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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th February 2014

No. 1904—IR(ID)-157/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th January 2014 in Industrial Dispute Case No. 27 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Berhampur Electrical Division No. 1, SOUTHCO, At Courtpetta, P.O. Berhampur, Ganjam and their workman Shri Megha Naik represented through the Working President, Odisha Rajya Bidyut Karmachari Shramik Sangha was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 27 OF 2013

Dated the 15th January 2014

*Present :*

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

*Between :*

The Management of . . . First Party—Management  
Executive Engineer, Berhampur Electrical Division No. 1,  
SOUTHCO, At Courtpetta, P.O. Berhampur, Dist. Ganjam.

*And*

Their workman . . . Second Party—Workman  
Shri Megha Naik, represented through the Working President,  
Odisha Rajya Bidyut Karmachari Shramik Sangha,  
At Laxminarayan Nagar, P. O. Lanjipalli, Berhampur,  
Dist. Ganjam.

*Appearances :*

None	..	For the First Party—Management
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Shri Megha Naik	..	For the Second Party—Workman himself

## 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. 6244—IR(ID)-157/2012-LESI., dated the 6th July 2013 with the following schedule :—

“Whether the demand of the Working President, Odisha Rajya Bidyut Karmachari Sangha, Power House Colony, Bhubaneswar-12 for regularization of services of Shri Megha Naik, Sweeper by the Executive Engineer, Berhampur Electrical Division No. 1, Berhampur is legal and/or justified ? If so, what should be relief ?”.

2. The case of the second party workman is that he is continuing as a Sweeper in NMR cadre from May, 1981 till date with wages of Rs. 150 per month from 1981 which was enhanced to Rs. 280 per month with effect from January 1987, Rs. 320 per month from September 1995, Rs. 500 from February 1998 and Rs. 1,000 with effect from December 2002. Though he has submitted representation for regularisation of his service and in consideration of the same the Division Office submitted a proposal to the HRD/IR, GRIDCO, the first party management deliberately ignored the same. In the meantime services of Shri E. Bhagirathi, Watchman and Smt. Kuri Naikani, Sweeper who are junior to the second party workman have been regularized. Hence, on the complaint petition filed by the Working President, Odisha Rajya Bidyut Karmachari Shramik Sangha ultimately this reference has been made for adjudication of the dispute.

3. The first party management did not contest the case, hence set *ex parte*.

4. In the aforesaid premises, the only issue to be decided in this case is as follows :—

## ISSUES

(1) “Whether the demand of the Working President, Odisha Rajya Bidyut Karmachari Sangha, Power House Colony, Bhubaneswar-12 for regularization of services of Shri Megha Naik, Sweeper by the Executive Engineer, Berhampur Electrical Division No. 1, Berhampur is legal and/or justified ? If so, what should be the details” ?

5. In support of the case the second party workman in addition to his oral evidence has filed documents marked Exts. 1 to 7.

### FINDINGS

6. *Issue No. 1*—In absence of challenge there is no scope for this Tribunal than to accept the evidence adduced on behalf of the second party workman to the effect that he was appointed as a Sweeper with effect from 1981 in the cadre of NMR and he has been working as such till date.

7. In the case of Secretary, State of Karnataka Vrs. Umadevi and others, reported in AIR 2006 (SC) 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 were 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 Art. 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 AIR - 2010 SC - 2587, their Lordships of the Hon'ble Supreme Court in Paras. 7 & 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 (AIR 2006 SC 1806 : 2006 AIR SCW 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 (AIR 2006 SC 1806 : 2006 AIR SCW 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 AIR SCW 1991) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/instrumentalities do not perpetuate the practice of employing persons 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 the 10th April 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 regularization. The fact that the employer has not undertaken such exercise of regularization 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 regularization in terms of the above directions in Umadevi as a one-time measure."

8. In view of the aforesaid principles decided by the Hon'ble Supreme Court, the first party management is directed to consider the case of the second party workman for regularization of his services within a period of two months of the date of publication of this Award in the Official Gazette.

The reference is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY

15-01-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. K. RAY

15-01-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

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By order of the Governor

N. BEHERA

Under-Secretary to Government