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**LABOUR & E. S. I. DEPARTMENT**

NOTIFICATION

The 26th April 2013

No. 4020—IR (ID)-127/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th March 2013 in I. D. Case No. 07/2012 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Budula Primary Agriculture, Co-operative Society, Budula and its 4th grade workmen Shri Bhagyaban Sahu and Shri Ranjit Tandi represented by the President, Balangir District Central Co-operative Bank Grade IV (A) Employees Union, Balangir 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. 07 OF 2012

Dated the 12th March 2013

*Present :*

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

*Between :*

The Management of the . . . First Party—Management  
President/Secretary, Budula  
Primary Agriculture Co-operative  
Society Ltd.,  
At/P.O. Budula, P. S. Loisingha,  
Dist. Balangir.

And

Its 4th Grade Employees . . . Second Party—Workmen  
Shri Bhagyaban Sahu and Shri Ranjit Tandi  
represented by the President, Balangir  
District Central Co-operative Bank  
Grade IV(A) Employees Union, Balangir.

*Appearances :*

|  |       |                                |
|--|-------|--------------------------------|
| Shri Pabitra Sahu, Secretary, Budula PACs. | . . . | For the First Party—Management |
| <hr/>                                      |       |                                |
| Shri B. C. Mohanty, President              | . . . | For the Second Party—Workmen   |

**AWARD**

This Award arises out of a reference made by the Government of Odisha, Labour & E. S. I. 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. 5003(6), dated the 28th June 2012. The dispute involved under the schedule of reference is as follows :—

"Whether non-fixation of pay of the 4th Grade Employees namely Shri Bhagyaban Sahu and Shri Ranjit Tandi, pursuant to the Order No. 18672, dated the 31st July 2009 of the Registrar of Co-operative Societies, Odisha, by the Management of Budula Primary Agriculture Co-operative Society is legal and justified ? If not, what is the relief the concerned 4th grade workmen are entitled to ?".

2. The case of the second-party workmen, as per their statement is claim to that they were employed by the first-party in the 4th Grade of their establishment, Second-party No. 1 namely Shri Bhagyaban Sahu was employed as a Peon since about 8 years back and the second-party No. 2 namely Shri Ranjit Tandi was employed as a Watchman since about 16 years back. They claim that they performed their duties to the satisfaction to their superiors and there is no complaint against them before the Management. But their pay has not yet been fixed. It is the specific case of the second-parties that the Management has not implemented the Order No. 18672, dated the 31st July 2009 of the Registrar of Co-operative Societies, Odisha and since the revised pay scale has not been implemented, they are suffering huge monetary loss. According to the workmen, the above order of the Registrar has already been implemented by other Primary Agriculture Co-operative Societies. With such averments, they pray for a direction to the management to revise their pay scale pursuant to the order of the Registrar, Co-operative Societies and also to pay their differential wages.

3. The first-party filed written statement stating therein that the two workmen are presently receiving Rs. 2,775 each per month on daily wage basis. It is their specific case is that the Board of Management in its Resolution No. 02, dated the 8th August 2011 resolved not to implement the letter of the Registrar, Co-operative Societies, Odisha, Bhubaneswar regarding scale of pay of 4th Grade employees on the ground that the Society was running in loss as per the audit report. In the written statement, the first-party has submitted that there is loss of Society consequitively from the period 2006-2007 till the 20th November 2012. The management submit to pass necessary order taking into consideration the financial position of the Society and in the light of the letter of the Registrar, Co-operative Societies, Odisha, Bhubaneswar.

4. The second-party in response to the written statement submitted a rejoinder wherein they claim that on the basis of the order of the Registrar of Co-operative societies they each are entitled to a monthly salary of Rs. 4,565 (Pay Rs. 2,550 and D. A. @ 79%, i. e., Rs. 2,015). In the rejoinder, it is further averred that the Assistant Registrar of Co-operative Societies, Odisha, vide Office

Order No. 1162, dated the 30th August 2012 has directed to implement the letter dated the 31st July 2009. It is also narrated in the rejoinder that the Board of Management of the first-party in their Resolution No. 06, dated the 28th October 2010 had resolved to implement the order of the Registrar of Co-operative Societies, Odisha, Bhubaneswar regarding the scale of pay of the Peon and Watchman with effect from August, 2009 but they have never resolved that the Society is running in loss. According to the workmen the income of the first-party society is sufficient enough to pay the revised salary of the employees and they take a false stand of loss with a view to mislead the Court.

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

#### ISSUES

- (i) "Whether the reference is maintainable ?
- (ii) Whether non-fixation of pay of the 4th Grade Employees namely Shri Bhagyaban Sahu and Shri Ranjit Tandi, pursuant to the Order No. 18672, dated the 31st July 2009 of the Registrar of Co-operative Society is legal and justified ?
- (iii) If not what is the relief the concerned 4th Grade workmen are entitled to ?"

6. Two workmen examined themselves as witnesses but the first-party did not choose to examine any witness. Several documents were filed on behalf of the second-party members which were marked Ext. 1 to Ext. 4 and the documents filed on behalf of the management were marked Ext. A to Ext. C.

