

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 501 CUTTACK, WEDNESDAY, MARCH 12, 2014/FALGUNA 21, 1935

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th February 2014

No. 1909—IR (ID)-88/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th January 2014 in Industrial Dispute Case No. 8 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Basta Electrical Division, Basata of North Odisha Electricity Supply Company, Balasore and their workman Shri Shyam Sundar Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 8 OF 2013

Dated the 17th January 2014

Present :

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

Between :

The Management of
Executive Engineer,
Basata Electrical Division,
Basta of North Odisha
Electricity Supply Company,
Balasore. First Party—Management

And

Their workman
Shri Shyam Sundar Mohanty,
At Durgapur, P.O. Pakhar,
Via Anantapur, Dist. Balasore. Second Party—Workman

Appearances :

Shri D. N. Naik, Auth. Rept.	. . For the First Party—Management
Shri S. S. Mohanty	. . For the Second Party—Workman him self

A W A R D

This case has been instituted under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the “Act”) on reference made by the Labour & ESI Department of the Government of Odisha under Section 12 (5) of the Act vide its letter No. 561—IR (ID)-88/2012-LESI., dated the 19th January 2013 with the following schedule :—

“Whether the termination of services of Shri Shyam Sundar Mohanty, workman in the year 1990 by the management of Executive Engineer, Balasore Electrical Division of erstwhile Odisha State Electricity Board, presently Basta Electrical Division of North Odisha Electricity Supply Company, Balasore is legal and/or justified ? if not, what relief Shri Mohanty is entitled to ?”

2. The case of the second party workman is that he was initially appointed as a regular NMR under the Central Electrical Division, Soro from September, 1977 without any break till 1981 and thereafter from 1981 to 1983 under the Bahanaga Electrical Subdivision, Soro II. The Executive Engineer, Central Electrical Division vide his office Order No.57/4883, dated the 23rd December 1983 transferred him along with 29 other NMRs to work under the S.D.O., Electrical, Basta Subdivision under the Balasore Electrical Division where he continued till 1990. Thereafter he was refused employment. Challenging the said action some of the employees approached the Industrial Tribunal in I.D. Case No. 18 of 1992 and as per the orders passed by this Tribunal their services have been regularised. Though the second party workman has completed more than 240 days he was refused employment for no fault of his own and without compliance of the provisions of the Industrial Disputes Act, 1947. All his representations made to the concerned authorities having been proved futile, he approached the Hon’ble High Court and consequent upon the orders passed by the Hon’ble Court the Assistant Labour Commissioner took up the conciliation on failure of which the State Government has made the present reference for adjudication.

3. The first party management in its written statement admitting the engagement of the second party workman as an NMR from the 1st September 1981 to 30th November 1983 under the erstwhile Soro Subdivision under the Central Electrical Division, Balasore, has stated that the second party workman never joined under the Basta Electrical Subdivision and he has not worked under the said Subdivision as claimed by him. It is stated that he having abandoned the service is not entitled to any relief claimed for.

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

ISSUES

- (i) “Whether the termination of services of Shri Shyam Sundar Mohanty, workman in the year 1990 by the management of Executive Engineer, Balasore Electrical Division of the erstwhile Odisha State Electricity Board, presently Basta Electrical Division of North Odisha Electricity Supply Company, Balasore is legal and/or justified ?
- (ii) If not, what relief Shri Mohanty is entitled to ? “

5. In support of their respective case while the second party workman has examined himself and filed one document marked Ext.1, the first party management examined one witness and filed documents marked Exts. A, B and C.

FINDINGS

6. *Issue Nos. (i) & (ii)*—In this case there is no dispute over the engagement of the second party workman as an NMR from the 1st September 1981 till 30th November 1983. While the second party workman claims to have worked till 1990 the first party management strongly refuted the same. On behalf of the second party workman no document has been filed in support of his continuation after 1983. The only document filed on behalf of the second party is Ext.1 which relates to his transfer made vide Order No.4883, dated the 23rd December 1983 of the Executive Engineer, Central Electrical Division, Balasore. In course of his cross-examination it is elicited that after his recovery from ailment he submitted his joining report which has not been accepted.

7. On scrutiny of the materials on record I do not find any allegation against the second party workman except the abandonment of service. The Hon'ble Supreme Court in the case of G.T. Lad and Chemicals & Fibres of India Ltd., reported in 979 (38) FLR 95 has observed that voluntary abandonment is a question of fact which can be determined basing on the surrounding circumstances, in as much as in case abandonment of service it is the obligation of the first party management to serve a notice on the workman which is found absent in the case in hand. On behalf of the first party management it is stated that in the meantime the management has been change from OSEB to GRIDCO and lastly to NESCO. Therefore, the first party management is no way responsible for any of the liabilities of the erstwhile managements. The settled principle of law is that always the successive management takes up the liability of its predecessor. In the aforesaid circumstances, due to the negligence of the first party management is under obligation to absorb the second party workman as an NMR within a period of two months of the date of publication of this Award in the Official Gazette. However, the second party workman having not served the management during the period he remained out of employment, he is not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
17-1-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
17-1-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

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