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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 21st March 2013

No. 2935—IR(ID)-3/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th February 2013 in Industrial Dispute Case No. 9 of 2011 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Odisha Forest Development Corporation Ltd., Bhubaneswar and their Workman Shri Dharmasoka Parida 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. 9 OF 2011

Dated the 14th February 2013

Present :

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

Between :

The Management of
Odisha Forest Development
Corporation Ltd., Bhubaneswar/
The Managing Director, Odisha Forest
Development Corporation, Ltd.,
Balangir (CKL) Division, Balangir.

.. First Party—Management

And

Their Workman
Shri Dharmasoka Parida,
S/o Late Bishnu Charan Parida,
Palace Line, Balangir,
Dist. Balangir.

.. Second Party—Workman

Appearances :

Shri A. K. Guru, Law Officer	. . . For the First Party—Management
Self	. . . For the Second Party—Workman

AWARD

This Award arises out of a reference made by the Government of Odisha in the Labour & Employment Department under the powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short "the Act") vide order under Memo. No. 3999(5), dated the 25th April 2011. The dispute involved under the Schedule of reference is as follows :—

"Whether the action of the Divisional Manager, Balangir Division, O.F.D.C., Balangir in terminating the services of Shri Dharmasoka Parida, Daily Wage Worker by way of retrenchment with effect from the 11th August 2001 is legal and/or justified ? If not, what relief is he entitled to ?"

2. The case of the second party workman as per his statement of claim is that the first party employed him on 1-12-1985 and assigned duties in its establishment and he performed his duty as and when directed and required by the management getting wages on monthly basis. He was in continuous service from 1-12-1985 but all of a sudden, the second party was refused from his service with effect from the 11th August 2001 without assigning any reason thereof. Such act amounts to illegal retrenchment. The second party alleges that the first party did not follow the principles "first come last go" and "last come first go" and retained the service of some workmen who were junior to him violating the Section 25-G of the I.D. Act. According to the second party, his retrenchment/termination of service is nonest and void and he should be deemed to be still in service under the first party and entitled to reinstatement with full back wages.

3. The first party filed written statement stating therein that the second party raised this dispute after 10 years of alleged retrenchment and therefore, the reference is bad in law. According to the first party, there is no dispute in existence and the second party is not entitled to any relief. It is the specific case of the first party management that the second party was engaged on daily wage basis without any recruitment procedure during the month of December 1985 by the Balangir Plantation Division. There was a merger of 3 forest based Corporations, namely, O.F.C., O.F.D.C. and S.F.D.C. with effect from the 1st October 1990. The Balangir Plantation Division of the erstwhile O.F.C. Ltd. was merged with the Balangir Afforestation Division and O.F.D.C. Ltd. After the merger of the 3 Corporations it was noticed that several appointments were made beyond the requirement yardstick and there was large surplus of employees in comparison to the work available in the Corporation. During the year 1992, M/s. Tata Consultancy Services were appointed for manpower planning and reorganisaition of the services and the said institution suggested for reorganisation of different fields units and indicated that 3,281 employees in regular cadre were surplus. The major trade of the Corporation, namely, Timber falling was completely banned in the year 1992 which seriously affected the revenue earning of the organisation. According to the first party, their Corporation is running in continuous loss and by the end of Financial Year 2000-2001 the loss was nearly 43.21 crores. The Board of Directors of the Corporation in their 188th meeting held on 26-6-2001 decided to retrench all the daily wage employees numbering 1,047 and implement V.R.S. drive for regular employees and instructions were issued to all Divisional Managers and General

Managers to retrench the daily wage employees following due procedure of law. The second party workman was issued show cause notice vide Division Office Letter No. 1885, dated the 8th July 2001 against the proposed retrenchment which he received on 10-7-2001. On the same day the second party submitted a reply stating therein about pendency of one writ petition bearing No. 7959/1998 before the Hon'ble High Court of Orissa. The said writ petition was withdrawn by the workman on 16-7-2009. During pendency of the writ application and in compliance to the Hon'ble Court's Order, dated the 27th July 2002, the Divisional Manager, Balangir (C) Division passed a reasoned order of reinstatement vide Office Order No. 142, dated the 30th July 2001 stating that the workman shall get wages for the month of May, June and July, 2001, notice pay in lieu of notice and retrenchment compensation for the total period he worked. Accordingly, an Account Payee Cheque bearing No. 241305, dated the 30th July 2001 for Rs. 19,345 was offered to the workman but he refused to receive the same. The letter along with the cheque was sent to him through registered post which could not be served upon him due to his absence at home. According to the first party, the Corporation is taking drastic steps for reduction of regular staff and therefore, there is no available work to engage the second party. With such averments, the management submits to answer the reference in their favour.

