

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 857 CUTTACK, MONDAY, MAY 6, 2013/BAISAKHA 16, 1935

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th April 2013

No. 4053—li/1(B)-65/2002-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th December 2012 in Industrial Dispute Case No. 95 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Quality Control Division, Cuttack and their Workmen Shri Dillip Kumar Biswal and twenty-two others was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 95 OF 2002

Dated the 7th December 2012

Present :

S.A.K.Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Executive Engineer, Quality Control Division, Cuttack. First Party—Management

And

Their Workmen Shri Dillip Kumar Biswal and 22 others. Second Party—Workmen

Appearances :

For the First Party—Management	..	Shri R. Chatterjee, Asst. Research Officer No. II.
For the Second Party—Workman	..	Shri D. K. Biswal, General Secretary

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 9471—II/1(B)-65/2002-LE., dated the 7th August 2002.

“Whether the retrenchment of Shri Dillip Kumar Biswal and 2 others with effect from the 16th February 2002 and Shri Uttam Chandra Rout and 19 others with effect from the 1st December 2001 (as per the list enclosed as Annexure A & B) by the Executive Engineer, Quality Control Division, Cuttack is legal and/or justified ? If not, what relief they are entitled to ?”

2. The case of the workmen, in brief, as set out in their statement of claim is that initially they were working as Laboratory Attendant on N.M.R. basis since 1982 and after opening of Mahanadi Barrage Quality Control and Research Division, the above -named workmen who were working as N.M.R. Laboratory Attendant brought to the same post on work charged basis. According to the workmen, they were working continuously for more than 18 to 20 years prior to their retrenchment on 1-12-2001 and 16-2-2002. Due to preparation of faulty seniority list, they were retrenched from service whereas some employees who were junior to them were allowed to continue in services. The workmen have further stated that the condition precedent to the retrenchment was also not followed at the time of their retrenchment. Therefore, the workmen have prayed for their reinstated in service with full back wages.

3. On the other hand, the management appeared and filed written statement admitting that the above-named workmen were working as work-charged Laboratory Attendant. Due to financial stringency and reduction of work, the Water Resources Department, Government of Odisha vide its Letter No. 20222, dated 29-5-2001 directed to retrench the surplus staff on the principle of “last come first go”. Accordingly, the present workmen were retrenched with effect from the 1st December 2001 and 16th February 2002. Before retrenchment, a gradation list in respect of each category of work-charged employees was prepared by the Superintending Engineer, Mahanadi-Chitropala Island Irrigation Circle, Cuttack and communicated the same to the management vide its letter dated 1-2-2002. The retrenchment of the workmen has been made in accordance with the Letter, No. 44, (Con)., dated 8-2-2002 of the Superinending Engineer, Mahanadi-Chitrotपाला Island Irrigation Circle, Cuttack. The management has further stated that the condition precedent to retrenchment as provided in the Industrial Disputes Act, 1947 was properly followed and the seniority list prepared by the Superinending Engineer, Mahanadi-Chitrotपाला Island Irrigation, Circle, Cuttack is final and

binding on the workmen so also no person junior to the workmen was retained at the time of their retrenchment. Therefore, the question of reinstatement and payment of back wages to the workmen does not arise. On these backgrounds, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues have been settled :—

ISSUES

- (i) “Whether the retrenchment of Shri Dillip Kumar Biswal and 2 others with effect from the 16th February 2002 and Shri Uttam Chandra Rout and 19 others with effect from the 1st December 2001 (as per the list enclosed as Annexure A & B) by the Executive Engineer, Quality Control Division, Cuttack is legal and/or justified ?
- (ii) If not, what relief they are entitled to?”

5. In order to substantiate their pleas, out of 23 workmen, 3 workmen examined themselves as W.Ws. 1 to 3, and proved bunch of documents under the cover of Exts. 1 to 22. Similarly, the management also examined its Assistant Research Officer No.II as M.W.1 and proved bunch of documents under the cover of Exts. A to Z.

FINDINGS

6. *Issue Nos. (i) & (ii)*—Both the issues are taken up together for the sake of convenience.

During the course of hearing, both the parties in their affidavit evidence have reiterated their facts stated in the statement of claim and written statement respectively.

7. The management urged that as per the find seniority list under the cover of Ext.S and as the above-named workmen the junior most employees retrenched after due compliance of the provisions as laid down under Section 25-F of the Industrial Disputes Act, 1947. On the other hand, the workmen urged that the said Ext.S was a defective seniority list and they were not junior employees and also some junior employees are still under the employment of the management and now they are working. The workman further urged that at the time of retrenchment of their services, the management has not complied the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 simultaneously.

