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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 11th April 2014

No. 3286—IR(ID)-105/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th March 2014 in Industrial Dispute Case No. 52/2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of the Executive Engineer, M/s Odisha Industrial Infrastructure Development Corporation (IDCOL), Bhubaneswar and its workman Shri Ganeswar Panda was filed by the above-named workman U/s 2-A(2) of I. D. Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 52 OF 2012

Dated the 6th March, 2014

Present :

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

Between :

The Management of . . . First Party—Management
the Executive Engineer,
M/s Odisha Industrial Infrastructure
Development Corporation (IDCO),
Bhubaneswar Construction Divn. No.II,
IDCO Tower, Janpath, Bhubaneswar.

And

Its workman Shri Ganeswar
Panda, S/o Shri Rajendra Panda, . . . Second Party—Workman
At Rathagada, P.O. Godisahi,
Mundali Colony, Dist Cuttack.

Appearances :

Shri Manas Mohanty, Divl. Head	. .	For the First Party—Management
Shri Ganeswar Panda	. .	For the Second Party—Workman himself

AWARD

This case has been instituted U/s 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 (u/s 12(5) of the Act vide its Letter No. 9601—IR(ID)105/12//LESI., dated the 23rd November, 2012 with the following schedule :—

"Whether the action of the Management of M/s Odisha Industrial Infrastructure Development Corporation (IDCO), Bhubaneswar in refusing employment to Shri Ganeswar Panda, D.L.R.-Typist, with effect from the 1st October 2000 is legal and/or justified ? If not, what what relief Shri Panda is entitled to ?"

2. The case of the second party workman is that he was appointed as a Mate with effect from the 1st July 1989 but he was engaged in various types of work and was discharging the work of a Typist. Though the duties performed by the workman was permanent and perennial in nature, he has been engaged as a Casual employee like a workman. The first party management used to deposit the monthly contribution as per the E. P. F. Scheme under the management's Provident Fund Number. Since the second party workman was getting less pay than his counter parts, i.e. regular employees and his juniors namely (1) Biswanath Padhy, (2) Satyabadi Sarangi, (3) Brahmananda Swain and (4) Sadhu Charan Swain have been regularised ignoring his twenty-one years of unblemished service under the management, he approached the Hon'ble High Court in O.J.C. No.9103 of 1999 wherein the management in their counter affidavit in the said Writ application refuted the claim of the second party workman to have been engaged by the IDCO. However, the Hon'ble High Court disposed of the said Writ application with a direction to approach the labour machinery. He thereafter approached the Labour Court, Bhubaneswar in I. D. Misc. Case No, 87 of 2007 under Section 33-C(2) of the Industrial Disputes Act claiming back wages in which the Labour Court vide its order, dated the 6th September 2011 opined to come through proper procedure. Being aggrieved by such step taken on behalf of the second party workman, the first party management refused him employment on the 3rd October 2000 in violation of the provisions of the Industrial Disputes Act. For such action the second party workman filed his grievance petition

before the D. L. O., Khurda on the 14th August 2007 who took abnormal time for settlement and finally on the report of the labour machinery the State Government has referred the present dispute for adjudication. In the claim statement, the second party workman in addition to his prayer for reinstatement with all back wages has further claimed for regularisation of his service.

3. The first party management in its written statement challenging the maintainability of the case on the ground of limitation, as the second party has raised the dispute after lapse of seven years, has further stated that the second party workman was never engaged by the first party management and he was deployed by the labour contractor and was paid by him. The payment of contribution under the E.P.F. Scheme was made because of its mandatory in nature. It does not establish employer-employee relationship between the first party management and the second party workman, refuting the claim of the second party workman that he was engaged under the BCDD-II from the 1st July 1989 to the 30th September 2000, it is stated that he was engaged through a contractor and while working as such he absconded from duty since the 1st October 2000. Therefore, in no circumstance this case is maintainable nor the second party workman is entitled to the reliefs claimed in the present proceeding.

4. The second party workman in his rejoinder reiterating the stand to have been appointed by the first party management as a D.L.R. has claimed for his reinstatement with back wages and regularisation of his service.

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

ISSUES

(i) "Whether the reference is maintainable ?

(ii) Whether the action of the Management of M/s. Odisha Industrial Infrastructure Development Corporation (IDCO), Bhubaneswar Construction Division No. II, Bhubaneswar in refusing employment to Shri Ganeswar Panda, D.L.R.-Typist, w.e.f. the 1st October 2000 is legal and /or justified ?

(iii) If, not, what relief Shri Panda is entitled to ?"

6. In support of their respective case, while the second party workman examined himself as W. W. No. 1 and filed documents which have been marked Exts. 1 to 15, first party management examined one witness and filed documents which have been marked Exts. A, B and C.

