

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1243 CUTTACK, MONDAY, AUGUST 4, 2014/SRAVANA 13, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 25th July 2014

No. 5919—IR(M)-12/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th February, 2014 in Industrial Dispute Misc. Case No. 01/2013 (u/s 33A) of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1)M/s. Samal Distributors, Labour Contractor of M/s. Goa Carbon Ltd., At Udayabat (Bhitargarh) P.O. Paradipgarh, Dist Jagatsinghpur (2) M/s. Goa Carbon Ltd. At Udayabat (Bhitargarh) P.O. Paradipgarh, Dist Jagatsinghpur and their two workmen represented by General Secretary, Paradip Progressive Construction Workers and Employees Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC.CASE No. 1 OF 2013

(u/s 33-A of the Industrial Disputes Act)

Dated the 5th February, 2014

Present :

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

Between :

Shri Niranjan Swain, .. Complainant
General Secretary,
Paradip Progressive Construction
Workers & Employees Union,
At PPL Chhak, P.O. Atharbanki,
Paradip, Dist Jagatsinghpur.

And

(1)M/s. Samal Distributors, .. Opposite Party
Labour Contractor of M/s. Goa
Carbon Ltd.,
At. Udayabat (Bhitargarh)
P.O. Paradipgarh,
Dist Jagatsinghpur.

(2)M/s. Goa Carbon Ltd., Opposite Party
 At. Udayabat (Bhitargarh),
 P.O. Paradipgarh,
 Dist Jagatsinghpur.

Appearances :

Shri S. Mantry, President of the Union	. .	For the Complainant
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Shri S. Sasmal, Proprietor	. .	For O. P. No. 1
Shri S. K. Mishra, Auth. Rept.	. .	For O. P. No. 2

AWARD

This application under Section 33-A of the Industrial Disputes Act, 1947 has been filed seeking necessary orders for contravention of Section 33 of the Industrial Disputes Act by the O. P. Managements.

2. The case of the complainant is that the first party management No.1 terminated the services of Shri G. Beura, Sardar of Gang No.1 and Shri P. K. Das, Sardar of Gang No.15, who are the Asst. General Secretary and leading member of Paradip Port Construction Workers & Employees Union, respectively with effect from the 25th May 2013 in violation of the provisions of Section 33 of the Industrial Disputes Act.

3. The O. P. No.1 in its show cause challenging the *locus standi* of the complainant to file such a complaint has further stated that the two workmen namely, Shri G. Beura and Shri P. K. Das due to their negligence and misconduct has been suspended from their duties with effect from the 25th May 2013 and a domestic enquiry has been initiated against them. Pending finalisation of the enquiry they have been paid subsistence allowance as per law. Therefore, there is no violation of Section 33 of the Industrial Disputes Act. Accordingly, this case u/s 33-A of the Industrial Disputes Act is not maintainable.

4. The O. P. No.2 in its show cause challenging the maintainability of the case against it has further stated that since the two workmen have been suspended pending disposal of the disciplinary proceeding there is no violation of the provisions of Section 33 of the Industrial Disputes Act and the case filed under Section 33 -A of the said Act is not maintainable.

5. The issues framed in this case are as follows:—

ISSUES

1. Whether this Misc. case is maintainable ?
2. Whether the disciplinary action taken by the Opposite Parties against two workmen is legal and justified ?
3. If not, then what relief the workmen are entitled to ?

6. In support of their respective case, while the complainant has examined two witnesses and filed documents marked Exts. 1 to 9, the O. P. No.1 examined one witness and filed and proved documents marked Exts. A, B, Ext. C series and Ext. D series and the O. P. No.2 examined one witness and did not choose to adduce any documentary evidence.

FINDINGS

7. Issue No. 1—This case has been filed by one Niranjan Swain, General Secretary of Paradip Port Construction Workers and Employees Union under Section 33-A of the Industrial Disputes Act, 1947. Section 33-A of the Industrial Disputes Act envisages to enforce contravention of Section 33 of the Act by any employee aggrieved by such contravention. In the case in hand, Shri Giridhari Beura and Shri Pravat Kumar Das are the so-called aggrieved employees but the complaint has been filed by Shri Niranjan Swain. In the aforesaid factual and legal background this case u/s 33-A of the Industrial Disputes Act filed by Shri Niranjan Swain who is not an aggrieved employee for the alleged contravention is not maintainable.

8. *Issue No. 2*—The allegation of the complaint petition is that the services of Shri Giridhari Beura and Shri Pravat Kumar Das have been terminated vide Exts.3 and 7 respectively. On perusal of the said two exhibits it reveals that in the first paragraph it has been mentioned in Odia that "Enu Apananku Karjyaru Antara Karagala". In the second paragraph it is intimated that a decision has been taken to appoint one enquiry officer to enquire into the matter. Both the aggrieved employees in course of their cross examination have admitted about receipt of 50% of their salary after their *so-called* alleged termination. Therefore, the aforesaid factual aspects lead to show that there is a departmental proceeding against both of them and pending such enquiry they have been put under suspension and paid subsistence allowance.

9. The stipulation in Section 33 of the Industrial Disputes Act is that during pendency of the proceeding of an industrial dispute no employer shall in regard to any matter connected with the dispute alter to the prejudice of the workman concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding or for any misconduct connected with the dispute discharge or punish whether by dismissal or otherwise any workman concerned to such dispute save with express permission in writing of the authority before which the proceeding is pending. Since in the case in hand pending a departmental proceeding both the workmen have been put under suspension and they have neither been discharged nor punished, the provision of Section 33-A of the Industrial Disputes Act will not be attracted.

10. Issue No. 3 —In view of the aforesaid discussions, the case is not maintainable nor the workmen are entitled to any relief claimed for in the present proceeding.

The case is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
5-2-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
5-2-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government