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## LABOUR & E. S. I. DEPARTMENT

### NOTIFICATION

The 4th January 2014

No. 112—IR (ID)-07/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th November 2013 in Industrial Dispute Case No. 21 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s NEM Engineering Projects Pvt. Ltd., Plot No. 6/169, Near Substation, Dhabalgiri, Jajpur Road, Dist. Jajpur and their Workmen Shri Jagdish Birua and 8 (eight) others was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE NO. 21 OF 2011  
Dated the 12th November 2013

*Present :*

Shri P. K. Ray, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of  
M/s NEM Engineering  
Projects Pvt. Ltd.,  
Plot No. 6/169,  
Near Substation,  
Dhabalgiri, Jajpur Road,  
Dist. Jajpur. . . . . First Party—Management

And

Their Workmen  
Shri Jagdish Birua  
and eight others,  
C/o Birsingh Bodra,  
At Danagadi (Trijanga Bansipur),  
P.O. Danagadi, Dist. Jajpur. . . . . Second Party—Workman

*Appearances :*

For the First Party—Management	. . Shri P. K. Panda, Auth. Representative
For the Second Party—Workman	. . Shri J. Birua, Auth. Representative

## A W A R D

This case has been instituted under Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the 'Act') on a reference made by the Labour & Employment Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 2897—ID-7/2011-LE., dated the 23rd March 2011 with the following Schedule:—

“Whether the action of the management of M/s NEM Engineering Projects Pvt. Ltd., Dhabalgiri, Jajpur Road, Dist. Jajpur in terminating the services of Shri Jagdish Birua, Sunaram Basra, Gour Bardo, Sanjay Bodra, Nandu Hembram, Bijan Singh Sardar, Sany Tiria, Damodar Deogam and Laxman Birua by way of refusal of employment with effect from the 13th August 2009 is legal and/or justified ? If not, what relief these workmen are entitled to ?”

2. The case of the seven second party workmen, namely Jagdish Birua, Sunaram Basra, Sanjay Bodra, Nandu Hembram, Bijan Singh Sardar, Damodar Deogam and Laxman Birua, who have filed claim statement is that they were working under the first party management, who is a contractor under the Principal Employer, namely M/s Brahmani River Pellets Ltd. (hereinafter referred to as “B.R.P.L.”) with effect from the dates mentioned below :—

Sl. No.	Name of the workmen	Designation	Date of joining
1	Jagdish Birua	Gas Cutter	19-11-2007
2	Sunaram Basra	Khalasi	07-11-2007
3	Sanjay Bodra	Rigger	20-11-2007
4	Nandu Hembram	Rigger	19-02-2008
5	Bijan Singh Sardar	Saw Welder	13-03-2008
6	Damodar Deogam	Rigger	07-11-2007
7	Laxman Birua	Rigger	07-11-2007

The B.R.P.L. is manufacturing pellets and more than 100 workmen are engaged as workers under it per working day and hence it is an 'industrial establishment'. The second party workmen who have filed their claim statement have worked for more than 240 days under the first party management and in the industrial establishment of the B.R.P.L. The B.R.P.L., which is an 'industrial establishment' without giving three months notice or obtaining permission from the Government for the purpose illegally retrenched the second party workmen with effect from the 13th August 2009. Being aggrieved by such order they raised the dispute and ultimately on a reference made by the Government this case has been taken up for adjudication.

3. The first party management in its written statement admitting the engagement of the second party workmen Nos. 1 to 7 in fabrication work has stated that since the work was nearing completion, the management having decided to reduce the strength disengaged 27 workmen including the

second party workmen with effect from the 12th August 2009. After receipt of notice 20 workmen collected their dues from first party management but the present second party workmen numbering 7 intentionally did not collect their dues and filed this case. It is stated that none of them has completed 240 days of continuous service nor they are entitled for one month notice. The second party workmen have been retrenched after observing all the formalities. Since they have not completed continuous service for a period of one year, three months notice was not required which is envisaged under Section 25-N of the Industrial Disputes Act, hence they are not entitled to any relief sought for.

