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**LABOUR & E.S.I. DEPARTMENT**

NOTIFICATION

The 13th May 2014

No. 3741—IR(ID)-46/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2014 in I.D. Case No. 14 of 2012 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of M/s Sambalpuri Bastralaya Handloom Co-operative Society Ltd., Bargarh & their 45 weaver members of Tora Weaving Centre, At/P.O./P.S./Dist. Bargarh was referred to for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 14 OF 2012

Dated the 31st March 2014

*Present :*

Shri Srikanta Mishra, LL.M.  
Presiding Officer,  
Labour Court, Sambalpur.

*Between :*

The Management of . . . First Party—Management  
M/s Sambalpuri Bastralaya Handloom  
Co-operative Society Ltd., Bargarh.

And

Their 45 Weaver Members of Tora . . . Second Party—Workman  
Weaving Centre At/P.O./Dist. Bargarh.

*Appearances :*

Shri S. K. Rath, Jr. Accounts Assistant . . . For the First Party—Management

Shri B. C. Suna, Authorised Representative . . . For the Second Party—Member

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AWARD

This award arises out of a reference made by the Government of Odisha, Labour & E.S.I. Department under the power conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide order under Memo No. 10400 (5), dated the 17th December 2012. The disputes involved under the schedule of reference is as follows :—

- (i) "Whether the Member-Weavers of Tora Weaving Centre numbering 45 (as per list) are workmen within the meaning of Section 2 (s) of the I. D. Act, 1947 ?
- (ii) Whether the demand of these 45 Member-Weavers for remuneration for the days during which they remained unemployed due to renovation work of the building of Tora Weaving Centre and to continue work therein are justified ? If so, what should be the relief ?"

2. The case of the 45 second party members as per their statement of claim is that they are the Weaver-Members of Sambalpuri Bastralaya Handloom Co-operative Society Ltd., Bargarh. The said society has its Weaving Centre at village Tora in the district of Bargarh. Since about 20 to 30 years, they engaged themselves in weaving clothes like Sari, Dhoti, Gamchha etc. and getting wages on piece rate basis from the management. It is the specific case of the second party members that the Weaving Centre functions from 6 A.M. to 6 P.M. with a break of two hours from 12 A.M. to 2 P.M. The management use to supply yarns to the second party members and collect the cloth from them as per their requirement. The second party members insisted the first party management to cover them under the provisions of Employees State Insurance and Miscellaneous Provisions Act, 1952 but thereafter on a plea of renovation work of the Weaving Centre demolished the house and forced them to remain unemployed. Subsequently, the management gave a proposal to provide each of the members a separate loom free of cost and few amount to set the looms at their own house but due to want of space, they did not accept the proposal and persisted that the renovation work should be completed soon so that they can work as before. The management did not complete the renovation work and kept them unemployed. With such background they pray for issuance for a direction to the management to pay wages to them as per their last months earning in the Weaving Centre till completion of the renovation work.

3. The first party management filed written statement wherein they asserted that the second party members are "A" Class Members of the society and they are not workmen within the meaning of Section 2 (s) of the I.D. Act. According to the management there is no employer and employee relationship between the parties and therefore, the claim of the second party members is not tenable in law. It is submitted by the management that the society was formed for the socio-economic development of weaver class by providing them assistance in different ways. They were provided with looms, yarns and other materials required for production of finished product (cloth). After production, the Weaver-Members were paid with the differential amount towards the cost of their production after deducting the price of raw materials and other assistances. Some of the Weaver-Members had no convenient place of weaving and production of finished products for which the society set up different weaving centres including one at village Tora for the convenience of the second party members. The accommodation provided at Tora Weaving Centre became damaged and turned to be a dilapidated premises and therefore the same was demolished to construct new place for the members. With such averments, the first party pray for rejection of the case.

4. The second party members filed rejoinder wherein they submitted that they were rendering manual labour upon the raw materials supplied by the society and were paid their wages which creates the master and servant relationship between the parties. According to the second party members, their weaving work in the Tora Centre is the only source of their earning and livelihood but the management in the name of renovation work kept them unemployed for a long time. In the rejoinder the second party members prayed this court to direct the first party to restart the Weaving Centre and pay Rs. 20,000 to each of the members towards their wage during the period of demolition of the building till restarting of the weaving work.

