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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 28th October 2014

No. 8505—li-1(SS)-46/2001-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th September 2014 in I. D. Case No. 28 of 2001 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of (I) M/s Narayani Carriers & Contractors (P) Ltd., Nirmal Market, Rourkela, (II) Hindustan Steel Works Construction Ltd., RSP, Rourkela and their Workman Shri Manguli Ch. Sahoo represented through General Secretary, Rourkela Thika Shramika Sangha, Rourkela was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE COURT OF PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 28 OF 2001

Dated the 16th September 2014

*Present :*

Smt. V. Jayashree, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Rourkela.

*Between :*

- The Proprietor,  
(I) M/s Narayani Carriers & Contractors (P) Ltd., .. First Party—Management  
Office at Nirmal Market, Power House Road,  
Rourkela.  
(II) Hindustan Steel Works Construction Ltd.,  
R.S.P., Rourkela.

*And*

Shri Manguli Ch. Sahoo, represented .. Second Party—Workman  
through General Secretary, Rourkela  
Thika Shramik Sangha,  
C/o R.M.S.Bisra Road, Rourkela.

*Appearances :*

Shri S. Biswal, Advocate	.. For the First Party No.1—Management
Shri G. Pujhari, Advocate	.. For the Second Party—Workman

## AWARD

The Government of Odisha in Labour & Employment Department in exercise of their powers conferred under sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide Order No. 13775—li-1 (SS)-46/2001-LE., dated the 27th September 2001 for adjudication :

“Whether the action of the management of M/s Narayani Carriers and Contractors (P) Ltd., Rourkela Steel Plant, Rourkela/Hindustan Steel Works Construction Ltd., Rourkela Steel Plant, Rourkela, in terminating the services of Shri Manguli Charan Sahoo, Brick Cutter, with effect from the 10th December 1999 is legal and/or justified ? If, not, what relief Shri Sahu entitled to ?”

2. The first party management No. I is the M/s Narayani Carriers & Contractors (P) Ltd., SAIL, Rourkela Steel Plant, Rourkela and first party No. II is Hindustan Steel Works Construction Ltd., Rourkela Steel Plant, Rourkela. The second party workman Shri Manguli Charan Sahoo joined the first party management No. I on 17-9-1998 as a Brick Cutter in the job of Coke Oven, Battery No. 5-A and 5-B and when the brick cutting job was over in December, 1999, he was retrenched giving all the benefits as per law.

3. On the complaint of Shri Manguli Charan Sahoo addressed to the Deputy Labour Commissioner, Rourkela complaint made against M/s Narayani Carriers and Contractors (P) Ltd., inside Rourkela Steel Plant, Rourkela that he was not issued with a gate pass inside Coke Oven Battery No. 5-A and 5-B although the management restarted the work engaging other contract labourers with whom he was working previously. He was working as brick cutter in the job of Coke Oven Battery No. 5-A and No. 5-B since 17-9-1998 for a period of 14 months under M/s Narayani Carriers and Contractors Pvt. Ltd., Rourkela Steel Plant, Rourkela. On the complaint, enquiry fixed the management did not attend the enquiry and it was found that there was *prima facie* dispute for intervention. Admittedly, in conciliation requesting the parties to attend, whereas the management did not participated in the conciliation proceeding. Since there was no chance for settlement on the view of the Union Rourkela Thika Shramik Sangha and the management’s view, since all the efforts to reconcile the parties became unfractous, the conciliation proceeding was closed and since the conciliation has failed, the reference was made by the appropriate Government.

