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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 16th October 2014

No. 8092—IR(ID)-97/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th September 2014 in Industrial Dispute Case No. 15 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s O. F. D. C. Ltd., Satyanagar, Bhubaneswar and their Workman Shri Kalpataru Samantaray was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 15 OF 2013

Dated the 15th September 2014

*Present :*

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

*Between :*

The Management of . . . First Party—Management  
M/s O. F. D. C. Ltd.,  
Satyanagar, Bhubaneswar.

*And*

Its Workman Shri Kalpataru Samantaray, . . . Second Party—Workman  
At/P. O. Angrapada, Dist. Khurda.

*Appearances :*

Shri Ashok Swain, Law Officer . . . For the First Party—Management

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Shri P. K. Swain, Authorised Representative . . . For the Second Party—Workman

## AWARD

The Government of Odisha, in the Labour and 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. 745—IR(ID)-97/2012-LESI., dated the 28th January 2013 :—

“Whether the action of the management of the Divisional Manager, O. F. D. C. Ltd., 217/218, Satyanagar, Bhubaneswar in terminating the services of Shri Kalpataru Samantaray, Watchman (daily wages) with effect from the 9th February 1998 is legal and/or justified ? If not, what relief Shri Samantaray is entitled to ?”

2. The case of the second party workman is that he was engaged as a Watchman with effect from July, 1992 and continued in the said post without any break till the 8th February 1998 when his services were terminated with effect from the 9th February 1998. According to him, the first party management, being an industrial establishment ought to have complied with the provisions of Section 25-N of the Act, but instead it has complied with the provisions of Section 25-F of the Act. Further case of the second party workman is that no Government permission was taken while retrenching him from service. It is further alleged that no gradation list was prepared in the office of the first party management when his service was terminated and subsequently new employees have been engaged in his place. It is further averred in the claim statement that he was supposed to be regularised two years after his joining as a daily wager. When he put forth his claim for regularisation of his service he was retrenched on a plea of surplus staff even though there were sufficient vacancies in the office of the first party management to absorb the second party workman in regular cadre. In the premises, the second party workman has challenged his termination of service as illegal and unjustified and claimed for his reinstatement in service with all back wages and service benefits.

3. The first party management has contested the claim statement of the second party workman denying the pleadings of the workman in *toto* and taking a stand that as per the Government Policy three forest based organisations namely, OFC, OPDC and SFDC were merged and the first party corporation was constituted in the year 1990. After merger of the three corporations, it was observed that the staff strength of the merged Corporations was excess in comparison to the work load and the requirement of the Corporation. Hence, M/s Tata Consultancy Services was engaged to look into the smooth functioning and management of the Organisation and submit a report in that regard. The said Expert Body submitted a report in the year 1993 showing a large number of regular employees as surplus. The said Body did not take the daily wagers into consideration while submitting the report since the number of regular employees were found surplus. As a matter of policy, the first party management took a decision to retrench the surplus staff including the daily wagers on the basis of the recommendation of the Expert Body. Accordingly, one month's notice pay and compensation was paid to the second party workman as per the provisions of Section 25-F of

the Act before his retrenchment. It has been further pleaded by the first party management that no employee junior to the second party workman was absorbed in the organisation after the retrenchment of the second party workman. It has also refuted the claim of the second party workman that the first party Corporation is an 'industrial establishment' and further the dispute having been raised after lapse of eleven years the same is not maintainable.

4. Taking into consideration the pleadings of the parties the following issues have been settled for adjudication :—

#### ISSUES

“(i) Whether the action of the management of Odisha Forest Development Corporation Ltd., Bhubaneswar in terminating the services of Shri SKalpataru Samantaray, Watchman (daily wages) with effect from the 9th February 1998 is legal and/or justified ?

(ii) If not, what relief Shri Samantaray is entitled to ?”

5. In support of their respective case while the second party workman has examined himself and filed documents marked Exts. 1, 2 and 3, the first party management has examined one L. D. Assistant on its behalf and filed documents marked Exts. A to M.

#### FINDINGS

6. *Issue No. (i)*—The learned representative appearing for the second party workman has forcefully advanced his argument to declare the so called retrenchment as illegal and unjustified mainly on three grounds, i. e. the first party management being an 'industrial establishment' was required to comply with the provisions of Section 25-N of the Act including seeking permission from the Government before retrenching the second party workman ; no notice pay and compensation was paid to the second party workman as contemplated under Section 25-F or Section 25-N of the Act and other persons engaged on daily wages and junior to the second party workman were not retrenched and services of some of them are regularized after retrenchment of the second party workman. To strengthen his contention that the first party management is an 'industrial establishment' reliance has been placed on a decision of the Hon'ble Supreme Court, reported in 2007 (II) LLI 95 (Uttaranchal Forest Development Corporation Vrs. Jabar Singh). Besides, it has been submitted that in some other references disposed of by this Tribunal, it has been held that the provision of Section 25-N of the Act is required to be complied with by the first party management holding it as an 'industrial establishment'.

Resisting and refuting the allegations and submissions advanced by the second party workman, the learned representative appearing for the first party management has contended that the judgment relied upon by the second party workman is not relevant to the dispute under reference. It is his claim that first party management is not an 'industrial establishment' and the Hon'ble Apex Court have held the Uttaranchal Forest Development Corporation as an 'industrial establishment' on the

basis of specific notification of the Government of U. P. declaring the Corporation as and 'industrial establishment' and as such the authority under reference is not applicable in the instant case. Referring to the principles enunciated by the Hon'ble Apex Court in the case of Hari Nandan Prasad and another *Vrs.* Employer I/R to Management of FCI and Another, reported in AIR 2014 (SC) 1848 and in the case of Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board and Another, reported in AIR 2009 (SC) 3004 and the Award of this Tribunal arising out of I. D. Case No. 47 of 2012, it is further contended that the challenge to the retrenchment having been made after a substantial delay and the workman having worked for a few years, he is at best entitled to receive some compensation, if his retrenchment is found to be not in conformity with the provisions of law and settled principles.

