRIDCO or WESCO. The documents filed by the workmen reveal that for a long period they were working as Meter Readers under the GRIDCO and WESCO. As per the copy of the office order of WESCO marked Ext. W-2 communicated to the second party No. 1 on 12-12-2001, he was directed to take meter reading and distribution of energy bills of single phase domestic and commercial consumers with effect from September, 2001 at the rate of 0.50 paise and Re. 1 respectively. Similarly the copy of WESCO Office Order No. 479, dated the 18th October 2001 marked Ext. W-16 reveals that the workman No. 2 was directed to take meter reading with effect from the 1st July 2001 at the same rate. The workman No. 3 relies upon Ext. W-9 which is a xerox copy of WESCO Office Order vide Letter No. 479, dated the 18th October 2001 with similar direction to him to conduct meter reading in the same rate. The Ext. W-9 and Ext. W-16 bear the same Letter No. 479, dated the 18th October 2001 and therefore it appears that there is some mistake in communicating the office order to the workman Nos. 2 and 3. However, the management did not seriously dispute the genuineness of the documents. Therefore it can safely be said that during the year 2001 the workman Nos. 1, 2 and 3 were directed to take up the work of meter reading and the remuneration was fixed on piece rate basis. The workman rely upon a copy of abstract of meter

reading and energy bill distribution charges prepared by WESCO which was marked Ext. W-13. As per this document, the workman No. 2 received an amount of Rs. 1,729.50 and the workman No. 3 received Rs. 2,004 towards the meter reading and bill distribution charges for the months of May and June, 2001. Another copy of bill abstract of meter readers prepared by the WESCO marked Ext. W-14 reveals that the workman No. 1 claimed Rs. 2,267, workman No. 2 claimed Rs. 4,330, workman No. 3 claimed Rs. 5,077 towards the meter reading and bill distribution charge for the months of January-February, 2004 and February-March, 2004. The documents filed on behalf of the workmen as discussed above clearly reveal the fact that they were never getting any specific scale of pay and their remuneration was determined on the basis of fixed charges and the amount of work done by them. The workman witness No. 1 has admitted during cross-examination that he was distributing the electricity energy bills to 2,500 consumers per month but there was no specific yardstick or target for the same. He further admitted that the number of bills distributed in every month was fluctuating. In view of the own admission of the workmen, their remuneration for meter reading and bill distributing depended upon their own performance of work. The workmen, in contradiction to their statement of claim, deposed in Court that they were getting fixed salary from the WESCO but they have admitted in cross-examination that they have no document to show that they were getting monthly salary from the management. Rather their own documents suggest that they were not getting similar remuneration for rendering service as Meter Reader.

10. The management strongly contend that the second party workmen were engaged in the capacity of individual employment contact for service and not contract of service and therefore they cannot be termed as employees under the first party. The Hon'ble Apex Court in the case of *Shivanandan Sharma Vrs. the Punjab National Bank Limited* [(1955) 1 L.L.J. 688] laid down the tests for determining the question whether a person is an employee or independent contractor and held that "Supervision and Control" is the crucial test for determining relationship. In several decisions of the Hon'ble High Courts and Supreme Court, it has been observed that the greater the amount of direct control exercised over the person rendering the services by the person contracting for them, the stronger the ground for holding it to be a contract of service. In the present case, the management for whom the workmen were rendering services as Meter Reader did not fix any target for their work and there is no evidence that they exercised any control over the work done by the workmen. On the basis of individual work, the workmen were paid different amount of remuneration. They were not provided any service benefits as that of regular employees. They were never called upon to explain for performing less work nor they were questioned for doing more work in any particular period. There is also no evidence that the workmen were asked to perform their duties within any particular time or within any particular locality. All these circumstances clearly establish the facts that the workmen were not under the direct control of the management and as such they were individual contractors and not employees under the management. The first party No. 1 entered into an agreement with first party Nos. 2 and 3 in the month of April, 2004 entrusting them to perform the job of spot billing, meter reading, etc., and during the tenure of the agreement period, the present workmen along with others worked under the said managements. Although the workmen claimed that they were asked to work under the first party Nos. 2 and 3 under the direction and supervision of first party No. 1, there is absolutely no documentary evidence that the services of the workmen were placed by the first party No. 1 with the first party Nos. 2 and 3. It is crystal clear that the individual contract work of the workmen continued till the cessation of agreement between the first party No. 1 and first party Nos. 2 and 3. The first party Nos. 2 and 3 might have paid remuneration to the second party workmen on the basis of the amount of work done by them but there was no

employment or payment of monthly salary and therefore the second party workmen were never the employees under the first party Nos. 2 and 3. After a careful consideration of the evidence on record, I am constrained to hold that the WESCO, Sambalpur (first party No. 1) and its agency M/s. Phoenix I.T. Solutions (first party Nos. 2 and 3) never appointed the second party members as their employees and therefore there is no question of termination of their service. The workmen rendered service to the first party management at different times under their individual contract for service and therefore, any refusal for employment on 10-2-2006 by the management cannot be said to be illegal or unjustified. The issue No. (i) is accordingly answered against the workmen.

11. *Issue No. (ii)*—Since I have already held that the second party members are not the employees of the first party management, they are not entitled to any reinstatement or payment of back wages as claimed by them. The issue No. (ii) is accordingly answered against the workmen.

Hence, the following award :

AWARD

The reference is answered on contest without any cost against the workmen. The management has neither illegally terminated the service of the second party members nor refused employment with effect from the 10th February 2006 and therefore, the workmen are not entitled to any relief.

Dictated and corrected by me.

SRIKANTA MISHRA
4-12-2012
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
4-12-2012
Presiding Officer
Labour Court
Sambalpur

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