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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 10th October 2014

No. 7906—IR(ID)-87/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th July 2014 in Industrial Dispute Case No. 12/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the management of M/s Ultra Pharmaceuticals, Jagatpur, Cuttack and their workmen Shri Chandramani Panigrahi & 11 others represented by the General Secretary, Jagatpur Industrial Workers Union, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 12 OF 2013
Dated the 26th July 2014

Present :

Shri B. C. Rath, o.s.J.s. (Sr. Branch)
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The management of
M/s. Ultra Pharmaceuticals,
S-3/5, New Industrial Estate,
Jagatpur, Cuttack-754 021.

.. First Party—Management

And

Its workmen namely,
(1) Chandramani Panigrahi
(2) Surendra Das

(3) Sukanta Das
 (4) Prasanta Mohanty
 (5) Rajkishore Lenka
 (6) Babaji Charan Sahoo
 (7) Lingaraj Satpathy
 (8) Pradipta Bastia
 (9) Pitambar Mohanty
 (10) Mirza Matlub Beig
 (11) Ganeswar Sahoo
 (12) Mirza Mehemud Beig,
 represented through Jagatpur .. Second Party—Workmen
 Industrial Worker's Union,
 Gosala Road, Nayabazar, Cuttack-4.

Appearances :

None	..	For the First Party—Management
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Shri S. N. Biswal, Authorised Representative	..	For the Second Party—Workmen

AWARD

The Government of Odisha, in the Labour & E.S.I. Department, in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause(d) of sub-section(1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 795—IR(ID)-87-2012-LESI, dated 30th January 2013 :—

"Whether the termination of services of Shri Chandramani Panigrahi and 11 others, skilled workmen (details enclosed as Annexure-A) by the management of M/s Ultra Pharmaceuticals with effect from the 1st March 2011 is legal and/or justified ? If not, what relief Shri Panigrahi and 11 other workmen are entitled to ?"

2. The case of the above named second party workmen, represented through Jagatpur Industrial Workers' Union, Gosala Road, Nayabazar, Cuttack in brief is that they were all working under the first party management as skilled workmen being employed between 1981 and 1994 on a monthly remuneration ranging from Rs. 2,500 to Rs. 2,800. It is alleged by the second party workmen that although they were discharging their duties to the satisfaction of the Authority, yet the first party management was neither paying their salary regularly nor it was depositing the E.S.I. and E.P.F. dues before the appropriate authorities from 2001. It is further alleged that on their demand to release 50% of their unpaid salary from January 2008 to February 2011 the first party management terminated their services by way of refusal of employment with effect from the 1st March 2011 without complying with the provisions of the Industrial Disputes Act, 1947. It is specifically pleaded in the claim statement that while continuing under the management none of the workmen had ever been charge sheeted for any misconduct or any enquiry was conducted against them for any allegation. It is pleaded that all of them having completed 240 days of continuous service under the first party management in every calendar year till 2011, were entitled to the protection of the provision

contained in Section 25-F of the Act and non-compliance of the same renders the action of the first party management as illegal and unjustified. Lastly, it is pleaded by the second party workmen that since the date of their termination from service all of them having not been gainfully employed elsewhere are facing a lot of financial problem to maintain their livelihood and as such, they are all entitled to be reinstated in service with full back wages with other consequential service benefits.

3. Being noticed the first party management entered appearance in the initial stage of the proceeding but it was *set exparte* vide Order No. 14, dated the 25th February 2014 on account of failing to file any written statement and taking steps after their appearance.

4. In order to substantiate its stand, the second party Union examined two witnesses, out of whom W.W. No. 1 is the General Secretary of the Union and W.W. No. 2 is a concerned workman in the present dispute. Besides the oral evidence, the second party union has also proved certain documents which have been marked as Exts. to 12.

5. W.W. No. 2, Shri Raj Kishore Lenka deposing for himself as well as for his co-workers has stated that inspite of their working for a considerable period under the first party management when on the 1st March 2011 they demanded for payment of their 50% unpaid salary from January, 2008 to February 2011 they were all refused of employment with effect from the said date. It is in his evidence that although all of them had rendered continuous service for more than 240 days in every calendar year and none of them had ever been charge sheeted for any misconduct, the management has put an end to their service without complying with the provisions of the Act. All of them having not been gainfully employed elsewhere since the date of their aforesaid termination, he has claimed reinstatement of all the workmen in service with full back wages. W.W. No. 1, who is the General Secretary of the Union, has stated that the workman involved in the reference are the members of its Union and all of them have been terminated from their services with effect from the 1st March 2011. He has proved Exts. 11 series, the copies of Provident Fund Receipts and Exts. 12 series, the copies of E.S.I. Cards.

6. Admittedly, there is no document to establish that the second party workmen were under the employment of the first party management from January 2008 to February 2011 and they have been refused employment with effect from the 1st March 2011 by orders of the management except xerox copies of Provident Fund Receipts and E.S.I. Cards under Exts. 11 and Exts. 12 series respectively. On a close scrutiny of Exts. 11 and Exts. 12 series it is found that the workmen appearing as member of the second party in the case are either being shown as a subscriber to the E.P.F. under the employment of the first party or they have been enrolled under the E.S.I. Scheme on account of being employed under the first party. Thus, there is nothing on record to disbelieve the uncontroverted evidence led by the second party workmen including Ext. 11 and Ext. 12 series that they were in the employment of the first party management from January 2008 to February 2011 till they were refused employment by the first party management with effect from the 1st March 2011. Further, it appears from the conciliation failure report that the representative of the management had admitted before the Conciliation Officer about the employment of the second

party workmen under the management. The conciliation failure report further reveals that the factory of the management became defunct due to financial difficulties. No claim seems to have been made before the Conciliation Officer regarding compliance of the Statutory provisions while refusing employment to the second party workmen on the alleged ground of defunct of the unit. Considering the uncontroverted oral and documentary evidence placed in the dispute and in absence of any rebuttal evidence, this Tribunal has no other alternative than to hold that the second party workmen were under the employment of the first party management and they were refused employment, which amounts to termination of their services, without compliance of the statutory requirements as contemplated u/s 25-F of the Act. Therefore, such termination of service of the second party workmen made by the first party management without following the due procedure is not sustainable in the eye of law and as such, the same is to be held illegal and unjustified.

7. Now coming to the question of relief to which the second party workmen are entitled to, it is not on record in shape of any evidence to show that the unit of the first party management is now functional. On the aforesaid background any order of reinstatement in favour of the second party workmen may not solve the claim of the workmen. Further, the second party workmen have contributed nothing for the first party management during the period they remained unemployed after termination of their services. In the above facts and circumstances, it is felt just and appropriate to award compensation in favour of the second party workmen in lieu of their reinstatement and back wages. Accordingly, the first party management is directed to pay each of the second party workmen a sum of Rs. 15,000 (Rupees fifteen thousand only) as compensation in lieu of reinstatement and back wages within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

B. C. RATH
26-7-2014
Presiding Officer,
Industrial Tribunal, Bhubaneswar

B. C. RATH
26-7-2014
Presiding Officer,
Industrial Tribunal, Bhubaneswar

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