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## LABOUR & E.S.I. DEPARTMENT

### NOTIFICATION

The 6th March 2013

No. 2279—II/1 (S)-17/2006-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. 21 of 2006 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 Workman Shri Dillip Kumar Mohanty, ex Meter Reader 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. 21 OF 2006

The 4th December 2012

#### *Present :*

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

#### *Between :*

The Management of  
1. M/s Executive Engineer,  
Sambalpur Electrical Division,  
WESCO, Ainthapali,  
At/P.O./Dist. Sambalpur.

.. First Party—Management

2. Regional Co-ordinator,  
M/s Phoenix I.T. Solutions of  
Unit-II, S.D.P. Block-1, V.S.E.Z.,  
Visakhapatnam-530046.

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

And

Their Workman  
 Shri Dillip Kumar Mohanty,  
 Ex Meter Reader,  
 Qr. No. E-25/1,  
 At/P.O. Burla,  
 Dist. Sambalpur.

.. Second Party—Workman

*Appearances :*

For the First Party—Management

.. Shri H.C. Dani, Advocate

For the Second Party—Workman

.. Shri B. K. Purohit, Advocate

## AWARD

This award arises out of a reference made by the Government of Odisha, Labour & Employment Department under Section 10 (1) (c) of the Industrial Disputes Act, 1947 vide their Notification No. 8600—li/1(S)-17/2006-LE., dated the 21st September 2006 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 Shri Dillip Kumar Mohanty, Meter Reader with effect from November, 2005 by way of refusal of employment is legal and/or justified ? If not, to what relief the workman Shri Mohanty is entitled ?”.

2. The case of the second party workman as per his statement of claim is that he is a highly skilled workman having passed I.T.I in Wireman Trade. He was appointed by the first party management No.1 as a Meter Reader with effect from the 16th February 2001. He was being paid wages on Piece Rated Basis with revision from time to time by the first party management No.1 with effect from the 1st November 2004. The first party No.1 outsourced certain works like Spot Billing, Collection of consumer data, etc. to private entity, i.e first party Nos.2 and 3. The first party No. 1 put the second party to work under the first party No.3 to perform the said outsourced work and the second party amongst others performed the said work satisfactorily up to October 2005. The workman alleges that though he was working under the first party for more than 4 years, they did not provide him the statutory entitlement like bonus, leave salary, EPF, ESI, holidays leave, etc. with effect from November, 2005. The management jointly refused employment to the second party without paying any retrenchment benefits under the provisions of the Industrial Dispute Act. The second party approached the District Labour Officer, Sambalpur for redressal of his grievance along with the other retrenched workers. As per the direction of the DLO, Sambalpur, the first party reinstated some retrenched workers including the juniors to the second party but arbitrarily discriminated him. He claims that he was deprived of work in violation of Section 25-H of the

Industrial Disputes Act and new persons were engaged by the first party ignoring him, with such averments the workman prays for reinstatement in service with full back wages and all other service benefits.

3. The first party management No.1 filed written statement objecting the maintainability of the case on the ground that it is not the employer of the second party who was a contractual worker and had no right to continue in employment beyond the contract period. It is the specific case of the first party No.1 that the second party was performing the job of Meter Reader on contractual basis for certain period and was subsequently engaged by the first party No.1. According to it, the claim of the second party regarding regularisation in service is misconceived and without any basis.

4. The first party No.2 was set *ex parte*. The first party No.2 filed written statement wherein it asserted that the second party is a stranger to him. It has no idea about the claim of the workman regarding his appointment by the first party No.1. The first party No.3 denies the fact that the second party worked under it as a workman with effect from October, 2005. According to this party, the claim of the second party should be dismissed with cost.

5. The second party filed a rejoinder stating therein that the management in the written statement tried to twist the law of the land. He claims that his job was specific and perennial and as such he is entitled to the claim.

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

#### ISSUES

- (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 Shri Dillip Kumar Mohanty, Meter Reader with effect from November, 2005 by way of refusal of employment is legal and/or justified ?
- (ii) If not, to what relief the workman Shri Mohanty is entitled ?”

7. The workman examined himself and proved several documents which were marked as Ext. W.1 to Ext. W.22. The first party No.1, the Executive Engineer, SED (WESCO) was examined as sole witness who proved several documents marked Ext. M.1 to Ext. M.7.

