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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 12th May 2014

No. 3723—li/1(BH-I)-19/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th March 2014 in Industrial Dispute Case No. 17 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1) M/s Birla Tyres Ltd., Chhanpur, Balasore & (2) 20 Contractor's Establishment executing work in M/s Birla Tyres, Balasore and their contract labourers represented through the Birla Tyres Workers Union, Balasore was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 17 OF 2009

Dated the 26th March 2014

Present :

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

Between :

(1) The Managements of . . . First Party—Managements
M/s Birla Tyres Ltd., Chhanpur, Balasore.

And

(2) 20 Contractor's Establishments
executing work in M/s Birla Tyres, Balasore.

And

Their contract labourers, represented through . . . Second Party—Workmen
Birla Tyres Workers' Union, Balasore.

Appearances :

Shri S. K. Mishra, Advocate	..	For the First Party—Management No. 1
Shri S. K. Dash, Advocate	..	For the First Party—Management No. 2
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Shri D. Mahanta, Advocate	..	For the Second Party—Union/Workmen

AWARD

This case has been instituted under Section 10(1) 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)(c) of the Act vide its Letter No. 8143—li/1(BH)-19/2007-LE., dated the 31st August, 2009 with the following schedule :—

(1) “Whether the contract labourers engaged through different contractors’ establishments in M/s Birla Tyres, Balasore and deployed by the latter in different departments against requirement and absenteeism are required to be taken to the company roll as regular/ company casuals as per the recommendations of Labour Commissioner, Odisha vide Memo No. 14587(5), dated the 17th June 1994 ? If so, what should be the details ?

(2) Whether the management of M/s Birla Tyres, Balasore is required to formulate a rehabilitation scheme for contract labourers and provide compassionate appointment to the nearest family members of a disabled contract labour ?

(3) Whether the management of Birla Tyres is required to absorb and regularise the services of 206 contract labourers as company casual who were retrenched on the 17th November 2000 from Ware House Department by the contractors’ establishment of (1) Baba Enterprises (2) Sony Brothers (3) Nigam Enterprises ? If so, what should be the details ?”

2. The case of the second party union is that in the year 1994 on a demand on behalf of the contract labourers working under the first party management for regularisation of their services along with some other demands the matter was brought to the notice of the Labour Commissioner, Odisha who after an enquiry attended by the Union representatives and the representatives of the first party management submitted his report on the 17th June 1994 recommending for abolition of contract labour and their regularisation in phases. Pursuant to the said recommendation the management took a decision to honour the said recommendation and accordingly entered into agreements only with the workers engaged through M/s Rout Brothers and taken them to its roll in phases.

Regarding introduction of the Rehabilitation Scheme no decision could be arrived at for which the matter has been referred for adjudication.

Further, in the year 2000 the first party management retrenched 206 contract labourers instead of regularising them. Though in the meantime the first party management has taken some of them as company casual but the rest are left out with *mala fide* intention as they are the strong supporters

of the second party Union. Since their job is prennial in nature, they deserve regularisation. In the aforesaid circumstances, due to the contravention of the provisions of law by the first party management ultimately the present reference has been made for adjudication of the disputes.

3. The first party management Nos. 1 & 2 in their separate written statement have taken the common stand challenging the *locus standi* of the second party Union to raise the dispute and further that the Union is stopped to raise any demand which has already been settled up by bipartite settlement since long.

Regarding the introduction of Rehabilitation Scheme they have stated that it cannot be a statutory demand nor the management has any obligation to fulfill the same. In respect of schedule 3 of the reference, it is stated that the matter was earlier referred to the Industrial Tribunal for adjudication vide I. D. Case No. 31 of 2000 and I. D. Case No. 12 of 2001 in connection with the contract labourers of M/s Baba Enterprises, Sony Brothers and Nigam Enterprises in which no dispute Awards have been passed, and challenging which the workers of the said three contractors have approached the Hon'ble High Court in OJC No. 1415 of 2002 which is subjudice. Hence, this issue cannot be adjudicated pending finalisation of the same.