5. On the basis of the pleadings of the parties, the following issues have been settled :

#### ISSUES

- (i) “Whether the Member Weavers of Tora Weaving Centre numbering 45 (as per list) are workmen within the meaning of Section 2 (s) of the I.D. Act, 1947 ?
- (ii) Whether the demand of these 45 Member-Weavers for remuneration for the days during which they remained unemployed due to renovation work of the building of Tora Weaving Centre and to continue work therein are justified ?
- (iii) If so, what should be the relief ?”

6. On behalf of the second party members, one of the workmen namely Bhakta Charan Suna was examined as a sole witness who proved several documents which were marked Exts. 1 to Exts. 48. The management examined its employee Durjodhan Meher, a Junior Accounts Assistant as only witness. The management relied upon only one document which is its bye-laws.

#### FINDINGS

7. *Issue No. (i)*—It is the main contention of the management that the second party members are not workmen and they are only “A” Class members of the society. According to the management, there is no relationship of employer and employee between the parties. The second party members in their statement of claim clearly mentioned that they are Member-Weavers of Sambalpur Bastralaya Handloom Co-operative Society Ltd. and they were kept engaged in weaving cloth like Sari, Dhoti, Gamchha etc. and getting wages on piece rate basis. Such fact is not disputed by the management. It is also the specific case of the second party members that for last 20 to 30 years they are performing the said job at the Weaving Centre which functions from 6 A.M. to 12 Noon and 2 P.M. to 6 P.M. This fact is also not disputed by the management. It is further admitted case of both parties that the management society supplies yarn and weaving looms installed within the premises of the society and the second party members using the said yarn and loom produced the end product, i.e. Sari, Dhoti, Gamchha etc. which are sold by the society for its benefit/income. The management society use to pay remuneration to the second party members on the basis of the work done by them on piece rate basis. During course of hearing, the second party proved several pass books marked Exts. 7 to 41 which indicate the fact that the management society maintains weaver pass book in respect of the second party members in a regular basis. In the said pass book, the account of work executed by the respective second party members and payment made to them on piece rate basis is maintained. The management witness during cross-examination has admitted that the second party members work inside premises of the society and the staffs of the society

maintained their pass book and also keep account of payment to them. He further admitted that the second party members exert physical labour to prepare materials beneficial to the income of the society. There is no evidence that the second party members during the tenure of their weaving under the first party were engaged in any private farm or had any other source of income other than the remuneration paid to them towards weaving of materials on the raw material supplied by the first party. The witness examined on behalf of the second party during his cross-examination has specifically stated that he and the other second party members were working under the first party temporarily and no order was given to them in the matter of their engagement. He has admitted that all the weaver members have been issued with share certificate indicating deposit of respective share. On the basis of the above evidence, the second party members claim to be workmen whereas the first party contend that they are voluntary workers and not workmen.

8. The Section 2(s) of the Industrial Disputes Act, defines “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express, implied and for the purpose of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led that dispute but does not include.....”

9. The word “industry” as defined in Section 2(j) of the Act means any systematic activity carried on by co-operation between an employer and his workmen..... for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes..... whether or not (i) any capital has been invested for the purpose of carrying on such activity or (ii) such activity is carried on with a motive to make any gain or profit and includes.....”.

10. In the present case, the relationship between the first party and second party is created on the basis of a bye-law for the registered society by name “Sambalpuri Bastralaya Tantasilpa Sasima Sahayoga Samiti, Bargarh” having Registration No. 117 S.M., dated the 22nd June 1954 (copy of which has been marked Ext. A). The part-2 of the bye-law vide paragraph-4 describes the aim of the society. This part of the bye-law describes that the society has been formed for production of good quality cloth by the members of the society and for sale of the same. The society also undertakes to provide raw materials including thread, colour etc. and loom as well as weaving apparatus in a convenient manner to the members. The society also undertakes that for the above purpose the members would be provided with yarns in advance payment of cost to the members for conversion of yarns to cloth and to collect cloth from them. It is the specific aim of the society to educate the members in the matter of economy, self dependance and mutual co-operation. The bye-law also provide for resignation and removal of its members on specific circumstances. It is the consistent case of the second party members that they are the members of the Sambalpuri Bastralaya Handloom Co-operative Society Ltd. The management witness during cross-examination stated that the second party members caste their vote for election to the post of management officials. The second party withness deposed that all the Weaver-Members have been issued with share certificate indicating deposit of respective shares.

