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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 12th March 2014

No. 2270—Ii/1 (SS)-1/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2013 in Industrial Dispute Case No. 05 of 2005 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of Superintendent Engineer, Western Electricity Supply Company of Odisha Ltd., Rourkela and President/General Secretary, Western Odisha Bidyut Shramik Mahasangha, Electrical Circle, Rourkela and General Secretary, OSEB Employees Union, Rourkela was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL ROURKELA

INDUSTRIAL DISPUTE CASE NO. 5 OF 2005

Dated the 30th December 2013

Present :

Shri S. K. Mohanty,
Presiding Officer,
Industrial Tribunal,
Rourkela.

Between :

Superintendent Engineer,
Western Electricity Supply
Company of Odisha Ltd.,
Rourkela. . . First Party—Management

And

1. President/General Secretary,
Western Odisha Bidyut Shramik
Mahasangha, Electrical Circle,
Rourkela. . . Second Party—Workmen

2. The General Secretary,
OSEB Employees Union,
Rourkela.

Appearances :

Shri G. C. Pradhan, Advocate	. .	For the First Party—Management
Shri N. C. Mohanty, Advocate	. .	For the Second Party—Workmen

AWARD

1. The Government of Odisha, in the Labour & Employment Department in exercise of powers conferred upon them by 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 disputes for adjudication vide their Order No. 9015—Ii/1(SS)-1/2004-LE., dated the 27th October 2005 :—

> "Whether the termination of services of 60 NMR workers (copy enclosed as Annexure-II) working at Rajgangpur Electrical Division and Rourkela Electrical Division by the management of WESCO with effect from the 1st November 2003 is legal and/or justified ? If not, what relief are they entitled to ?"

2. The case of the second party (hereinafter referred as the workman) is that the second party workmen were employed by the first party to perform its different permanet and perennial nature of work relating to operation and maintenance of electric lines and substations for its smooth functioning for wages and as such are "workman". But they have been illegally terminated by the first party management for which the present dispute has arisen. According to the workmen after formation of GRIDCO 110 members of NMRs/CLRs who were earlier working for 10 to 12 years under the erstwhile OSEB, but not regularised, continued to work under GRIDCO and the employees union have requested the GRIDCO to regularise their service in the post of Helper. The matter was taken up by DLC, Rourkela and the DLC had advised to the Superintending Engineer, Electrical Circle, Rourkela to regularize them in the post of Helper vide his Letter No. 2174, Dt. 19-2-1997 and No. 2398, Dt. 22-2-1997. Further during discussion on 17-8-1997 the Superintending Engineer, Electrical Circle, Rourkela had informed the union that matter was referred to the head office of GRIDCO and it would be decided soon. In the meantime as per the provision of Odisha State Electricity Reform (Transfer of Assets, Liability, Proceedings & Personnel) Scheme Rule, 1998, WESCO came into operation with effect from the 26th November 1998 and as per the provisions made thereunder all proceedings including the dispute complaint etc., lying pending on that date would be decided by WESCO. So the matter of regularization of the above workmen was raised by the WESCO Employees Co-ordination Committee on the 14th March 1999 and subsequently Western Odisha Bidyut Shramik Mahasangha was registerred and the issue of regularization was espoused by this new union. The further case of the workmen is that after number of discussions a bipartite settlement Dt. 5-7-2002 was signed between the representative of WESCO management and the Western Odisha Bidyut Shramik Mahasangha, Sambalpur regarding absorption of ex NMRs of Rourkela and Rajgangpur Electrical Division and it was further agreed for determination of vacant post in unskilled and semi-skilled category through work study and mutual discussion pursuant to the bipartite settlement, the ex NMRs and CLRs were called for interview and after proper screening test 60 persons were selected against the permanent requirement of 30 posts