4. On receipt of written statement, the second party filed a rejoinder stating therein that he has been deliberately retrenched though the daily wage workers junior to him were regularised service by the first party management. He alleges that his right to protection has been infringed by the illegal act of the first party. He prays for reinstatement with full back wages and cost of litigation.

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

ISSUES

- (i) "Whether the action of Divisional Manager, Balangir Division, O.F.D.C., Balangir in terminating the services of Shri Dharmasoka Parida, Daily Wage Worker by way of retrenchment with effect from the 11th August 2001 is legal and/or justified ?
- (ii) If not, what relief is he entitled to ?"

6. The workman examined himself and one Assistant Labour Officer and proved several documents which were marked as Ext. W-1 to Ext. W-30. The first party management examined sole witness namely Uttam Kumar Mohanty, L. D. Assistant of the management, who proved several documents marked Ext. M-1 to Ext. M-16.

FINDINGS

7. *Issue No. (i)*—The second party claims to be a workman employed by the first party since Dt. 1-12-1985 and worked under them till Dt. 11-8-2001 when he was refused to serve. It is the specific stand of the first party that the second party was engaged on daily wage basis without following due recruitment procedure by notifying through Employment Exchange. It is admitted in the written statement that the second party was originally engaged in the erstwhile Balangir Plantation Division during December, 1985 and was paid wages as per the rate prescribed by the Labour & Employment Department from time to time. The witness of the management for the first party deposed evidence that the second party was initially engaged as a daily labourer under Muster Roll basis and continued as such from 1-12-1985 to 31-7-1987 which is evident from Ext. W-8. On perusal of this document, I find, the same is in compliance to the correspondence regarding

regularisation of the service of the second party. Therefore, the same cannot be a basis to hold that the second party was not appointed on daily wage basis. On the contrary, I find the O.F.D.C. Ltd. vide their Divisional Manager's letter No. 120, dated the 18th January 1995 (marked Ext. W-4) intimated the General Manager, Plantation Division, Balangir or a query regarding regularisation of the service of second party has clearly intimated that Shri Dharmasoka Parida (second party) was working in the erstwhile O.F.C., Balangir (PL) Division since Dt. 1-12-1985 and he is continuing as a daily wager as yet. There is no indication in this letter that the second party ever worked as a Labourer under Muster Roll. It is clear that he was all along treated as a daily wage labourer from the date of his appointment. In the above document the Divisional Manager clearly stated that one Chakra Bariha who was engaged from Dt. 11-12-1985 has been regularised. The Divisional Manager further intimated the General Manager, Plantation Zone to take considered steps for regularisation of the second party in the service of the Corporation. It reveals from the evidence on record, more specifically the exhibits W-6 (Letter No. 1164, dated the 3rd August 1995) and a *pro forma* annexed to it, that the second party made representation for his regularisation of service which was approved for consideration by his authorities. Under Ext. W-7 (Letter No. 1339, dated the 5th September 1995) also the Divisional Manager (Plantation), Balangir recommended for regularisation of the service of the second party. It is noteworthy to mention here that the Odisha Forest Corporation Ltd. vide letter No. 18951, dated the 26th September 1990 (Ext. W-2) addressed to all General Managers, Divisional Managers and Regional Marketing Executives under the O.F.C. Ltd. decided to regularise the services of all daily rated/consolidated and *ad hoc* employees working under the Corporation prior to 31-3-1986 and requested to send the list of employees in a *pro forma* by 30-9-1990. Pursuant to the same, the concerned authorities send the list of employees vide Confidential Letter No. 2521, dated the 2nd July 1991, the General Manager, O.F.D.C. Ltd., directed the Divisional Managers of the Corporation to enquire into the irregular proposals, if any in respect of persons listed (Ref. to Ext. W-3). As per the annexure to this document, they Balangir Plantation Division enlisted the name of 28 persons for regularisation in service. The name of the present workman was not entered in the list though his junior, one Chakra Bariha (appointed initially on Dt. 11-12-1985) was entered in the list vide Sl. 28. Since the second party was senior to Shri Bariha being initially appointed on 1-12-1985, he made representation and his authorities recommended for his regularisation as discussed earlier.

8. The law is well settled that while a junior is working, a senior employee cannot be retrenched and this amounts to a breach of Sections 25-G and 25-H of the I. D. Act. Reference in this context is made to the decision of the Hon'ble Supreme Court in the case of State of Haryana *Vrs.* Dilbaugh Singh, reported in 2007(I) C.L.R. (S.C.) 550. In the present case since the second party Shri Dharmasoka Parida is senior to Shri Chakra Bariha, and the said fact is confirmed by the Divisional Manager vide Ext. W-4, I am of the considered opinion that the second party well deserved to be regularised in service and he was illegally deprived of his right. It appears from the record that the management though initially admitted the second party to be a daily wager since Dt. 1-12-1985, it subsequently tried to make a discrepancy regarding his nature of appointment, i.e., either under Muster Roll or daily wager. It is not the case of the management than the second party was sponsored by any other institution to work under Muster Roll. Considering the spirit of letter marked Ext. W-2, I am of the view that all the persons working under the Balangir Plantation Division were intended to be regularised but due to some obvious reasons the second party was discriminated which is clearly illegal. From the documents filed by the second party it is crystal clear that his authorities repeatedly intimated the first party to regularise his service but the same was not duly considered.