8. So, in view of the above rival contentions of both the parties, now this Court has to determine as to whether the gradation/seniority list under the cover of Ext.S was prepared fairly and properly, whether the management has strictly followed the principle of “last come first go” as envisaged under Section 25-G of the Industrial Disputes Act, 1947 and also whether the management after due compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 had retrenched the workmen from their services.

9. On perusal Ext.S, the gradation/seniority list of work -charged staff, it shows that the date of joining of the workmen has been mentioned as 24-5-1985, 25-5-1985, 26-5-1985, 27-5-1985, 5-6-1985 and 7-2-1985. On the other hand, the M.W.1 in his affidavit evidence at Paragraph 13 has clearly admitted that the retrenchment benefits like, gratuity, notice pay and retrenchment compensation of the workmen have been paid for both the N.M.R. end work-charged period taking into account in accordance with the Industrial Disputes Act, 1947. So from it, it is clear that the workmen were working as N.M.R. prior to brought to the cadre of work -charged but at the time of preparation of gradation/seniority list, the management has not taken into consideration the first date of joining in the service of the workmen as N.M.R. On further perusal of Exts.1 and E regarding the date of first joining in the service of the workmen, it is clear that they were working as N.M.R. since 1982 and accordingly the management has also calculated the retrenchment compensation accordingly. On further perusal of Ext.15, the letter of Department of Water Resources, Government of Odisha addressed to the Engineer-in-Chief, Water Resources, Odisha, Bhubaneswar wherein it has been written as follows :

“In inviting a reference to the Letter No. 1483, Dt. 20-3-2002 of Chief Engineer, Drainage, Cuttack-3 on the subject noted above, I am directed to say that it has been decided that 23 work-charged Laboratory Attendants who have been retrenched out of the project cadre may not be retrenched and equal number of N.M.R. Laboratory Attendants/Boys may be retrenched from the research cadre as they are still junior in the N.M.R. list.”

From the above letter, it is clear that the workman were not junior employees at the time of retrenchment. But the management without taking any steps to comply the letter of the Government under the cover of Ext.15 remained silent. So on this point, I am of the opinion that the final gradation/ seniority list under the cover of Ext.S is not a genuine one and also not prepared according to the principle of natural justice. In view of the discussions made above, it is also clear that the management has violated the principle of “last come first go” as envisaged under Section 25-G of the Industrial Disputes Act, 1947.

10. Regarding notice pay and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947, the management filed the documents under the cover of Exts.X and Z which reveals that the management has prepared the same vide Vr. No.448 and 449, dated 31-3-2003 whereas the workmen have retrenched from service with effect from 1-12-2001 and 16-2-2002. So, it is clear that the retrenchment compensation was paid to the workmen after lapse of more than one year of their retrenchment from service. But the specific position of law is that the management must give notice pay and retrenchment compensation to a workman at the time of retrenchment simultaneously. So on this point also, the management has failed to comply the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947.

11. So on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that the retrenchment of 3 workmen with effect from the 16th February 2002 and 20 workmen with effect from the 1st December 2001 by the management is neither legal nor justified. So, the above-named workmen are entitled to be reinstated in service with back wages. However, on perusal of the affidavit evidence of M.W.1, so also cross- examination of W.W.1,

it is clear that all the workmen have already been re-engaged under the management with effect from December 2007. Therefore, at present it is not wise to direct the management for their reinstatement in service. But at the same time, as the management in spite of direction of the Government has not carried out the orders, the above-named 23 workmen are entitled to get full wages from the date of their illegal retrenchment till the date of their re-engagement with continuity of service and all service benefits. However, the management is at liberty to realise the compensation amount from the workmen at the time of payment of their back wages, if the same has not been realised earlier. Both the issues are answered accordingly.

12. Hence, ordered :

That the retrenchment of Shri Dillip Kumar Biswal and 2 others with effect from the 16th February 2002 and Shri Uttam Chandra Rout and 19 others with effect from the 1st December 2001 (as per the list enclosed as Annexure A & B) by the Executive Engineer, Quality Control Division, Cuttack is neither legal nor justified. As the above-named workmen have already been reinstated with effect from the December 2007, now they are only entitled to get their back wages from the date of reinstatement till the date of retrenchment in service with continuity of service and all service benefits. The management is directed to implement this Award within a period of two months from the date of its Notification failing which the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED
7-12-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
7-12-2012
Presiding Officer
Labour Court, Bhubaneswar

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