#### FINDINGS

8. *Issue No. (i)*—The second party workman, during course of his evidence, has clearly deposed that he passed Matriculation and then I.T.I. in Wireman Trade and therefore, he has technical qualification suitable for being appointed as Meter Reader or Helper in any electrical industry. He

deposed that on 16-2-2001, he was appointed as a Meter Reader by the WESCO Limited and was posted at Burla -1 and Burla-2 Section. He was allotted the work to take meter reading and distribution of engery bills of single phase domestic and commercial consumers under Burla Subdivision and his such process of work continued till December, 2005. The workman has further deposed that he was also allotted the work of revenue collection under the SDO (Commercial), Burla and also allotted the work of Electrical Helper, Meter Installer at different places under the control and supervision of the management No.1, i.e. WESCO. In support of his qualification, the workman has filed the copy of High School Certificate Examination marked Ext. W.3 which reveals that he passed the said examination held in the month of April, 1984 under the Board of Secondary Education, Odisha. A copy of National Trade Certificate issued in favour of the workman in the year, 1990, has been marked as Ext. W.6. The copy of concerned marksheet has been marked as Ext. W.5. As per these documents the workman completed the course of training at I.T.I., Hirakud and passed the Trade Test in the trade of Wireman held in the month of February, 1990. The Council of Vocational Training, Odisha has also issued a certificate to the workman certifying that he has passed the prescribed Trade Test in the Trade of Wireman specifying the marks secured in each paper and the copy of the said document has been marked as Ext. W.2. The workman also obtained apprenticeship training under the Odisha State Electricity Board, Electrical Operation Divisions, Burla and a certificate to that effect was issued in his favour in the year 1992 by Additional Subdivisional Officer, Power House, Burla which is revealed from the copy of the certificate marked Ext. W.4. This document specifies that the workman has undergone Apprenticeship Training in the trade of Lineman for a period of 2 years i.e. from the years 1990 to 1992. The concerned officer has certified that during the training he has gathered experience in maintenance of Hydro Genertors, Turbines and Power Transformers. He has also got experience in overhauling three phases, 440 volts motors and starters so also generators. The certificate vide Ext. W.4 was specifically issued for employment purpose. The above evidence is not challenged by the managements and therefore, it can safely be said that the second party workman is a highly skilled person and able to do several types of electrical works as that of Electrical Lineman, Helper, Meter Installer, etc.

9. It is the claim of the workman that on 16-2-2001 he was appointed as a Meter Reader by the first party No.1 and continued to perform the said job till December, 2005. The first party No.1 in his written statement mentioned that the second party was engaged in the capacity of individual employment contract for service and he cannot be terned as an employee under him. According to the management, the second party was only performing some contracted description of work like Meter Reading, Spot Billing, Electrical Servey and Three phase distribution, transformer reading etc. and his nature of work is not perennial work. The first party management No.1 submit that the second party only worked under the first party No.3 on contractual basis. The specific evidence of the workman that he was appointed by the WESCO on 16-12-2001 is not disputed by the first party.

It reveals from the documents filed by the first party that on 21-4-2004 the first party No.1 entered into an agreement with the first party No.3 regarding collection of electricity charges and consumer care. A copy of the agreement has been marked as Ext M.5. It is therefore crystal clear that the first party No.3 was not in picture with the workman who was initially appointed as Meter Reader under the first party No.1. It reveals from the evidence on record that during the last part of the year 2004 the first party No.1 decided to outsource the Meter Reading, Spot Billing and collection of consumer data for which it made agreement with the first party Nos.2 and 3. But before the agreement, the workman was working as a Meter Reader under the WESCO (first party No.1). The first party No.1 for its own convenience entered into an agreement with the first party No.3 and such agreement cannot affect the interest of the workman which arose out of a continuous service for a period of about 4 years. The workman during course of his evidence has filed a number of certificates issued in his favour by the Subdivisional Officers, WESCO, Burla which were marked Ext. W.15 to Ext.W.18. These documents reveal that the workman was working as a Meter Reader in the office of the Subdivisional Officer, Distribution Subdivision, WESCO, Burla on contract basis for 5 years. It has been certified that he has a good technical expertise in taking up various meters and he has been working sincerely in the department. The workman has filed several office orders of the SDO, WESCO, Burla regarding the charges of meter reading which are marked Ext. W.9 to Ext.W.11. A copy of letter, Dt. 7-4-2003 issued by the WESCO enhancing the meter reading and bill distribution charges has been marked as Ext. W.12. Copies of the letters issued by the Superintending Engineer, Electrical, Burla Circle and Executive Engineer, WESCO Limited, Sambalpur Electrical Division, are also marked on behalf of the workman as Ext. W.13 and Ext. W.14. These documents reveal that the billing charges were enhanced from time to time. On a careful perusal of the oral and documentary evidence on record, I find, the second party was appointed as a Meter Reader by the WESCO in the year 2001 but there was no fixation of any monthly salary. As per policy decision of the company (WESCO) the workman was being paid remuneration on piece work basis. As per the fixed rate of meter reading, spot billing and distribution of bills, the workman was getting his remuneration and therefore he had no fixed salary. The income of the workman depended upon his own ability and choice to work and therefore he cannot be regarded to be a regular employee under the first party No.1.