#### FINDINGS

7. *Issue No. (i)*—There is no dispute that the first-party is a Primary Agricultural Co-operative Society which comes under the definition of Industry under the Industrial Disputes Act. There is also no dispute that the second-party members are the 4th Grade Employees under the first-party management and they are working since more than 08 and 16 years respectively in a continuous manner. Therefore, they are workmen as per the definition under Section 2(S) of the I. D. Act. The dispute between the parties in the matter of non-fixation of pay is recognised to be an Industrial Dispute. It reveals from record that the second-party members approached the Assistant Labour Officer, Balangir for settlement of the dispute and the said authority as Conciliation Officer held a discussion with the parties on the 30th July 2011. The Conciliation Officer was satisfied about the existence of the Industrial Dispute but since the management declined to concede to the demand of the workmen, he submitted a failure report to the Government on the 26th August 2011. On the basis of the said report the present reference has been made by the Government. The question under the reference is whether the first-party is justified in not implementing the order of the Registrar of Co-operative Societies, Odisha. The management does not seriously dispute the maintainability of the reference and they have actively participated in the hearing. Under the such circumstances, I am inclined to hold that the reference is maintainable.

8. *Issue No. (ii)*—During course of hearing a copy of Order No. 18672, dated the 31st July 2009 passed by the Commissioner-*cum*-Registrar of Co-operative Societies, Odisha, Bhubaneswar has been marked as Ext. 1. On perusal of this document, I find there was a discussion under the

Chairmanship of the Hon'ble Minister, Co-operation, dated 19th January 2009 for consideration of the demand of the employees Union of LAMPS/PACS/FSCS for fixation of their pay scale and it was resolved that the Primary Agriculture Co-operative Societies and other Societies through their Committee of Management are competent to allow pay and other allowances to the employees. It was suggested that the pay scale of Peon and Watchman of the Primary Agriculture Co-operative Society would be Rs. 2,550–55–2,660–60–3,200. They shall also be entitled to D. A. @ 79% as per ORSP Rules, 1998. As per the said order, the Committee of Management of the Societies were required to allow the pay and allowances to the employees on fulfilment of certain conditions, i. e., volume of business, capacity to pay, profitability and viability. The second-party members have adduced evidence that some other Primary Agriculture Co-operative Societies have already implemented the Order of the Registrar, Co-operative Societies, Odisha but the first-party has not implemented the same taking false stand. The first-party Management though submitted that as per audit report their Society is running at loss, they have not filed any authentic extract of the audit report regarding loss of the Society. Since no positive materials has been furnished by the first-party, it cannot be said that their Society is running in loss. During course of hearing, the workmen have proved one copy of the Order No. 1162, dated the 30th August 2012 issued by the Assistant Registrar of Co-operative Societies, Balangir Circle which has been marked as Ext. 4. As per this document, the Management of the Primary Agriculture Co-operative Societies were directed to implement the circular of the Registrar, Co-operative Societies with effect from the 1st August 2009. The ARCS further directed the management of PACS to pay salary on the revised scale of pay to the employees for the month of August, 2012 and clear up all the arrear dues observing financial position of the concerned PACS. Therefore, it is crystal clear that the second-party workmen are entitled to salary in the revised scale of pay at Rs. 2,550 with 79% D. A. with effect from the 1st August 2009. They are further entitled to revised scale of pay in cash in their salary with effect from August, 2012. It is up to the management to pay the arrear dues of the second-party members after observing their financial position as per the direction of the ARCS, Balangir Circle.

9. It is clear from the pleadings of the parties and the documents relied upon by them so also the discussions made above that the first-party without any justifiable reason withheld to implement the Order No. 18672, dated the 31st July 2009 of the Registrar, Co-operative Societies, Odisha, Bhubaneswar and their such act is illegal and unjustified. The issue No. 2 is accordingly answered in the negative.

10. *Issue No. (iii)*—In view of the discussions made under issue No. 2, this issue is answered in favour of the workmen. An Award should be passed in his favour as per the observation made above.

11. In view of the determination of the issues in the manner aforesaid the reference is answered in favour of the workmen and the following Award is passed :—

#### AWARD

The reference is answered in favour of the workmen on contest without cost. The non-fixation of pay of the 4th grade employees namely Shri Bhagyaban Sahu and Shri Ranjit Tandi, pursuant to the Order No. 18672, dated the 31st July 2009 of the Registrar of Co-operative Societies, Odisha by the management of Budula Primary Agriculture Co-operative Society is held to be illegal and

unjustified. The first-party management is directed to pay the salary of the second-party members in revised pay scale, i. e., Rs. 2,550–55–2,660–60–3,200 with effect from the 1st September 2008 as per the Order No. 18672, dated the 31st July 2009 of the Registrar, Co-operative Societies, Odisha, Bhubaneswar. The management is further directed to pay the salary of the second-party members in the above scale in cash with effect from August, 2012 as per the Order No. 1162, dated the 30th August 2012 of the Assistant Registrar, Co-operative Societies, Balangir Circle. The management is further directed to clear up all the arrear dues of the second-party workmen within a period of 3 months of publication of the Award in the official gazette.

Dictated and corrected by me.

SRIKANTA MISHRA  
12-3-2013  
Presiding Officer  
Labour Court, Sambalpur

SRIKANTA MISHRA  
12-3-2013  
Presiding Officer  
Labour Court, Sambalpur

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