4. The second party Union in their rejoinder reiterating the stand taken in the claim statement has further stated that pendency of the Writ Application in the context does not stand in the way of adjudication of the present case.

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

ISSUES

- “(1) Whether the contract labourers engaged through different contractors’ establishments in M/s Birla Tyres, Balasore and deployed by the latter in different departments against requirement and absenteeism are required to be taken to the company roll as regular/ company casuals as per the recommendations of Labour Commissioner, Odisha vide Memo No. 14587(5), dated the 17th June 1994 ? If so, what should be the details ?
- (2) Whether the management of M/s Birla Tyres, Balasore is required to formulate a rehabilitation scheme for contract labourers and provide compassionate appointment to the nearest family members of a disabled contract labour ?
- (3) Whether the management of Birla Tyres is required to absorb and regularise the services of 206 contract labourers as company casual who were retrenched on the 17th November 2000 from Ware House Department by the contractors’ establishment of (1) Baba Enterprises (2) Sony Brothers (3) Nigam Enterprises ? If so, what should be the details ?
- (4) Whether the reference is maintainable ?
- (5) Whether the reference is bad for non-implementation of any necessary party ?
- (6) Whether the 2nd party Union has a right to raise the dispute ?”

6. In order to substantiate their respective stand, the second party Union has examined two witnesses and filed document marked Exts. 1 to 51. While the first party management No. 1 has examined one witness and filed documents marked Exts. A to H, Exts. J to N and Ext. P, the first party management No. 2 has also examined one witness and filed documents which have been marked Exts. A-I to H-I & Exts. J-I to L-I.

FINDINGS

7. *Issue No. (i)*—The reference in the schedule is whether the contract labourers engaged through different contractors' establishment in M/s Birla Tyres, Balasore deployed in different departments against requirement and absenteeism are to be taken into the company's roll as regular/company casual as per the recommendation of the Labour Commissioner, Odisha, Bhubaneswar. The aforesaid recommendation of the Labour Commissioner is within the purview of Section 10(2) of the Contract Labour (Regulation & Abolition) Act as there is strong wages disparity between the regular and contract labourers and the work is perennial in nature. Moreover, on the said issue the first party management entered into bipartite settlements in respect of some other workers which is not fair and proper. The aforesaid provisions of law demands that all the contract labourers engaged in such nature of work are required to be regularised ofcourse for convenience of implementation the first party management may do so in phases.

8. *Issue No. (ii)*—Regarding introduction of Rehabilitation Scheme though it is for the welfare of the employees, yet the same is a policy decision and the first party management should settle up the matter with all the Unions to avoid any harassment to persons and their family who are victimised in course of their employment.

9. *Issue No. (iii)*—This issue envisages to absorb and regularise the services of 206 contract labourers as company casual who are retrenched on the 17th November 2000 from Ware House Department by the contractors' establishment of M/s Baba Enterprises, Sony Brothers and Nigam Enterprises. There is no dispute that on the issue of retrenchment previously references were made to this Tribunal on the basis of which I. D. Case No. 31 of 2000 and I. D. Case No. 12 of 2001 were registered. Both the cases were ended with no dispute Award on which the contract labourers of the aforesaid three contractors' establishment have approached the Hon'ble High Court in OJC No 1415 of 2002. Therefore, unless that case is disposed of no view can be taken for consideration of their regularisation as per the recommendation of the Labour Commissioner, Odisha, Bhubaneswar.

10. *Issue Nos. (iv, v and vi)*—On behalf of the first party members objection has been raised regarding the maintainability of the case as well as the non-joinder of necessary party. But no material has been placed in support of the same. Regarding the issue on the *locus standi* of the

second party Union to raise the dispute, on perusal of record I find that the Labour Commissioner who is the competent authority to decide the same held in his enquiry report in Ext. 6 that the second party Union has got the competency to raise the dispute. Hence, the objection raised by the first party management is devoid of any merit and is rejected.

Accordingly Award is passed as per my separate finding on different issues.

Dictated and corrected by me.

PRADIP KUMAR RAY
26-03-2014
Presiding Officer
Industrial Tribunal, Bhubaneswar

PRADIP KUMAR RAY
26-03-2014
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government