10. It is the submission of the workman that his job as Meter Reader is perennial in nature and therefore, although the first party No.1 entered into an agreement with the first party Nos.2 and 3 for meter reading and preparation of bills, the ultimate benefit of the service of the workman went to the first party No.1 and on such reasoning, his termination of service without following the procedure laid down in the Industrial Disputes Act is illegal. On the contrary, it is the submission of the management that the workman was doing the job of Meter Reader as an individual contractor

under the first party No.1 and there was no contract of service . In the case of *Shrivanandan Sharma Vrs. Punjab National Bank Limited* (Reported in 1955 1-LLJ 688), the Hon'ble Apex Court observed that the crucial test for determining the question whether a person is an employee or independent contractor is "Supervision and Control". It is well settled that in order to determine a person to be an employee of another, there must be the existence of the right of the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do but also the manner in which he shall do the work. The greater the amount of direct control exercised over the person rendering the services by the person discontracting for them, the stronger the ground for holding it to be a contract of service. In the present case, the workman has not adduced any evidence to the effect that his job of meter reading was under the direct control of the first party No.1. It is proved from the documents filed by the workman that initially he was getting remuneration at the rate of 0.50 paise per each meter reading and Re. 1 (one rupee) for distribution of bill to each consumer. Such rate was subsequently revised by enhancing the meter reading charge to Re. 1 per each reading. For the purpose of meter reading and distribution of bills to the consumers of electricity, the first party No.1 did not exercise any direct control nor any instruction was issued to the workman to perform his job in any particular manner. Therefore, the relationship between the second party and the first party No.1 was not in the nature of contract of service and rather it was in the nature of contract for service. In such view of the matter, I am constrained to hold that the second party was not an employee of the first party on perennial basis and as such he cannot claim for regular employment under the first party No.1. So far as the relationship between the first party Nos.2 and 3 and the second party, I find the workman alleges that he worked under the first party Nos.2 and 3 as the first party No.1 placed his employment with them. There is absolutely no documentary evidence to support such assertion of the second party. It is true that the first party No.1 entered into contract with first party Nos.2 and 3 for smooth functioning of its Consumer Care Unit but in absence of any direct control over the second party and in absence of any written communication, it cannot be said that the second party was forced to serve under the first party Nos.2 and 3. Besides, as per the written statement of the first party No.2, the contract between the first party Nos.1 and 2 & 3 has in the meantime ceased to operate. Such fact is not disputed by the workman. It appears that the workman rendered service as a Meter Reader on contractual basis under the first party Nos.2 and 3 for the period of contract between the first party Nos.1 & 2 and 3 when the tenure of contract expired, the workman got no contract job and therefore he approached the labour forum.

11. On a careful scrutiny of the evidence on record and the discussions made above, I am constrained to hold that the workman has failed to establish that his service was terminated by way of illegal refusal of employment by the first party management. The issue is accordingly answered against the workman.

12. *Issue No. (ii)*—Since it has been held that the second party was not a regular employee under the first party management, he is not entitled to reinstatement in service, the second party was never getting any fixed salary and therefore he is not entitled to get any back wages as claimed by him.

Hence, the following Award.

#### AWARD

The reference is answered on contest without any cost against the workman. The management has neither illegally terminated the service of the second party nor refused employment with effect from November 2005 and therefore the workman is 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

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