FINDINGS

7. *Issue No. (ii)*—In this case when the second party workman challenges his refusal of employment with effect from the 1st October 2000 as illegal, the stand of the first party management is that the second party workman was not its employee and he was engaged through a labour contractor and while working under the contractor he absconded from duty with effect from the 1st October 2000. To substantiate his claim as an employee under the first party management the second party workman has filed documents such as Ext. 1 series, the copies of attendance sheets,

Ext.2 series, the copies of Muster Rolls, Ext.3, the copy of the letter, dated the 31st August 1995 issued by the Assistant Engineer(Civil), IDCO, Bhubaneswar and Ext.11, the copy of particulars of P. F. statements of Ganeswar Panda, ex D.L.R.-Typist. In rebuttal to the aforesaid documentary evidence on record the first party management has clarified that Muster Roll is being maintained as per the Odisha Contract Labour (Regulation and Abolition) Rules, 1975, the relevant portion of which speaks as follows :

7.1. The principal employer shall ensure the presence of his authorised representative at the place and time of disbursement of wages by the contractor to workmen. It shall be the duty of the contractor to ensure the disbursement of wages in the presence of such authorised representative.

7.2. The authorised representative of the principal employer shall record under his signature a certificate at the end of the entries in the Register of Wages or the Wages-cum-Muster Roll, as the case may be in the following Form :—

"Certified that the amount shown in Column No has been paid to the workman concerned in my presence on at"

Similarly, as per the Employees Provident Fund and Miscellaneous Provisions Act, contribution is to be paid in respect of every employee engaged by or through a contractor, Hence, neither the Muster Roll nor the Provident Fund do not establish the employer-employee relationship between the first party management and the second party workman.

On persual of Ext.2 series, the copies of the Muster Rolls it is found from the certificate given by the Disbursing Officer that the second party workman was a D.L.R. which is contrary to the stand taken by the first party management witness No.1 that there is no provision for appointment of D.L.R. and secondly the payment has not been made directly to the second party workman by the first party management. The letter Ext.3 reveals that the second party workman has been designated as a D.L.R. Typist under the first party management. The E.P.F. statement under Ext.11 reveals that the second party workman was an ex D.L.R. Typist.

Regarding the explanation furnished by the first party management in its written argument with reference to Rule 72 of the Odisha Contract Labour (Regulation & Abolition) Rules, 1975 and the provisions of Employees Provident Fund and Miscellaneous Provisions Act, it is found that such provision of the Odisha Contract Labour (Regulation & Abolition) Rules envisages that endorsement of payment to the workers through wages-cum-Muster Roll to be certified by the principal employer to have been paid in presence of its representative but there is no document furnished by the first party management to show that such amount of E.P.F. has been paid by the first party management on behalf of the contractor nor it has furnished any document to the effect that the second party workman was being paid through the contractor. Therefore, in the absence of any such documents furnished by the first party management in view of the documents filed by the second party workman regarding payment of wages through Muster Roll vide Ext.2, the letter of the Assistant Engineer vide Ext.3 and the E.P.F. statement Ext.11 disclosing the name of the second party workman as an ex D.L.R.-Typist, lead to the conclusion that the second party workman was working as a D.L.R. under the first party management.

8. When the second party workman has claimed that he was refused employment with effect from the 1st October 2000, the stand of the first party management is that he was absconded with effect from the 1st October 2000, of course with a plea that he was engaged through a contractor. Since the stand of the first party management to the effect that the second party workman was engaged through a contractor has not been negated and it has been held that he was engaged as a D.L.R. under the first party management and the first party management failed to produce satisfactory steps taken to substantiate the abandonment of service by way of any notice served upon the second party workman, the same is not acceptable. The aforesaid factors indirectly substantiate the claim of the second party workman that he was refused employment with effect from the 1st October 2000 and there is no compliance of the provisions of the Industrial Disputes Act to legalise the same. Therefore, it is held that the second party workman was engaged as a D.L.R. under the first party management and it terminated his service by way of refusal of employment with effect from the 1st October 2000, in violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947.

9. *Issue No. (iii)*—The second party workman claims for his reinstatement with all back wages and regularisation of service. The reference has been made to adjudicate the dispute relating to the legality and justifiability of the refusal of employment made to the second party workman. In view of the aforesaid finding relating to the illegality of his termination from engagement, he is entitled to reinstatement in his previous post. Since he has not worked from the date of his refusal till his reinstatement, he is not entitled to any wages on the principle of 'no work no pay'. As there is no reference relating to regularisation of his service, I am not inclined to adjudicate the same in this reference.

10. *Issue No. (i)*—The first party management challenged the maintainability of the case on the ground of limitation. Admittedly, the dispute has been raised on the 14th August 2007, i.e. after lapse of seven years. In the case of Karan Singh Vrs. Executive Engineer, Haryana State Marketing Board, reported in 2008 (116) FLR (SC) 237, the Hon'ble Supreme Court has held that the Tribunal has no authority to invalidate the reference, particularly when it has found that the order of termination violates Section 25-F of the Industrial Disputes Act, 1947. In the case in hand the first party management is found to have contravened the provisions of Section 25-F of the Industrial Disputes Act while effecting termination of service of the second party workman. In the aforesaid background, the case is held to be maintainable.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
6-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
6-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
R. K. NANDA
Under-Secretary to Government