

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 849 CUTTACK, FRIDAY, MAY 23, 2014/JAISTHA 2, 1936

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 13th May 2014

No. 3736-IR(ID)-52/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th March 2014 in I. D. Case No. 45 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Mesco Steel Ltd., Bhubaneswar and its workman Shri Sahadev Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE
IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 45 OF 2011

The 25th March 2014

Present :

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

Between :

The Management of
M/s. Mesco Steel Ltd.,
Bhubaneswar. ... First Party–Management

And

Their workman
Shri Sahadev Mohapatra,
At Haripur, P.O. Kabirpur,
Dist. Jajpur. ... Second Party–Workman

Appearances :

Shri D. P. Nanda, Advocate ... For the First Party–Management

Shri Sushanta Dash, Advocate ... For the Second Party–Workman

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 & Employment Department of the Government of Odisha under Section 12(5)(d) of the Act vide its letter No. 7408-ID-52/2011-LE., Dt. 16-08-2011 with the following schedule :—

“Whether the action of the management of M/s Mesco Steels Ltd. in terminating the services of Shri Sahadev Mohapatra with effect from 10-7-2006 is legal/or justified ? If not, to what relief Shri Sahadev Mohapatra is entitled ?”

2. The case of the second party workman is that he was initially appointed as an Engineer, Trainee under the first party employer M/s Mesco Project Ltd. vide appointment letter Dt. 6-7-2000 with a monthly remuneration of ₹ 4,000.00. Pursuant to the said order he joined at Bhubaneswar office on 1-8-2000. After some month his service was placed at Kalinganagar Complex, Danagadi at Jajpur site and putting his signatures in the Attendance Register up to August, 2002. After August, 2002 the second party presented himself to work under the first party management up to 31st December, 2004. Thereafter he was not allowed to enter into the premises of the first party management and the factory of the management remained temporarily closed without prior permission of the Government. The factory of the first party management at Danagadi, Jajpur was opened sometime in the year 2004 and the Plant started functioning in January, 2005. After opening of the factory, on the approach of the second party workman the Chief General Manager vide his letter dated 30-1-2006 offered appointment to the second party workman to work under the Chief General Manager (Mines), Bhadrasahi, Keonjhar with a consolidated amount of ₹ 7,000.00 per month. Pursuant to the said order the second party workman submitted his joining report on 6-2-2006. As the local people opposed the appointment of the second party workman at the work site and threatened to take away his life feeling unsafe he communicated the Managing Director of the first party vide his letter Dt. 8-2-2006 and as per the advice of the Authority he left for Bhubaneswar office and submitted his joining report on 23-2-2006. But the authority of Bhubaneswar office did not allow him to work and again advised the second party workman to join at Keonjhar site. Though he repeatedly requested to allow him to perform duty either at Bhubaneswar or at Jajpur it did not yield any result. Ultimately the first party management terminated the service of the second party workman by way of refusal of employment when he reported to resume his duty at Bhubaneswar office on 10-7-2006.

3. The first party management in its written statement has stated that the first party management M/s Mesco Steel Ltd. is a sister concern of Mesco Project Ltd., the earlier employer of the second party workman in the year 2000. It is stated that in the initial appointment on 6-7-2000 he was appointed as a Trainee for a period of two years which either can be extended or curtailed at the discretion of the company. Immediately after his joining due to certain unavoidable circumstances like slump in the market the production of the company was stalled and the industrial set up remained entirely inoperative from September, 2000 till April, 2004. During the said period no employee was engaged except few skeleton staff in the Watch and Ward Department and Administrative Officers for maintenance of records. After 2004 even if the Mesco Project Ltd. was inoperative the present first party management M/s Mesco Steel Ltd. reopened its industrial unit and on the approach of the second party workman the first party management had given him fresh engagement as a Trainee Engineer for a period of six months vide its letter Dt. 30-01-2006. Pursuant to the said order the second party workman joined on 6-2-2006 at Bhadrasahi Mines but due to some reasons best known to him he made communication on 8-2-2006 and abandoned the place

of posting citing danger to his life and approached various authorities including the District Administration and the Labour Department. It is stated that the plea of the second party workman apprehending danger to his life is an after-thought as the staff posted there are mostly outsiders and there is proper security for safety and security of the staff. Virtually the second party workman has not done any work at the work site. He was never advised by any of the authorities of the company to join at Bhubaneswar. Therefore, he is not entitled to any relief claimed for.