under Rourkela Electrical Division and 30 post under Rajgangpur Electrical Division. After such selection, they were issued with individual appointment letters stating therein that the said engagement was purely on temporary and contractusal basis for a fix period of 70 days with effect from the 26th July 2002. Though the workmen were individually appointed for a fixed period of 70 days they continued to work as such till 31-10-2003 continuousely. But the management with an oblique intention to deprive them of the status and privileges of regular/permanent workmen of their establishment, has designated them as temporary and contractual workmen. The workmen have also taken the plea that after their appointment, they were directed to work continuously under different electric subdivisions under Rourkela and Rajgangpur Electrical Divisions independently and were engaged to work against different operation and maintenance work which were of permanent/perennial in nature such as attending to fuse call maintenance work, line maintenance, substation maintenance, revenue collection work, etc. According to the workmen though they were initially appointed for a fixed period of 70 days, no subsequent appointment order or extension order was issued to them in any manner and they were required to work as such from 16-7-2002 to 31-10-2003 continuously without any break in any manner and have been employed for more than 240 days in a calendar year. The union of the workmen had earlier raised a demand to fill up the vacant post of Helper lying under the first party management and the said demand was referred to this Tribunal and was adjudicated by this Tribunal vide I.D. Case No. 9 of 2002 wherein the Hon'ble Tribunal was pleased to pass award on 27-9-2003 in favour of the second party workmen directing the management to fill up the 50% of the vacant post of Helper immediately. However to get rid of the demand of the second party workmen union and to deny regularization of post of workmen, all on a sudden the management terminated their service with effect from the 1st November 2003 by way of refusal of employment without any notice and without assigning any reason. It is submitted by the second party union that while terminating their service the first party management has neither served them any notice nor has paid them in lieu of such notice nor paid them retrenchment compensation nor have complied the Section 25-F of the I.D. Act. As such termination of their services by the first party management is highly improper, motivated, illegal and unjustified and is not sustainable in the eye of law, so the second party workmen have prayed this Tribunal to answer the reference in their favour and to direct the management to reinstate the second party workmen in their service with effect from the 1st November 2003 with full back wages along with other consequential benefits.

3. On the other hand, the first party management in their written statement have taken the plea that the present reference is hit by principles of *res judicata* because the matter pending before the Hon'ble High Court in O.J.C. No. 2796 of 1996 is almost the same and similar with the issues involved in the present reference because the said case was also filed for the purpose of regularization wherien the very same workmen were involved and the said writ petition is still pending before the Hon'ble High Court. Further another writ application bearing W.P.C. No. 12841 of 2003 has been filed by the first party management before the Hon'ble High Court challenging the award passed by this Tribunal in I.D. Case No. 9/2002. According to the first party management a contractual workman has no right to continue in employment beyond the contract period and as such the reference on the said ground is misconceived. Likewise temporary workers cannot claim parity with permanent/ regular workers. Moreover as per provision of Section 2 (00) (bb) of the I.D. Act, 1947 termination of contractual employment upon the completition of such tenure do not amount to retrenchment and

as such no dispute is maintainable in that regard. So extension of such contractual period does not mean that the company will carry the liability of appointment and regular employment for contractual employees. According to the first party management as per the bipartite agreement entered into between the management and the second party union on 5-7-2002, only such employees will be absorbed on contractual basis for a timely period against emergent requirement as and when regular vacancy shall arise their case shall be considered for appointment on regular basis subject to their qualifying the test/interviews to be conducted by the management. Therefore, during subsistence of such agreement, arising of the present dispute is bad in law. The first party managment has also denied all averments made by the second party union in their written statements. So they have prayed the Tribunal not to grant any relief in favour of the second party workmen union as prayed for by them in their written statement of claim.

4. From the above pleadings of the parties, the following issues have been framed :

(i) "Whether the termination of services of 60 N.M.R. workers working at Rajgangpur Electrical Division and Rourkela Electrical Division by the management of WESCO with effect from the 1st November 2003 is legal/or justified ?

(ii) If not, what relief are they entitled to ?"

