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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 10 February 2014

No. 1151—IR-(ID)-41/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2013 in I. D. Case No. 37 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Sasmal Distributors, a Contractor establishment under M/s Goa Carbon Ltd. Paradeep and their contract workmen (11 Nos.) represented through the Paradeep Progressive Construction Workers & Employees Union was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 37 OF 2012

Dated the 31st December 2013

Present :

Shri P. K. Ray, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

- | | |
|-----------------------------|----------------------|
| The Managements of | .. First Party—No. 1 |
| (1) M/s Sasmal Distributor, | |
| At Bijaychandrapur, | |
| Atharbanki, Paradip, | |
| Dist. Jagatsinghpur. | |
| (2) M/s Goa Carbon Ltd., | .. First Party—No. 2 |
| At Udayabat, Paradip, | |
| Dist. Jagatsinghpur. | |

And

Their Contract Workmen, namely,

.. Second Party—Workmen

1. Shri Giridhari Beura,
2. Shri Rajendra Das,
3. Shri Rabikanta Mana,
4. Shri Dillip Das,
5. Shri Sankar Behera,
6. Shri Khageswar Sahoo,
7. Shri Sishir Kumar Sethy,
8. Shri Tapas Mandal,
9. Shri Nityananda Sahoo,
10. Shri Pravat Kumar Das,
11. Shri Prafulla Sahoo,
12. Shri Uttam Pallei.

Represented through Paradeep Progressive
Construction Workers & Employees Union,
At. P. P. L. Chhal, P. O. Atharbanki,
P.S. Paradeep, Dist. Jagatsinghpur.

Appearances :

Shri Santosh Sasmal, Proprietor	..	For the First Party—No. 1
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Shri S. K, Mishra, Auth. Rept.	..	For the First Party—No.2
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Shri S. Mantry, President of the Union	..	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. of the Government of Odisha under Section 12 (5) of the Act vide its Letter No. 4896—IR (ID)-41/2012-LESI., dated the 25th June 2012 with the following Schedule :—

“Whether the action of the management of M/s Sasmal Distributors, a contractor under M/s Goa Carbon Ltd., Paradeep in entrusting the work of Mazdoor to 11 number of workmen (as per list at Annexure-C) designated as Sardars with effect from the 1st February 2011 amounts to change of their service condition ? If so, what relief these workmen are entitled to ?”

2. The case of the second party workmen, represented through Paradeep Progressive Construction Workers & Employees Union (for short ‘PPC Workers & Employees Union’), is that since inception about 362 workers are working in the factory through different labour contractors till 2005 in the establishment of M/s Goa Carbon Ltd. By 2006 the first party management No. 1 became the sole labour contractor of the first party management No. 2 and the workers engaged in the factory since 2000 continued to work under the first party management No. 1. These labourers are mainly engaged for loading, unloading and in the supply section of the factory. In the year 2005 the workers for their protection against the employer joined the PPC Workers and Employees union. After the union came into picture the workers engaged in the loading and unloading work

formulated a group extending to 12 to 17 workers headed by a workman designated as "Sardar" and there are 17 such groups called as Gang of Mazdoors each having one "Sardar". The workers called as 'Mazdoors' used to get their wages through Sardar which was paid by the management on piece rate basis. The Sardars used to find work for the gangs for each day from the Supervisor of the Principal Employer, keep records of the work done by the respective gang and distribute the wages amongst their respective gangs. The Union also protected the interest of the workers by way of bipartite and tripartite wage settlements with both the managements in 2005 and 2009. As per the last tripartite settlement on 11-10-2009 besides 16 Sardars 43 Mazdoors of Supply Section were treated as Semi-skilled Mazdoors but the first party management with the active support of the Principal Employer in order to create fraction instigated the Mazdoors against the Sardars in the pretext that they are taking their wages without any work and later on formulated a co-management union compelling the workers to join the said union called as "Goa Carbon Shramik Sangha" and "Paradeep Industrial Workers Union". As a result, about 350 workers joined in the said two unions leaving apart the office bearers of the earlier union called PPC Workers & Employees Union. Since the Sardars did not join in the new unions they were harassed by the first party management in different ways, even changing the nature of their work, they were compelled to work as Mazdoors. Since the aforesaid action of the managements is within the purview of unfair labour practice as defined under Section 2 (ra) read with Vth Schedule of the Industrial Disputes Act, 1947, the Union raised the present dispute which has ultimately been referred to this Tribunal for adjudication.

3. The first party management No.1 in its written statement has stated that it being a contractor under the first party management No. 2 engages required number of workers including the present disputant for completion of job work. In order to maintain industrial peace the first party management No. 1 assigns job work to different gangs consisting of labourers. They are paid wages as per the piece rate work done by them subject to stipulation of minimum work per day. The Sardars are sharing their wages along with the workers of the concerned gang out of the wages the concerned gang is entitled as per the tripartite settlement dated 11-10-2009. Though the first party management abides by the terms and conditions of the tripartite settlement dated 11-10--2009, the present disputants without doing any work shared the wages with the Mazdoors for which there was a discontentment amongst the Mazdoors. In none of the settlements there was any specific status for the Sardars. They being one of the members of the gang entrusted to do the work and taking the share of wages without doing any work, the Mazdoors submitted a written complaint to the first party management No. 1 with a communication to the District Labour Officer, Jagatsinghpur and to avoid discontentment amongst the Mazdoors the so called eleven Sardars were asked to contribute their labour. Since the Sardars did not resume their duty for contributing labour, the matter was again brought to the notice to the District Labour Officer in the meeting dated 13-4-2011 in which was resolved that the Sardars shall perform their duties in usual manner as that of Mazdoors. As the Sardars did not resume their duties in spite of repeated intimation their entire period from February 2011 to March 2012 was treated as ' no work no pay', hence the claim of the second party union is not entertainable.

4. The first party management No. 2 in its written statement supports the stand taken by the first party management No. 1.

5. The second party union in their rejoinder reiterated its stand taken in the claim statement and refuted the allegations made by both the first party managements.

6. In the aforesaid premises, the issues framed are as under :—

ISSUES

- (i) “Whether the action of the management of M/s Sasmal Distributors, a contractor under M/s Goa Carbon Ltd., Paradeep in entrusting the work of Mazdoor to 11 number of workmen (as per list at Annexure-C) designated as Sardars with effect from the 1st February 2011 amounts to change of their service condition ?
- (ii) If so, what relief these workmen are entitled to ?”

7. To substantiate their respective stand, while second party union examined three witnesses and filed documents marked Exts. 1 to 8, the first party management No. 1 examined four witnesses and filed documents marked Exts. A, B and C and the first party management No. 2 examined one witness but did not adduce any documentary evidence.

FINDINGS

8. *Issue Nos. (i) & (ii)*—The admitted position in this case is that in none of the settlements the nature of work or status of Sardar has been specified. The evidence adduced on behalf of the workmen discloses that Sardar is one amongst the Mazdoors but they do not contribute their labour with the Mazdoors whereas at the same time share the wages of the Mazdoors for the piece rated work done by them taking advantage of the word ‘Sardar’ in the Tripartite Settlement dated 11-10-2009 for which there was a discontentment amongst the Mazdoors. Since nowhere the status of the Sardar has been defined, there is no scope for this Tribunal to hold that the role of the management by asking the Sardars to contribute their labour as that of Mazdoors amounts to any change in their status/conditions of service or it violates any of the provisions of the Industrial Disputes Act. Hence, they are not entitled to any relief sought for.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
31-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
31-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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