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**LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT**

NOTIFICATION

The 21st May 2014

No. 3888—li/(BH)-7/2007-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th March 2014 in Industrial Dispute Case No. 6 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Rengali Hydro Electric Project, Odisha Hydro Power Corporation Ltd., Rengali, Dist. Angul and their Workmen represented through the General Secretary, Odisha Hydro Power Corporation Employees' Union, Rengali was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 6 OF 2013

Dated the 24th 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  
Rengali Hydro Electric Project,  
Odisha Hydro Power Corporation Ltd.,  
Rengali, Dist. Angul.

And

Its Workmen, represented . . . Second Party—Workmen  
through General Secretary,  
Odisha Hydro Power Corporation  
Employees' Union, Rengali Unit,  
Rengali Dam Site, Dist. Angul.

*Appearances :*

Shri Debaraj Pradhan, Auth. Representative . . For the First Party—Management

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Shri K. P. Patra, Auth. Representative . . For the Second Party—Union

## 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. 13849—li-(BH)-7/2007-LE., dated the 20th December, 2007 with the following Schedule :

"Whether the fixation of Scale of Pay of Rs. 5,350—Rs. 10,520 for the Head Assistant with effect from the 1st April 1997 by the management of R.H.E.P., O.H.P.C. Ltd., Rengali vide Order No. 11405, dated the 4th September 2001 instead of Rs. 5,850—Rs. 10,850 as demanded by the O.H.P.C. Employees' Union is legal and justified ? If not, what is the relief those workmen are entitled to ?"

2. The case of the second party Union is that as per the Odisha Electricity Reforms Act on formation of the Odisha Hydro Power Corporation Limited, the Rengali Hydro Electric Project which was directly controlled by the State Government comes under the administrative control of O.H.P.C. Ltd. along with other Projects namely, Upper Kolab Hydro Electric Project, Bariniput, Dist. Koraput; Upper Indravati Hydro Electric Project, Mukhiguda, Dist. Kalahandi; Balimela Hydro Electric Project, Balimela and Hirakud Power Station, Burla which were under the control of O.S.E.B. Under the aforesaid Act and Rules the service facilities of the ex-Government employees and O.S.E.B. would not be less beneficial to its employees on permanent absorption under the O.H.P.C. But at the time of such absorption the employees of the O.S.E.B. were at a higher scale than that of the ex-State Government employees. Prior to absorption in O.H.P.C. the posts of Head Assistant stand in par with the Section Officer, Level-II in all respect including the Scale of Pay but after absorption on rationalisation of pay the Head Assistants have been provided with the Scale of Pay of Rs. 5,350—10,520, whereas the Section Officer, Level-II in the Scale of Pay of Rs. 5,850—10,850. Hence, on behalf of the Head Assistants the second party Union raised a dispute on the basis of which ultimately this reference has been made by the State Government for adjudication of the same.

3. The first party management in its written statement challenging the case on the point of limitation has stated that the first party management vide its Order No. 1145—OHPC-HRD-GR-52/1997(Vol.-V), dated the 4th September 2001 rationalised the pay structure with designation and unification of cadre in the Corporation. The employees were requested vide office Order No. 12009, dated the 19th September 2001 to submit their individual grievance concerning the rationalisation within the stipulated period but in the present case no such grievance or complaint was received from the individual employees or class of employees from the units. But after two and half years of implementation of the rationalisation with pay structure with designation and unification of grades the Union has raised the dispute. The Head Assistants who were the ex-employees of the State Government after rationalisation were given higher Scale of Pay which was enjoyed by the erstwhile employees of O.S.E.B. and it was fixed at the Scale of Pay of Rs. 5,350—10,520. Therefore, the claim of the second party Union has got no basis and deserves no consideration.

4. The second party Union in its rejoinder reiterating its stand taken in the claim statement has stated that since the post of Head Assistant and Section Officer, Level-II prior to their absorption in the O.H.P.C. were in one Scale of Pay and continued to be so in the subsequent pay revisions, the Scale of Pay extended to the Head Assistant at a lower range than that of the Section Officer, Level-II with effect from the 1st April 1997 is illegal.

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

#### *ISSUES*

- (i) "Whether the reference is maintainable ?
- (ii) Whether the fixation of Scale of Pay of Rs. 5,350—10,520 for the Head Assistants with effect from the 1st April 1997 by the management of R.H.E.P., O.H.P.C. Ltd., Rengali vide order No. 11405, dated the 4th September 2001 instead of Rs. 5,850—10,850 as demanded by the O.H.P.C. Employees' Union is legal and/or justified ?
- (iii) If not, what is the relief these workmen are entitled to ?"

6. In order to substantiate their respective case while the second party Union has examined one witness and filed documents marked Exts. 1 to 5, the first party management also examined one witness and filed documents which have been marked Exts. A to H and Ext. J.

#### *FINDINGS*

7. *Issue No. (i)*—The first party management challenged the reference of this case on the point of limitation and jurisdiction. So far as limitation is concerned, there is no such stipulation in the Industrial Disputes Act. The Hon'ble Supreme Court in the case of *S. M. Nilajkar Vrs. Telecom District Manager*, reported in (2003) 4 SCC 27 has held that the reference sought for by the workmen cannot be said to be delayed or suffering from a lapse particularly when law does not prescribe any period of limitation for raising a dispute under Section 10 of the Act. In view of the aforesaid observation of the Hon'ble Supreme Court, this Tribunal does not have the jurisdiction to hold the reference to be not maintainable on the point of limitation except adjudicating the dispute on the point of law.

Further, regarding jurisdiction of this Tribunal, since the first party management has adopted the Scale of Pay during rationalisation contrary to the terms and conditions of Section 24(2) of the Odisha Electricity Reforms Act, 1995 it gives rise jurisdiction to the Tribunal to adjudicate the same. Hence, the reference is maintainable.

8. *Issue Nos. (ii) and (iii)*—In this case the second party Union claims the Scale of Pay of the Head Assistants at par with the Section Officer, Level-II. Admittedly, prior to the absorption of ex-State Government employees in O.H.P.C. the Head Assistants and Section Officers, Level-II were given same Scale of Pay. The terms and conditions of their absorption in the O.H.P.C. was that their service conditions shall not be less beneficial in the Corporation. Fact remains, after revision of Scale of Pay the Head Assistants are given the Scale of Pay of Rs. 5,380—10,320, whereas the Section Officers, Level-II are given the Scale of Pay of Rs. 5,850—10,850. The State

Government in subsequent revisions also adopted the same status both for the Head Assistant and Section Officer, Level-II and has given them one Scale of Pay. Therefore, offering a less Scale of Pay for the Head Assistant by the first party management is in violation of the terms and conditions of its own rules and is illegal. Therefore, they are entitled to the Scale of Pay of Rs. 5,850—10,850 which has been given to the Section Officer, Level-II with effect from the 1st April 1997.

Accordingly, the issues are answered in favour of the second party Union.

Dictated and corrected by me.

P. K. RAY  
24-03-2014  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

P. K. RAY  
24-03-2014  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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