

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 852 CUTTACK, FRIDAY, MAY 23, 2014/JAISTHA 2, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 12th May 2014

No. 3718—IR(ID)-23/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th March 2014 in Industrial Dispute Case No. 15/2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Director, Text Book Production and Marketing, Bhubaneswar and its workmen represented through General Secretary, Text Book Press Mazdoor Sangha, Plot No.32, Ashok Nagar, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 15 OF 2012

Dated the 20th March, 2014

Present :

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

Between :

The Management of the Director, . . . First Party—Management
Text Book Production & Marketing,
Bhubaneswar.

And

Its workmen represented
through General Secretary, . . . Second Party—Workmen
Text Book Press Mazdoor Sangha,
Plot No. 32, Ashok Nagar,
Bhubaneswar

Appearances :

Sk. Anwar Alam, Personnel Officer	. .	For the First Party—Management
<hr/>		
Shri N. K. Mohanty, President of the Union.	. .	For the Second Party—Union

AWARD

This case has been instituted U/s 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 U/s 12(5) of the Act vide its Letter No. 2769—IR(ID)-23/2012/LESI., dated the 9th April 2012 with the following schedule :—

"Whether the action of the Management of M/s Text Book Production and Marketing, Bhubaneswar by not regularizing the services of the D.L.R. and Casual Workmen working under the management (as per the list) from the date of their joining is legal and/or justified ? If not, what benefits they are entitled to and what should be the details ?"

2. The case of the second party Union is that the first party management established in the year 1962 under the administrative control of the Government of Odisha was registered under the provisions of the Factories Act, 1948 and was declared as a 'Public Utility Service'. Considering its nature of work it has engaged staffs including skilled and unskilled workmen. By the end of 1987 it was having total staff of 776 including 88 + 2 Nos. of casual workmen but by the financial year 2012 the said strength was reduced to 399 in view of abolition of base level posts in different years. At present 121 numbers of DLRs and casual workers are working under the first party management for the last 15 to 25 years. Though they have been engaged against vacant base level posts and doing the same, similar and perennial nature of job like their counterpart regular employees and there is provision for regular appointment under the Odisha Government Text Book Press Industrial Employees (Classification, Method of Recruitment and other Conditions of Service) Rules, 1988, the the first party management has not yet regularised the services of the aforesaid employees under the said provision except forwarding the representations made by the second party Union to the Government with favourable views. Since the conciliation on the said matter ended in failure ultimately the matter has been referred to this forum for adjudication.

3. The first party management in its written statement disputing the number of casual/voucher paid workers as 121 has stated that their strength is only 109 and they have not been appointed against any regular/substantive vacancy. The State Government in Finance Department imposed restriction on the engagement of casual workers vide its letter No.17815/F., dated the 12th April 1993. Further, the School & Mass Education Department of the Government of Odisha directed the first party management vide its letter No. 3191, dated the 13th February 2006 to disengage the casual workers engaged after the 12th April 1993. Subsequently the Finance Department of the Government of Odisha vide its letter No. 31271/F., dated the 16th July 1999 and No. 32861/F., dated the 3rd August 2004 directed the first party management for abolition of 75% of vacant base level posts. The Odisha Govt. Test Book Press Employees (Classification, Method of Recruitment and other Conditions of Service) Rules, 1988 is meant for the regular workers. It gives very limited scope for consideration of regularisation of casual/voucher paid workers. In view of the stipulation made by the State Government in the Finance Department since 75% base level posts have been abolished there is no scope for considering the regularisation of the casual/voucher paid workers. It is further stated that these casual/voucher paid workers have approached the Hon'ble Odisha Administrative Tribunal in O. A. No. 194 of 2007 for regularisation of their services which is still subjudice. They have also approached the Hon'ble High Court for the self same cause of action in W. P.(C) No.16334 of 2005 in which pursuant to the direction of the Hon'ble High Court the Administrative Department, i.e., the School & Mass Education Department rejected the representation made by the second party for regularisation of the workers vide Government Order No. 22742/SME., dated the 20th November 2006. Therefore, there is no scope for the second party Union to re-agitate the same before this Tribunal. The casual/voucher paid workers engaged prior to the 12th April 1993 also could not be regularised as they have not been appointed against substantive vacancies and far less to speak of any concurrence of the Finance Department for engagement of the said workers. It has instructed to abolish the vacant base level posts. Out of them, 29 casual Attendants have approached the Hon'ble High Court in W. P.(C) No.16164 of 2005; 16165 of 2005 and 16167 of 2005 for regularisation of their services which is still subjudice. In the aforesaid background, the first party management besides claiming that the case in the Industrial Tribunal is not maintainable has stated that the second party is not entitled to any relief claimed for.

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

ISSUES

- (i) "Whether the the action of the Management by not regularising the services of the DLR and casual workmen working under it (as per the list attached to the order of reference) from the date of their joining is legal and/or justified ?
- (ii) Whether the workmen at Sl. Nos.16 to 66 (except Sl. Nos.24, 31, 42, 45, 46, 48 and 65) have approached the Hon'ble High Court of Orissa in W. P.(C) Nos.16164/05, 16165/05, 16167/05, 18814/09, 18897/09 and 18898/09 for regularisation of their services and in that view of the matter whether the present I. D. Case is maintainable?
- (iii) What benefits they are entitled to and what should be the details ?"