FINDINGS

5. *Issue Nos. (i) & (ii)*—Both the issues have been taken up together for the sake of convenience. To prove that the termination of services of 60 N.M.R. workers working at Rajgangpur and Rourkela Electrical Division by the management of WESCO with effect from the 1st November 2003 as illegal and unjustified, W.W.2 has deposed that before joining under WESCO, he was working in O.S.E.B. for 10 to 12 years as C.L.R and he is continuing as such even after his joining under WESCO and is working under Rajgangpur Electrical Division. He has further stated that 110 CLRs including him working under Rajgangpur and Rourkela Electrical Division have authorized their union to raise the issue of their regularization of their services before the management. So on 5-7-2002 there was a bipartite agreement between the management of WESCO and Western Odisha Bidyut Shramik Mahasangha vide Ext.1 wherein it was decided that the ex N.M.R. will be absorbed on contractual basis for fixed periods against emergent requirement and they will be absorbed on temporary contractual basis for fixed periods subject to they are found physically fit and having good antecedent and the employees who are personally absorbed on contractual basis for fixed periods will be preferred for posting against regular vacancies subject to satisfaction of the elligibility criteria as well as passing the test/interview to be conducted by the management as per the procedure. The evidence of W.W.2 further reveals that as per the aforesaid settlement vide Ext.1 there was a screening test of 110 CLR workers and after the screening test 30 workers of Rajgangpur Electrical Division and 30 workers of Rourkela Division were given contractual appointment on 18-7-2002 for a period of 70 days. Evidence also discloses that after completion of 70 days contractual period they have been continued in service up to 31-10-2003 and from 1-11-2003 they were disengaged without any prior notice and they were disengaged for about 9 months. Thereafter they were given fresh appointment through out sources. But the WESCO management has not issued any certificate to them for their duty period from the 18th July 2002 to the 31st October 2003. However in the meantime they have been regularized in service as Helper in WESCO.

So this reference has been made as they have claimed for their wages for 9 months disengagement period. W.W.1 is the President of Western Odisha Bidyut Shramik Mahasangha and he has proved the bipartite agreement already marked Ext.1 between the management and the union. The order of Superintending Engineer, Electrical Circle, Rourkela to the Executive Engineer, Electrical Division, Rourkela for engagement of 30 workers at Rourkela Division who were successful in the screening test which is marked as Ext.2. This witness has also proved that individual appointment order issued to 60 workers marked Ext.3. This witness has further proved the letter of Superintending Engineer, Electrical Circle, Rourkela to the Executive Engineer, R.E.D to deploy 30 members of ex -workers engaged on contractual basis under Electrical Subdivision (Commercial No.1 & 2), Rourkela and Electrical Subdivision, Banaigarh for attending exclusively to the commercial activities of the company which is marked as Ext. 5. He has also corroborated the evidence of W.W.2 that the workers had continued to work till 31-10-2003 and on 1-11-2003 they were disallowed to work without any notice and compensation. His evidence reveals that subsequently the workers have been engaged on contractual basis through outsourcing and they were regularized as permanent Helpers. According to him the workers are entitled for the wages for the period of their disengagement from 1-11-2003 till their reinstatement through outsourcing.

6. On the other hand, M.W.1 examined on behalf of the management has deposed that as per the bipartite agreement between the management and the workers union a screening test of 110 CLRs was conducted and as 60 out of them came out successful after screening test they were engaged purely on contractual basis for a fixed period of 70 days and as per the requirement such contractual appointment was given for a further period of 70 days each till 30-10-2003 with a break between such engagemet. As such the workmen have never worked for 240 days continuously in any year. So the disengagement of the workmen does not amount to retrenchment and they are not entitled for any back wages and compensation for the 9 months period during which days they were disengaged as claimed by them. But the plea of the management that the workmen were appointed on contractual basis for a specific period of 70 days and they were given such appointment for a further period of 70 days with a break between such engagement till 30-10-2003 does not appear to be reliable and trustworthy, because in that case for each 70 days contractual appointment such engagement order would have been passed and engagement letter would have been issued by the management to the concerned workman. But in this case the management has filed only one appointment letter Dt. 18-7-2002 marked as Ext.3 showing engagement of the workmen for a period of 70 days subject to certain terms and conditions. Save & except that engagement letter, no engagement letter has been filed before this Tribunal to show that the workmen were engaged contractually for 70 days period with a break. M.W.1 being cross -examined has fairly admitted that the management has not filed any documents before this Tribunal to show that there was a break of service of 60 employees after lapse of contractual period of 70 days. He has further stated that documents were there showing payment of wages to the employees. But that document is missing at the time of shifting of office and basing on available records in the office he says that there was break after lapse of 70 days of contractual period. But he has not stated that what are those available records from which he could say that there was break of service and the management has also not made any attempt to produce all those available records before the Tribunal to scrutinize the same