9. There is no dispute that the second party continued to work under the management from Dt. 1-12-1985 and only on Dt. 8-7-2001 vide Memo. No. 1885 (Ext. W-11) he was intimated that his service was to be terminated with effect from the 11th August 2001 and he was actually refused to work since that date. There was no disciplinary proceeding and the cause of termination of service is assigned to be surplus manpower and dearth of work load. The second party was called upon to make his submission in the matter and in case of no reply his service should be dispensed with. It reveals from record that the second party in response to the notice made submission on Dt. 10-7-2001 (copy of which is marked Ext. W-12). He intimated that at the time of regularisation of staff during the year 1990, his name was not sponsored by the then Divisional Manager due to oversight and he requested to stop retrenchment considering his continuous period of service from 1985. The management has not come up with any reasonable material as to why the submission of the workman was not considered, particularly when his junior was continued to work.

It further reveals from record that the second party filed writ petition before the Hon'ble High Court of Orissa vide O.J.C. No. 7959/1998 (Ext. W-13) being aggrieved by the act of his authorities in not regularising him in service. He, however withdrew the writ petition with leave of the Court to approach the Industrial Tribunal as a similarly situated person who filed O.J.C. No. 6613 of 1998 prayed to move the Tribunal. No observation was made by the Hon'ble High Court as the writ was not heard on merit. It was merely dismissed as withdrawn. The management under such circumstances cannot take any advantage and its plea that the Labour Forum was moved at a belated stage cannot be considered a ground to deny the second party any relief if he is otherwise entitled to.

10. In my earlier discussions I have already held that the second party was working on daily wage basis under the first party management since Dt. 1-12-1985 and his junior has been allowed to continue in service having been considered for regularisation. The second party was illegally deprived of being regularised though his authorities repeatedly recommended for the same. The management only with an arbitrary plea of surplus of staff and want of sufficient work terminated the service of the second party with effect from the 11th August 2001. When the management has regularised the service of a junior of the second party, the action of refusal of service of second party is clearly violative of Section 25-G of the I. D. Act, 1947. The second party as revealed from the materials on record is recommended by his higher authorities to be a sincere worker and he should be regularised and under such circumstances the whimsical order of termination of service of the second party by the management cannot stand good. It is therefore held that the action of the Divisional Manager, Balangir Division, O.F.D.C. in terminating the services of Shri Dharmasoka Parida, Daily Wage Worker, by way of retrenchment with effect from the 11th August 2001 is illegal and unjustified. The issue is accordingly answered against the first party management.

11. *Issue No. (ii)*—It has already been held that the second party continued in service as a daily wager under the first party from 1-12-1985 till 11-8-2001 when he was illegally terminated from service. The representation of the workman for regularisation in service, recommendations of his authorities for regularisation and his show cause requesting stop of retrenchment having not been properly considered by the first party, he is entitled to reinstatement. However, considering the fact that the second party made too late to move the Labour Machinery (though he wanted to get relief from Hon'ble High Court in writ petition filed in 1998 and withdrawing the same in the year 2009), I feel he is not entitled to full back wages as prayed for. In the facts and circumstances, the second party is only entitled to reinstatement and payment of 50% back wages from the date of his

retrenchment, i.e., 11-8-2001 till the date of reinstatement. The issue is accordingly answered in favour of the second party.

In view of the determination of issues in the manner aforesaid the following Award needs be passed.

AWARD

The reference is answered on contest without cost. The action of Divisional Manager, Balangir Division, O.F.D.C., Balangir in terminating the services of Shri Dharmasoka Parida, Daily Wage Worker by way of retrenchment with effect from the 11th August 2001 is held illegal and unjustified. The first party (management) is directed to reinstate the second party (workman) within two months giving him all service benefits at par with his immediate junior Shri Chakra Bariha. The first party is further directed to pay 50% back wages to the second party from 12-8-2001 till the date of his reinstatement within 3 months of publication of the Award failing which it shall be liable to pay interest on the amount due @ 12% per annum till the date of full realisation.

Dictated and corrected by me.

SRIKANTA MISHRA
14-2-2013
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
14-2-2013
Presiding Officer
Labour Court
Sambalpur

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