4. The second party workman filed a statement of claim averring that the first party No. I, M/s Narayani Carriers and Contractors (P) Ltd., had taken up the repair job of Coke Oven Battery of Rourkela Steel Plant, the principal employer the first party No. III through Hindustan Steel Works Construction Ltd., the principal employer the first party No. II by work order No. 88798—HSCL./ROU/DGM/TC-234. Both Rourkela Steel Plant as well as Hindustan Steel Works Construction Ltd., are public sector undertaking of Government of India under Ministry of Steel of Rourkela Steel Plant is the principal employer and Hindustan Steel Works Construction Ltd., is the principal contractor for executing the job. The work place being inside the Rourkela Steel Plant premises, the entry to

the place has to be permitted by issuing Identity Card/gate pass in respect of each workmen by Rourkela Steel Plant No. III. The first party No. II being the principal contractor has to recommend to the first party No. III to make the Identity Card of the workmen.

5. Shri Manguli Ch. Sahoo, the second party had been working in the job of rebuilding and repair of Coke Oven Batteries since 1972. He was working in the job of brick cutting under different contractors. Although at different times the contractors were changing, Shri Manguli Ch. Sahoo was working with all incoming contractors. He was working with M/s Narayani Carriers & Contractors (P) Ltd., the first party No. I the job of rebuilding and capital repair (Hot & Cold) of Coke Oven Batteries as and when complete, the workman engaged on the said job are terminated. That though the job is not permanent, it is semi-permanent and such jobs are available for 8 to 9 months in a year. The job being specialised in nature, the workers who have been working from 1962 and thereafter are taken by the incoming contractors. The second party workman by virtue of his appointment with the first party was the seniormost and he was the only brick cutter in his respective cadre. Therefore when the job of battery 5-A and 5-B were undertaken for rebuilding/repair, the first party employed the 2nd party workman and on the said job in accordance Section 25-H of Industrial Disputes Act read with Rule 78 of the Central Rules and 83 and 84 of State Rules. However the first party No. I terminated the service of second party and employed fresh workers in the job of brick cutting with ulterior motive who in collusion with first party No. I & III denied the employment to the second party violating the provision of I. D. Act and Rules and also failed to give any notice pay/wages as contemplated under I. D. Act and/or Contract Labour Regulation and Abolition Act read with Orissa Rules. It is submitted that as such this termination was *mala fide*, motivated, intentional, unlawful. Hence, pray that the second party workman is entitled to reinstatement with full back wages and other service benefits and any other relief as deemed fit and proper by the Hon'ble Tribunal.

6. On notices being sent neither the first party No. II appeared nor filed any written statement, so were set *ex parte*.

7. The first party No. I appeared and filed written statement challenging the maintainability admitting that the first party is a contractor by profession. For the purpose of business, the first party enters into contract and moves from place to place for filling tender with the aim of procuring work orders from different organizations. As such the status and working of the workers although remain fluid, temporary in nature and the contractual work always remain a time-bound programme of work. It is averred *inter alia* that the second party workman claim is totally false, vague and baseless.

8. That the first party contractor admits the allotment of the contract by HSCL to then was made vide work order No. 234—HSCL/ROU/DGM/TC-81/1998, Dt. 4-6-1998 and the first party has taken up the rebuilding of battery No. 5 which began from 16-7-1998 and duly completed on 4-1-2001. It is further averred that the at the initial stage when the civil construction work was started refractory bricks were used for the rebuilding of battery. The refractory bricks were sized as per the requirement before it is fixed in the battery. Shri Manguli Ch. Sahoo started his carrier as brick cutter from 17-9-1998 up to 10-12-1999. Shri Manguli Ch. Sahoo alongwith 88 others were paid their full and final settlement keeping in view of their earlier oral understanding at the time of

requirement. All of them collected their claim from them. When there was no such brick cutting job available, there was no point to allow him to sit and earn wages. The present case is not the case of retrenchment. When the period of employment is specified as per the terms of contract with principal which is known to the workers at the time of their employment is not retrenchment as defined under the I. D. Act. Shri Manguli Charan Sahu has been paid with all his claims. The first party contractor has endorsed his written statement with assurance that if they get similar type of job in Rourkela Steel Plant they assured that the case of Shri Manguli Ch. Sahoo will be duly considered for employment.