and to come to a conclusion that in fact there was break in service after lapse of 70 days actual period on each occasions. As it appears that there is no dispute regarding engagement of the workmen from 18-7-2002 till 31-10-2003 between the management and the workmen and the only dispute is that while according to the workmen there was no break and they were working continuously for the entire period even after expiry of initial contractual period of 70 days, the claim of the management is that there was break in between the contractual period of 70 days. But there is no oral or documentary evidence from the management side to satisfy the Tribunal that there was break in between contractual period of 70 days on each occasions for the period 18-7-2002 to 31-10-2003. So the evidence of the workman witness that the workmen have worked continuously from 18-7-2002 till 31-10-2003 without any break even after expiry of the initial contractual period of 70 days without any renewal appears to be believable and acceptable. It is also evident from Ext.5 that the workmen have been deployed for collection of revenue and for attending exclusively to the commercial activities of the company. As the workmen were found to have been employed by the management and continued service for not less than one year, the provision of Section 25-F of the I.D. Act shall be applicable to them in case of their retrenchment from service by the management and conditions precedent to the retrenchment of workman as laid down in that section will be applicable to the workman in the present case. As per the provision of Section 25-F of the I.D. Act no workman employed in continuous service for not less than one year under the employer shall be retrenched by that employer until (a) the workman has been given one month notice in writing indicating the reasons of retrenchment and the period of notice is expired or the workman has been paid in lieu of such notice wage for the period of notice, (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months. As in the instant case, the workmen have worked continuously for more than one year covering from 18-7-2002 to 31-10-2003 condition laid down in Clause (a) and (b) of Section 25-F of I.D. Act is clearly applicable to the workmen and the said condition precedent are to be complied with by the management before retrenchment of the workmen. But in the present cae, the management has not complied with the above condition precedent before retrenching the workmen from service and therefore the retrenchment of the workmen by the management with effect from the 1st November 2003 is illegal and unjustified. Of course the management has taken the plea that the reference is hit by the principles of *res judicata* as the matter pending before the Hon'ble High Court in O.J.C. No. 2796 of 1996 is similar with the issue involved in the instant reference case and further W.P.C. No. 12841of 2003 filed by the first party management challenging the award passed by this Tribunal in I.D. No. 9/ 2002 also involves similar fact of law and is subjudiced before the Hon'ble High Court. The management has also filed the certified copy of O.J.C. petition and the Order passed in the writ petition which have been marked as Ext.A & B. This Tribunal has gone through the said documents and it is found that those two documents have no nexus with the terms of reference of this case because the O.J.C. has been filed praying for regularisation of service of the workmen -petitioners and writ petition is filed challenging the award of this Tribunal directing to fill up 50% vacancies of post of Helper through proper advertisement or test or interview of selection.

7. From the dicussion made above, this Tribunal has no hesitation to come to a finding that termination of service of 60 N.M.R. workers working at Rajgangpur and Rourkela Eletrical Division by the management of WESCO with effect from the 1st November 2003 is illegal and unjustified.

So the retrenched workers are entitled to one month wages in lieu of one month notice in writing indicating the reasons of retrenchment and compensation which shall be equivalent to 15 days average pay for every completed year of continuous service which are condition precedent for retrenchment of the workmen as per the provision of Section 25-F of the I.D. Act.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHANTY
30-12-2013
Presiding Officer
Industrial Tribunal
Rourkela

S. K. MOHANTY
30-12-2013
Presiding Officer
Industrial Tribunal
Rourkela

By order of the Governor

R. K. NANDA
Under-Secretary to Government

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