5. In order to substantiate their respective stand while the second party Union has examined two witnesses and filed documents marked Exts.1 to 29, the first party management has examined two witnesses and filed documents which have been marked Exts. A to H, Exts. J to N and Exts. P to T.

FINDINGS

6. *Issue No. (i)*—The second party Union claims for regularisation of services of its members basing on Rule 10 of the Odisha Government Text Book Press Industrial Employees (Classification, Method of Recruitment and other Conditions of Service) Rules, 1988. The aforesaid provision envisages to fill up the vacancies in Class IV posts from amongst the Casual Helpers working in organisation duly sponsored by the Employment Exchange and while selecting the Casual Helpers for the purpose, their regularity and punctuality in attendance, official conduct and sincerity to duty during the period of working as Casual Helper will be the main criteria with due regard to seniority. In the case of Gujarat Agricultural University Vrs. Rathod Labhu Bechar and Others reported in AIR-2001 SC 706, their Lordships of the Hon'ble Supreme Court have held as follows :

"If work is taken by the employer continuously from daily wage workers for a long number of years without considering their regularisation for its financially gain as against employees legitimately claim, it is an unfair labour practice. Taking work, from daily wage worker or ad hoc appointee is always viewed to be only for a short period or as a stop gap arrangement, but we find new culture is growing to continue with it for a long time, either for financial gain or for controlling its workers more effectively with sword of Damocles hanging over their heads or to continue with favoured one".

In the State of Karnatak and others Vrs. M. L. Kesari and others reported in AIR 2010 SC 2587, their Lordships of the Hon'ble Supreme Court in Para. 7 & 11 have held as follows :

7. *"It is evident from the above that there is an exception to the general principles against 'regularisation' enunciated in Umadevi (AIR 2006 SC 1806, 2006 AIR SCW 1991), if the following conditions are fulfilled (i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years. (ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."*
11. *"The object behind the said direction in Para. 53 of Umadevi (AIR 2006 SC 1806 : 2006 AIR SCW 1991, Para. 44) is two fold. First is to ensure that those who have put in more than ten years of continuous service without the protection of any interim orders of courts or tribunals, before the date of decision in Umadevi (2006 AIR SCW 1991) was rendered, are considered for regularization in view of their long service. Second is to ensure that the departments/ instrumentalities do not perpetuate the practice of employing persons on daily-wage/ad hoc/casual for long*

periods and then periodically regularise them on the ground that they have served for more than ten years, thereby defeating the constitutional or statutory provisions relating to recruitment and appointment. The true effect of the direction is that all persons who have worked for more than ten years as on the 10th April 2006 (the date of decision in Umadevi) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization. The fact that the employer has not undertaken such exercise of regularization within six months of the decision in Umadevi or that such exercise was undertaken only in regard to a limited few, will not disentitle such employees, the right to be considered for regularization in terms of the above directions in Umadevi as a one time measure."

Since in this case the first party management does not dispute the engagement of 109 casual/ voucher paid workers, subject to the approval of the State Government the first party management is to consider their claim within the purview of Rule 10 of the aforesaid Rules.

7. *Issue No.(ii)*—The first party management has raised that since the issue has been finally disposed of basing on the direction passed by the Hon'ble High Court in W. P.(C) No.16334 of 2005 (Ext.D), this Tribunal does not have jurisdiction to decide the same. On perusal of record it is found that on the self same ground some of the members of the Second party Union had approached the Hon'ble Odisha Administrative Tribunal in O. A. No.2552(C) of 2004 (Ext.C) and against the order passed by the Hon'ble Orissa Administrative Tribunal they preferred W. P.(C) No.16334 of 2005 (Ext.D) before the Hon'ble Orissa High Court which was disposed on the 16th January 2006 with a direction to the School & Mass Education Department of the Government of Odisha to consider the representation of the second party members for regularisation of their services. The School & Mass Education Department vide its order dated the 20th November 2006 (Ext.E) rejected the representation made by the second party workmen. Some other members of the second party Union had also filed O. A. No.194 of 2007 before the Hon'ble Odisha Administrative Tribunal (Ext.F) which has been rejected vide its order dated the 21st April 2011. Further for the self same cause of action some of the members of the second party Union have approached the Hon'ble High Court of Orissa separately in W. P.(C) Nos.18814 of 2009, 18897 of 2009 and 18898 of 2009 which are still subjudice. Rejection of representations gives rise to fresh cause of action. When the first party management speaks about pendency of cases for self same cause of action, that of the second party Union is that it has withdrawn the same. But that fact remains that ultimately the decision of the Hon'ble High Court would prevail upon this case.

8. *Issue No.(iii)*—In view of the above discussion the first party management is directed to consider the claim of the second party Union for regularisation of service subject to the final decision of the Hon'ble Court, if any.

The reference is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
20-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
20-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

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