7. It is apparent from the pleadings and contentions advanced by the parties as well as their evidence that there is no serious dispute to the fact that the second party workman was serving as a Watchman on daily wage basis under the employment of the first party management with effect from July, 1992 till his service was terminated on the 9th February 1998. It is claimed by the second party workman that he was not served with any notice or notice pay and compensation under Section 25-N of the Act and no Government permission was sought for before effecting his retrenchment. It is also contended that no notice or notice pay and compensation was paid to him under Section 25-F of the Act even if the first party management is deemed to be not an 'industrial establishment' for sake of argument. This part of the claim of the workman is not denied by the management on a contention that the provision of Section 25-F of the Act is applicable in the case on account of the first party management being not an 'industrial establishment'. According to the first party management, notice pay and compensation as contemplated under Section 25-F of the Act was complied with but the workman in spite of notice did not turn up to receive the same.

8. Coming to the first point of dispute as to whether Chapter V-B which contains the provision of Section 25-N of the Act is applicable to the establishment of the first party management while retrenching the second party workman, it is seen that there is no serious dispute to the fact that workmen numbering more than hundred are employed in the establishment of the first party management on an average per working day for the preceding twelve months of the retrenchment of the second party workman which is emerging from Exts. A, B & K relied upon by the Management. In that view of the matter as per Section 25-K, Chapter - V-B is squarely applicable to the establishment of the first party management. Besides, taking the ratio decided by the Hon'ble Apex Court in the case of Uttaranchal Forest Development Corporations case (*supra*), the first party management being an Identical Organization like the Uttaranchal Forest Development Corporation is to be held as an 'industrial establishment' and there is no reason to hold the first party management not an 'industrial establishment'. Further, it is emerging from the pleadings and

evidence of the parties that the workman was proposed to be retrenched with effect from the 28th February 1997. A copy of the notice towards such retrenchment is exhibited on behalf of the first party management but the same is not sufficient to establish that the second party workman was served with such notice. Moreover, it is emerging that the second party workman did not receive one month notice pay and compensation even as contemplated under Section 25-F of the Act. Though argument has been advanced that the second party workman was duly noticed to receive the compensation and as he did not turn up to receive the compensation and notice pay, the same could not be handed over to him. There is no document to show that the workman was duly noticed to receive the notice pay and compensation. Furthermore, the first party management being an 'industrial establishment' is required to take permission from the Government in order to retrench any of its workman in view of the provisions enumerated in Section 25-N of the Act. Be that as it may be, the order of retrenchment is illegal having not been in conformity with the provisions as contemplated in Section 25-N of the Act. Therefore, the alleged retrenchment can not be said to be a valid retrenchment and the same is not lawful under the provision of either Section 25-N or 25-F of the Act.

9. Though the workman has claimed that persons junior to him have been retained in employment and their services are regularized by the management, he has failed to show who are the persons whose services are retained and regularized by the management. Not a single scrap of paper is also filed in support of his such claim. In that view of the matter, the challenge to the retrenchment made under the provisions of Section 25-G of the Act is not maintainable.

In view of the discussions made above, Issue No. I is answered accordingly in favour of the second party workman.

10. *Issue No. (ii)*—The retrenchment being found to be illegal and invalid the next question that arises for consideration is as to what relief the workman is entitled to. In this connection, a contention has been raised on behalf of the first party management that the reference is bad in law on account of the dispute to the retrenchment is raised after eleven years of such retrenchment. It appears from the materials on record that the workman had worked on daily wages for nearly six years. He was retrenched on the 9th February 1998 and he had raised the dispute for such retrenchment on the 15th November 2010. More than eleven years had lapsed since his termination when he raised the dispute for his retrenchment and claimed for his reinstatement. It cannot also be over sighted that the alleged retrenchment was effected due to surplus staff and inadequate workload of the first party management. The termination of the workman is declared illegal only on a technical ground of non-compliance of the provisions of Section 25-N of the Act. In similar situations, the Hon'ble Apex Court in the case of Hari Nandan Prasad and Jagbir Singh (*supra*) have held that relief by way of

reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held sufficient to meet the ends of justice in such situation. Moreover, in a similar Industrial Dispute in I. D. Case No. 47 of 2012, this Tribunal has awarded compensation instead of the relief of reinstatement and back wages.

Considering all the above aspects, I am not inclined to grant the relief of reinstatement and back wages in favour of the second party workman. However, it is a fit case for awarding some compensation in his favour. Taking into consideration, the facts and circumstances of the case, the nature of employment of the workman, his age and length of his service under the first party management, a compensation of Rs. 50,000 (Rupees fifty thousand only) to the workman in my considered view would meet the ends of justice in the instant case. Accordingly, the first party management is directed to pay the second party workman the above compensation amount within a period of one month of the date of publication of the Award in the Official Gazette or else the amount would carry an interest of 8% per annum.

The reference is answered accordingly.

Dictated and corrected by me.

B. C. RATH

15-09-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

B. C. RATH

15-09-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

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By order of the Governor

M. NAYAK

Under-Secretary to Government