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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 28th January 2014

No. 654—IR(ID)-59/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December 2013 in Industrial Dispute Case No. 54 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Cuttack Municipal Corporation, Cuttack and their Workmen Shri Kalandi Behera and 5 (five) others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 54 OF 2012

Dated the 27th December 2013

Present :

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

Between :

The Management of
The Commissioner,
Cuttack Municipal Corporation,
Cuttack. . . First Party—Management

And

Their Workmen : . . Second Party—Workmen

1. Shri Kalandi Barik,
S/o Late Kulamani Barik,
At Jhanjirmangala,
P.O. Telenga Bazar.
P.S. Badambadi, Dist. Cuttack.

2. Shri Rabindra Kumar Das,
S/o Nilakantha Das,
Vill./P.O./P.S. Naugaonhat,
Dist. Jagatsinghpur.
3. Shri Padmanav Behera,
S/o Mayadhar Behera,
Vill. Silpi Kumbhar Sahi,
P.O. Buxibazar, P.S. Purighat,
Dist. Cuttack.
4. Shri Sukanta Behera,
S/o Late Madhab Behera,
Vill. Silpi Kumbhar Sahi,
P.O. Buxibazar, P.S. Purighat,
Dist. Cuttack.
5. Shri Ananta Charan Nayak,
S/o Damodar Nayak,
Vill. Arili, P.O. Naraj,
P.S. Barang,
Dist. Cuttack.
6. Shri Ajay Ketan Das,
S/o Late Narayan Chandra Das,
Vill. Kadalipatana, P.O. Sanajaria,
P.S. Pattamundai,
Dist. Kendrapara.

Appearances :

Shri B. K. Dash, Establishment Officer . . . For the First Party—Management

Shri K. Barik, Workman No. 1 . . . For the Second Party—Workmen

AWARD

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 & E.S.I. Department of the Government of Odisha under Section 12 (5) of the Act vide its Letter No. 9615—IR (ID)-59/2012-LESI., dated the 23rd November 2012 with the following schedule :—

"Whether the services of Shri Kalandi Barik, Shri Rabindra Ku. Das, Shri Padmanav Behera, Shri Sukanta Behera, Ananta Ch. Nayak and Shri Ajay Ketan Das, all N.F.C.P. Supervisors need to be regularised at par with Shri Jyoti Prasanna Mohapatra and Shri Debasis Mohapatra by the Commissioner, Cuttack Municipal Corporation, Cuttack ? If so, what are the details ?"

2. The case of the second party workmen is that they have been engaged as Supervisors in the N.F.C.P. Project under the first party management as per the chart given below :

Sl. No.	Name of the employees	Period of engagement	
		From	To
1.	Shri Kalandi Barik	30-10-1998	11-04-2000
2.	Shri Rabindra Ku. Das	30-10-1998	11-04-2000
3.	Shri Sukanta Behera	30-10-1998	11-04-2000
4.	Shri Ananta Charan Nayak	01-06-1998	11-04-2000
5.	Shri Ajay Ketan Das	30-10-1998	11-04-2000

They have been working as such along with Shri Debasis Mohapatra and Shri Jyoti Prasanna Mohapatra at a time in the Project. Though the services of Shri Debasis Mohapatra and Jyoti Prasanna Mohapatra have been regularised, the services of the second party workmen were terminated with effect from the 11th April 2000 without compliance of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 for which on the complaint made by the above named workmen, the State Government made a reference to this Tribunal on which I. D. Case No. 53 of 2011 has been instituted. Subsequently on another complaint for regularisation of their services in par with Shri Debasis Mohapatra and Jyoti Prasanna Mohapatra, this reference has been made for adjudication of the same.

3. The first party management in its written statement admitting the engagement of the second party workmen as per the chart given by them has stated that the case of the second party workmen does not stand at par with Shri Debasis Mohapatra and Jyoti Prasanna Mohapatra. It is further stated that the second party workmen were not engaged by any valid orders by the appropriate authority. The present workmen have not rendered service continuously for more than a year and therefore, the provisions of the Industrial Disputes Act, 1947 are not applicable to them. These workmen have been disengaged pursuant to the Government in Housing and Urban Development Department's Order No. 36051, dated the 15th December 2000 as they had been engaged after the 19th May 1997, the stipulated date mentioned in the said order. Hence, it has stated that the case of the second party workmen is not maintainable.

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

ISSUES

- (i) "Whether the service of Shri Kalandi Barik, Shri Rabindra Ku. Das, Shri Padmanav Behera, Shri Sukanta Behera, Shri Ananta Ch. Nayak and Shri Ajay Ketan Das, all N.F.C.P. Supervisors need to be regularised at par with Shri Jyoti Prasanna Mohapatra and Shri Debasis Mohapatra by the Commissioner, Cuttack Municipal Corporation, Cuttack ?
- (ii) If so, what are the details ?"

5. In support of their claim while the second party workmen examined one witness and filed documents marked Exts. 1, 2 and 3, the first party management declined to adduce either any oral or documentary evidence in the case.

FINDINGS

6. *Issue Nos. (i) and (ii)*—In this case there is no dispute over the date of engagement of the second party workmen and their termination. It is the admitted case of both the parties that this Tribunal in I. D. Case No. 53 of 2012 has directed the first party management to reinstate the second party workmen in their respective post. The present dispute is relating to regularisation of their services.

In the case of *Secretary, State of Karnataka Vrs. Umadevi and others*, reported in A.I.R. 2006 (S.C.) 1806 (1) their Lordships in Para. 34 have held as follows :—

"Unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it was an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the Court to prevent regular recruitment at the instance of temporary employees whose period of employment has come to an end or of *ad hoc* employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularisation, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which is described as 'litigious employment' he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas, an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The Courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates."

In the *State of Karnataka and others Vrs. M.L. Kesari and others* reported in A.I.R. 2010 S.C. 2587, their Lordships of the Hon'ble Supreme Court in Paras. 7 and 11 have held as follows :

7. "It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in *Umadevi* (A.I.R. 2006 S.C. 1806 : 2006 A.I.R. S.C.W. 1991), if the following conditions are fulfilled, (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any Court or Tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years. (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the

appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

11. "The object behind the said direction in Para. 53 of Umadevi (A.I.R. 2006 S.C. 1806 : 2006 A.I.R. S.C.W. 1991, Para. 44) is two-fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of Courts or Tribunals, before the date of decision in Umadevi (2006 A.I.R. S.C.W. 1991) was rendered, are considered for regularisation in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing person on daily wage/*ad hoc*/casual for long periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on Dt. 10-04-2006 (the date of decision in Umadevi) without the protection of any interim order of any Court or Tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularisation. The fact that the employer has not undertaken such exercise of regularisation within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularisation in terms of the above directions in Umadevi as a one-time measure."

7. In the case in hand Ext. 3 filed on behalf of the second party workmen reveals that in Para. 6 of the Resolution, the Municipal Council has resolved to propose the Government for regularisation of services of 20 N.F.C.P. Supervisors and Para. 6 of the affidavit evidence of W.W. No. 1 reveals that they are also amongst the said 20 N.F.C.P. Supervisors. In view of the aforesaid Resolution in case the second party workmen are amongst the said 20 Supervisors in respect of which the Municipal Council has taken a decision in Para. 6 of Ext. 3, the first party management to consider the claim of the second party workmen in the light of the principles decided by the Hon'ble Supreme Court in Umadevi as well as M.L. Kesari's case (*supra*).

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
27-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
27-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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