4. The first party management in its additional written statement further reiterating its stand taken in the earlier written statement has stated that it is a contractor under the B.R.P.L., Kalinga Nagar, Dist. Jajpur and not a 'factory' nor an 'industrial establishment' within the meaning of Section 25-L of the Industrial Disputes Act. Therefore, the second party workmen are not entitled to three months notice nor wages in lieu of such retrenchment. They have been lawfully retrenched vide notice, dated 12-8-2009 as the fabrication work for which they were engaged is approaching its completion. Out of the 27 retrenched workmen, 21 workmen collected their dues but the second party workmen intentionally did not collect their dues even after receiving the notice of retrenchment. Hence, in no circumstance they are entitled to the reliefs claimed.

5. In the aforesaid premises, the issues framed are as follows :

#### ISSUES

- (i) Whether the action of the management of M/s NEM Engineering Projects Pvt. Ltd., Dhabalgiri, Jajpur Road, Dist. Jajpur in terminating the services of Shri Jagdish Birua, Sunaram Basra, Gour Bodra, Nandu Hembram, Bijan Singh Sardar, Sany Tiria, Dambarudhar Deogam and Laxman Birua by way of refusal of employment with effect from the 13th August 2009 is legal and/or justified ?
- (ii) if not, what relief these workmen are entitled to?

6. To substantiate their respective stand while the second party workmen have examined five witnesses and filed documents marked Exts.1 to 7, the first party management examined one witness and filed documents marked Exts. A to A-VII.

#### FINDINGS

7. *Issue No. (i)*—In this case there is no dispute about the date of engagement or retrenchment of the workmen. Admittedly, the first party management is a contractor under the B.R.P.L. It is manufacturing pellets. While the claim of the second party workmen is that more than 100 workmen were engaged per working day preceding the date of their termination, the first party management in its denial in course of cross-examination remained silent over the aforesaid statement made by the five second party workmen. In course of cross-examination the witness examined on behalf of the first party management has admitted that the contractor (first party management) has got licence to engage 400 workmen. Though the first party management disputes that it is not a 'factory', his evidence on record reflects that it was engaging workers for fabrication work which is a factory under the factories Act. Since the evidence on record leads to the presumption that they have

engaged 100 workmen or more in any of the day in the preceding year, it is one 'industrial establishment' and the provisions of Section 25-N of the Industrial Disputes Act are applicable to it.

Section 25-N of the Industrial Disputes Act, 1947 prescribes as follows :—

“25-N-Conditions precedent to retrenchment of workmen—

- (1) No workman employed in any industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—
  - (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.”

8. On scrutiny of the materials on record it is found that workman Shri Nandu Hembram (Sl. No.4) and Shri Bijan Singh Sardar (Sl. No.5) have worked for more than 240 days prior to the date of their termination. Workmen Shri Jagdish Birua (Sl. No.1), Shri Sunaram Basra (Sl. No.2) and Shri Sanjay Bodra (Sl. No.3) have worked for 194.5 days; 230 days and 225.5 days, respectively prior to the dates of their termination. In the case of workmen, A.E.I.B. Corporation Vrs. A.E.I.B. Corporation, reported in 1985 (51) FLR-481 the Hon'ble Supreme Court has held that— “Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when the workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute standing orders etc.”

In view of the principles laid down by the Hon'ble Supreme Court and taking into account the holidays it is held that the second party workmen named at Sl. Nos. 1, 2 and 3 have also completed 240 days of continuous service under the first party management No.1 prior to the date of their termination. But, the second party workmen, namely Damodar Deogam (Sl.No.6) and Laxman Birua (Sl. No.7) have worked much less than the stipulated period. Therefore, the second party workmen named at Sl. Nos.1 to 5 having completed more than 240 days of continuous service, they are entitled to the benefits envisaged under Section 25-N of the Industrial Disputes Act. There is no dispute that the provisions of Section 25-N of the Industrial Disputes Act has not been followed. Therefore, their retrenchment being in violation of Section 25-N of the Industrial Disputes Act is contrary to law and is illegal.

9. *Issue Nos. (ii)*—As per the findings on issue No.i, the retrenchment of second party workmen named at Sl. Nos. 1 to 5 being illegal, they be reinstated in service with a compensation of Rs. 15,000 (Rupees fifteen thousand only) each in lieu of back wages. Since the second party workmen at Sl. Nos. 6 and 7 have not completed 240 days of service prior to their termination, they are not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY  
12-11-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
12-11-2013  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
N. BEHERA  
Under-Secretary to Government