The first party management in its additional written statement has categorically reiterated that the appointment letter Dt. 30-1-2006 is a fresh one and he was allotted work in the Mines of the first party. As per Section 2(a)(i) of the Industrial Disputes Act, 1947, the appropriate Government is the Central Government and therefore, the reference is bad and this Tribunal does not have jurisdiction to decide the same.

4. The second party workman in his rejoinder challenging the averments made in the additional written statement has stated that the nature of duty of the second party workman has no link with the mining operation. Hence, this Tribunal has got jurisdiction to decide the same.

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

ISSUES

6. (i) “Whether the reference is maintainable ?
- (ii) Whether the second party is coming within the purview of Section 2(s) of the I. D. Act or not ?
- (iii) Is there any termination with effect from 10-7-2006 ?
- (iv) Whether the action of the management of M/s Mesco Steels Ltd. in terminating the service of Shri Sahadev Mohapatra with effect from 10-7-2006 is legal and/or justified ?
- (v) If not, what relief Shri Mohapatra is entitled to ?
- (vi) Whether the State Government is competent to refer the reference ?”

7. In order to substantiate their respective case while the second party workman has examined himself as W.W. No. 1 and filed documents marked Exts. 1 to 15, the first party management examined one witness and filed documents which have been marked Exts. A to C and Ext. D series.

FINDINGS

8. *Issue Nos. i & vi*—The first party management challenged the reference on the ground that the nature of work assigned to the second party workman comes within the purview of Section 2(a)(i) of the Industrial Disputes Act for which the Central Government is the appropriate Government in respect of the dispute and since the reference has been made by the State Government this Tribunal does not have jurisdiction to decide the same, hence the case is not maintainable. In the case of *Tata Memorial Hospital Workers’ Union Vrs. Tata Memorial Centre* and another, reported in AIR 2010 (SC) 2493, the Hon’ble Supreme Court has held that as per Section 2(a)(i) of the Industrial Disputes Act the industrial dispute concerning the industries specified in sub-section (i) and for the industries which are carried on or under the authority of the Central

Government, the Central Government is the appropriate Government. As per Section 2(a)(i) of the Industrial Disputes Act in relation to any other industrial dispute the State Government is the appropriate Government. Further the Hon'ble Supreme Court clarifying the phrase 'under the authority' has held that it means 'pursuant to the authority' such as where an agent or servant acts under authority of his principal or master which obviously cannot be said to be a company incorporated under the Companies Act. Therefore, in view of the aforesaid principle decided by the Hon'ble Supreme Court since the first party management is a private company having its field of operation at Bhadrāsahi in Keonjhar district in Odisha it cannot be said that the Central Government is the appropriate Government. Therefore, the objection raised on behalf of the first party management that the reference made by the State Government is bad in law is not sustainable.

9. *Issue Nos. (ii), (iii) and (iv)*—In this case the plea of the second party workman is that he was appointed to work at Bhadrāsahi Mines in the district of Keonjhar. His claim is that he was not allowed to work at Bhadrāsahi as the local people threatened to take away his life. But, the evidence on record reveals that other staff engaged at the said site are also outsiders and there is no untoward incident apprehending danger to the life of others. Besides, there is security staff at the site. The second party workman further asserted that when he requested to allow him to join at Bhubaneswar or Jajpur the same was refused and he was asked to work at Bhadrāsahi site for which he was appointed. The aforesaid statement of the second party workman do not lead to the presumption in any manner that he was refused employment. Rather, it is a clear case of abandonment of service. Therefore, he is not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me.

Pradip Kumar Ray, OSJS (Sr. Branch)
25-03-2014
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Pradip Kumar Ray, OSJS (Sr. Branch)
25-03-2014
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

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