11. The management society on the basis of materials available on record and the discussions made above is found to be carrying on a systematic activity i.e. production of cloth i.e. Sari, Dhoti, Gamchha etc. for making profit by selling the end product to satisfy the human requirement. For such activity, the management society can be safely be said to be a “Industry” within the meaning of Section 2 (j) of the I. D. Act.

12. Now the question is whether the second party members can be termed to be workmen as per Section 2 (s) of the I.D. Act. Admittedly, the management society (Industry) engages its members to do skilled work i.e. weaving and it pays specific amount for production of different cloth materials by them. To enable production, the society supplies raw materials and provides loom and weaving apparatus to its members. The society also provides accommodation to the second party members for weaving inside the society premises. It is true that the weaver members of the society do not get any monthly salary or fixed daily wage but they are paid remuneration on the basis of the amount of work done by them. Though, there is no fixed hour of work enforced upon the second party members, the society premises remain open from 6 A.M. to 6 P.M. for performance of weaving work having a break between 12 A.M. to 2 P.M. There is absolutely no evidence from the side of the management that the second party members having expended so much time in the society premises would have been able to do any other manual work to earn money. Therefore, their work inside the premises of the society is the only source of their livelihood and they can not think of any other engagement. It may be a fact that the first party does not maintain any attendance register nor it keeps any account of the exact time devoted by a weaver in the society premises for weaving purpose but the aforesaid activities satisfy the definition of “workman” as provided under section 2 (s) of the I. D. Act. It is therefore, held that the second party members are workmen and the first party is an “Industry” within the definition provided in the Industrial Dispute Act, 1947. The issue No. 1 is accordingly answered in the affirmative.

13. *Issue No. (ii)*—It is admitted case of both the parties that the weaving work within the Tora Weaving Centre under the first party management has been stopped due to construction work and renovation of the building undertaken by the first party. The management witness deposed during cross-examination that the entire building of the society was damaged and renovation work is going on since 2009 and the same is continuing till date. He has further admitted that due to renovation work, the second party members are unable to do any work inside the society premises and as such they have become unemployed. It is not understood as to for which particular reason the renovation work is not being completed within 5 years of its beginning. In this context, it would be pertinent to refer to the failure report submitted by the District Labour Officer-*cum*-Conciliation Officer, Bargarh which is annexed to the reference notification of the Government. It reveals from the said report that the second party members approached the Collector and District Magistrate, Bargarh by a complaint petition dated the 29th November 2008 narrated therein that they were working under the management since last 20 to 30 years at Tora Weaving Centre and they are deprived of getting minimum rate of wage and other statutory benefits like E.P.F., Leave facility etc. Their complaint was sent to the D.L.O., Bargarh for appropriate action. On the 21st December 2008 the D.L.O.-*cum*-Conciliation Officer, Bargarh sought for the views of the management who complied the same on the 12th February 2009. Thereafter the D.L.O. made a joint enquiry on the

25th April 2009. The complainant weaver members intimidated the DLO that the management on the plea of renovation of the building stopped them to work since the 25th March 2009. The DLO felt that the weaving work of Tora Weaving Centre remained suspended due to renovation work of the building undertaken by the management and therefore, there was existence of industrial dispute. He then admitted the matter into conciliation fixing the date to the 23rd February 2011. The matter was adjourned on different dates. On the 3rd May 2011 the Conciliation Officer-*cum*-DLO, Bargarh finally heard both the parties and found that there was no scope of settlement and accordingly he submitted failure report under Section 12 (4) of the I.D. Act, 1947. It is therefore, crystal clear that soon after the second party members raised a claim for getting some statutory benefits as workman in their petition dated 29th November 2008 and the matter was enquired into by the DLO, Bargarh. The management took steps for demolition of the building of Tora Weaving Centre and stopped the second party members to work since the 25th March 2009.