9. From the statement of claim on behalf of the second party workman and the written statement filed on behalf of the first party No. I following issues emerged for consideration :

- I. Whether the reference is maintainable ?
- II. Whether the action of the management in terminating the services of Shri Manguli Charan Sahu, Brick Cutter, with effect from the 10th December 1999 is legal and/or justifiable ?
- III. If not, to what relief Shri Sahoo is entitled ?

10. The first party No. I M/s Narayani Carriers & Contractors (P) Ltd., Rourkela appeared and filed written statement admitted regarding the claim of the second party that the first party No. II the management of Hindustan Steel Works Construction Ltd., and first party No. III the management of SAIL. Rourkela Steel Plant are public sector under Government of India are the principal employer and the first party No. II being the principal contractors and the first party M/s Narayani Carriers and Contractors (P) Ltd., is the contractor by profession had entered into an agreement with first party No. II & III. The first party has also admitted that for execution of work order No. 234—HSCL/ROU/DGM/TC-81/1998, the second party workman Shri Manguli Ch. Sahoo was engaged. He started his career as brick cutter in the civil construction of work from 17-9-1998 up to 10-12-1999. Thereafter since the employment of Shri Manguli Charan Sahoo along with 88 others was no more required they were paid with full and final settlement as per their earlier understanding at the time of requirement. So it is not the case of retrenchment as claimed by the second party. What is the oral agreement and in absence of suitable supportive evidence it is not believable. The second party workman being aggrieved has come up with a complaint since there exists a dispute between the management and contractor a conciliation was held. The first party did not participate in the conciliation proceeding. Hence the appropriate Government referred this case to this Tribunal to decide the case as mentioned above. Thus the reference is maintainable.

11. So far as Issue Nos. II & III are concerned, since both the issues are interlinked are taken up together. As mentioned above Issue Nos. II & III who are the principal employer under whom the first party No. I, M/s Narayani Carriers and Contractors (P) Ltd., had started by work order 234—HSCL/ROU/DGM/TC-81/98 and the workman was engaged by the contractors to work for a while. Thereafter, he was asked to stop work since 10-12-1999. The first party Narayani Carriers & Contractors Pvt. Ltd., although filed written statement failed to adduce evidence to substantiate their case reverting the rebutting made by the second party in his statement of claim.

12. The second party workman was working under the first party management with effect from 17-9-1998. He was assigned with the job of cutting bricks and was designated as brick cutter. It is not the case of the management that the second party was not discharged his duty to the

satisfaction of all concerned. Admittedly he has never been chargesheeted. He was suddenly refused employment with effect from 10-12-1999. He was retrenched from work. It is pointed out by the representative of the second party that as the first party management was employing more than 100 workers, the provisions of Chapter V (A) of the I. D. Act is applicable and first party management was under obligation to take permission from the appropriate Government before retrenching the second party workman. The management is to follow the principles of 'last come first go' and 'first come last go' principles. The second party claims that the junior of the second party were retained where as he has been retrenched which is illegal. He has not been served with any notice nor he was paid wages in lieu of notice. He has also not been paid of compensation under provision of under Section 25-F of the Act. In the circumstances the retrenchment is void *ab initio* and the 2nd party is entitled to reinstatement with full back wages. As such the provision under Section 21 (4) of Contract Labour (Regulation and Abolition) Act, 1970, the principal employer is liable to pay wages in case the contractor fails to make the payment. Therefore both the first party management are jointly and severally liable to pay the back wages to the second party workman.

13. In the circumstances both the issues are answered positively in favour of the second party workman.

Hence ordered :

The action of the management of M/s Narayani Carriers and Contractors (P) Ltd., Rourkela Steel Plant, Rourkela is found illegal and not justified. He is entitled for reinstatement. The first party management are liable to pay the back wages to the second party workman. Accordingly the reference is decided.

Dictated and corrected by me.

V. JAYASHREE  
16-9-2014  
Presiding Officer  
Industrial Tribunal  
Rourkela

V. JAYASHREE  
16-9-2014  
Presiding Officer  
Industrial Tribunal  
Rourkela

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