14. The management has not filed any resolution to the fact that the building of the Weaving Centre at Village Tora where the second party members were engaged for their livelihood was damaged to such an extent that it was unfit for carrying on business. There was also no document furnished by the management that the renovation work was scheduled to be made within any particular period. The management witness has clearly deposed that he does not know by what date the renovation work will be completed. During further cross-examination, he has clarified that while the renovation work was taken up, the second party members were asked to weave in their home by taking aid of machineries but they refused to do so. It was suggested to him that in order to keep the second party members out of work, the society is deliberately neglecting in completion of renovation work. The witness for the second party deposed that the management closed the weaving centre on the 25th March 2009 for repair and new construction of the Weaving Centre, Tora. He further deposed that after closing of the Weaving branch he and the other workmen are living in starvation and could not provide fund for study of their children and unable to meet their daily needs like foods, dress and medical, etc. On a careful scrutiny of the evidence on record, I am constrained to hold that the first party management apprehending some in convenience in the management of the Tora Weaving Society in the year 2009 particularly when the second party members raised a grievance before the Collector-*cum*-District Magistrate, Bargarh through a written complaint dated the 29th November 2008 claiming some statutory benefits, cunningly closed the weaving operation and thereby forced the second party members to unemployment. If at all the building of Tora Weaving Centre required any repair or renovation and if the management had any *bona fide* in demolishing the building they should have made an honest effort for renovation/reconstruction of the building within a reasonable period. It is their evidence that for last 5 years, the renovation is going on and the second party members are having no work. The second party members in the facts and circumstances appear to have diverted from the aim and object of the creation of the society under the bye-law. It is crystal clear that their acts and omissions here directly caused unemployment to the second party members and financial loss to them for a considerable period. The plea of the management that they advised the second party members to instal looms in their houses and go on production is merely eye-wash particularly when the second party members are poor weavers and they refuses to accept the proposal for want of required space in their household. In view of the discussions made above I am constrained to hold that the

demand of the second party members for some remuneration for the days during which they remained unemployed due to renovation work of the building of Tora weaving Centre is justified. The management witness has admitted during cross-examination that after renovation work is over, the second party members may work for the society in the matter of Weaving. Therefore, the demand of the second party members to continue work inside the premises of Tora Weaving Centre is also justified. The issue No. (ii) is accordingly answered in the affirmative.

15. *Issue No. (iii)*—It is well established during the discussion on other issues that the second party members are out of employment due to renovation work of the building at Tora weaving Centre undertaken by the first party management from the 25th March 2009. It is also established that the first party management though obliged to engage the second party members as per the aim and object of the creation of the society, they are neglecting in the matter of completion of renovation work as a result of which the second party members are unemployed for last 5 years and put to starvation. For such negligence of the first party management, the second party members are entitled to be duly compensated. It is true that there was no fixed remuneration for the second party members but considering their situation and the negligent conduct of the first party management, I feel some amount of compensation should be awarded in favour of the second party members. The minimum wage fixed by the State Government for an unskilled labourer is now Rs. 150 per day. In my considered view, the amount of Rs. 20,000 as claimed by the second party members should be justified compensation to each of the second party members. The issue No. (iii) is accordingly answered in favour of the second party members.

In view of the determination of the issues in the manner aforesaid, the following Award is passed.

#### AWARD

The reference is answered on contest in favour of the second party members without cost. The first party management is directed to pay compensation of Rs. 20,000 (Rupees twenty thousand) only to each of the second party members within a period of 3 months hence. The first party is further directed to complete the renovation work at Tora Weaving Centre within a period of 3 months and re-engage the second party members as before, Failing which, it shall be liable to continue payment of compensation to each of the second party members an amount of Rs. 1000 per month till they are re-engaged in the Weaving Centre from time to time.

Dictated and corrected by me.

S. MISHRA  
31-3-2014  
Presiding Officer  
Labour Court, Sambalpur

S. MISHRA  
31-3-2014  
Presiding Officer  
Labour Court, Sambalpur

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