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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th May 2014

No. 4016—li/1(S)-47/1999(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th April 2014 in Industrial Dispute Case No. 5 of 2000 of the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Management of M/s Ashoka Synthetics Ltd., At Kirei and its Workmen represented though Kirei Ashoka Synthetics Spinning Mills Workers Union, At Kirei, Dist. Sundargarh was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 5 OF 2000

Dated the 16th April 2014

Present :

Shri S. K. Mohanty,
Presiding Officer, Industrial Tribunal, Rourkela.

Between :

Managing Director/Director, . . . First Party—Management
Chief Executive, Ashoka Synthetics Ltd.,
At Kirei, Dist. Sundargarh.

And

The General Secretary, Kirei Ashoka Synthetics . . . Second Party—Workmen
Spinning Mills Workers Union,
At Kirei, Dist. Sundargarh.

Appearances :

Shri G. Pujhari, Advocate . . . For the First Party—Management
Shri B. Padhiary, Advocate . . . For the Second Party—Workmen

AWARD

The Government of Odisha in their Order No. 1100-LE., dated the 18th January 2000 had made reference to this Tribunal for adjudication of a dispute.

- (1) "Whether the existing workload of the workers of Mixing, D. F. Simplex, Ring Frame and Packing Department of M/s Ashoka Synthetics Ltd., Kirei needs to be enhanced and if so, what should be the details ?
- (2) Whether the workers, both Regular and Badlis of M/S Ashoka Synthetics Ltd., Kirei are entitled to wages for the lock out period commencing from the 23rd March 1999 ? If so, what should be the details ?"

Both the 1st party and 2nd party had filed their respective counters to the aforesaid reference before this Tribunal and taking into consideration the pleadings of the parties this Tribunal had framed the following issues for answer :—

ISSUES

- (i) "Whether the reference is maintainable ?
- (ii) Whether the existing workload of the workers of Mixing D. F. Simplex, Ring Frame and Packing Department of M/s Ashoka Synthetics Ltd., Kirei needs to be enhanced ?
- (iii) Whether the workers both Regular and Badlis of M/s Ashoka Synthetics Ltd., Kirei are entitled to wages for the lock out period commencing from the 23rd march 1999 ?
- (iv) Whether the lock out commencing from the 23rd March 1999 declared by the 1st party management is legal ?
- (v) If so, what should be the details ?
- (vi) Whether there exists any industrial dispute between the parties ?"

2. During hearing of the case, both the parties had led both oral and documentary evidence in support of their respective claims and the Learned Tribunal after carefully scrutinizing the oral and documentary evidence from both side and after hearing the counsel of both the sides had answered Issue Nos. I, III, IV and VI in favour of the 1st party management and had answered Issue No. II in favour of the 2nd party workmen and had accordingly passed an Award on the 30th July 2003. Being aggrieved by the said Award, the 2nd party workers union had challenged the same before the Hon'ble High Court vide W. P. C. No. 3298 of 2004 and the Hon'ble High Court had disposed off the same vide its order dated the 1st July 2008 wherein the Hon'ble High Court have been pleased to quash the findings of the Learned Tribunal in respect of Issue Nos. III and IV and have remitted the matter back to this Tribunal for re-consideration of the said issues after providing reasonable opportunity to the parties to lead evidence in support of the same. In obedience to the above order of the Hon'ble High Court this Tribunal has provided reasonable opportunity to both the parties to lead evidence in support of Issue Nos. III, IV and both the parties have also led futher oral evidence in addition to the evidence aleready adduced and the 2nd party workmen have also exhibited some

more documents which have been marked as Exts. 11 to 24. So, now this Tribunal is to reconsider Issue Nos. III & IV as directed by the Hon'ble High Court keeping in view the fresh oral and documentary evidence led by the parties along with evidence already tendered by them before this Tribunal.

3. *Issue Nos. III & IV* : Since both the issues are inter related, they have been taken up together for the sake of convenience. Of the two issues, Issue No. IV is to be considered first to decide "Whether the lock out declared by the 1st party management is legal and or not and if it is answered that the lock out was illegal ; both regular and badlis are entitled to wages for the lock-out period will arise come into picture otherwise not. The evidence of M. W. 3 reveals that on the 22nd November 1997 there was a strike of the workers in the industry in A Shift and so the company had written a letter to that effect to the Dy. Labour Commissioner vide Ext. Q. Subsequently there was a stoppage of work by the workers in the industry on the 2nd July 1998 which was also intimated to Dy. Labour Commissioner, Rourkela vide Ext. R. Moreover the workers of Cone Binding Department of the industry had resorted to go slow movement since May 1998 and the same was reported to District Labour Officer, Rourkela vide Ext. S. Thereafter on the 21st August 1998 the Gangpur Synthetic Spinning Workers Union had submitted a charter of demand to the industry vide Ext. T and on the 16th September 1998 the 2nd party union i. e. Kirei Ashoka Synthetic Spinning Mills Workers Union had submitted their charter of demand to the industry as per Ext. U. So the management of the industry had reported the activities of this union to the District Magistrate & Collector, Sundargarh vide Ext. V. Subsequently the General Secretary of the 2nd party Union gave a threat to the industry to go on strike from work on the 22nd January 1999 and the matter was also reported to District Magistrate & Collector, Sundargarh on the 22nd January 1999 vide Ext. W. His evidence further reveals that the workmen of the 2nd party Union stopped work from 6-30 P.M. of the 21st February 1999 and onwards and this fact was intimated by the management to the Dy. Labour Commissioner, Rourkela vide letter Ext. Y. Then on the 10th March 1999 at about 6-45 A.M. while M. W. 3 was passing through the gate of the industry saw some workers were holding a meeting at the gate and Mr. Ananda Naik the General Secretary of the 2nd Party Union was conducting a meeting of the workers and was instructing the workers not to attend their duties that day till the meeting was over. Though M. W. 3 went inside the factory and waited for the workmen in the A Shift at about 7-15 A.M. the workers attended their A Shift duty and when he was near the time office had heard anti management slogans being shouted by the workers. As such 15 minutes of work ; in A Shift was stopped. Further when the workers resumed work on that day after 7-15 A.M. they workers only in one side of each machine as against four/six sides, previously. This work was in ring frame of the spinning process. Due to the working of the workers only in one side of each machine, the work in other three sides/five sides of the machine was stopped and thereby the production of the industry was hampered and such strike continued till the 22nd March 1999. So the management had issued two notices to the workers vide Exts. Z and Z/1 and the matter was also reported to the Police vide Exts. AA and BB. But the situation did not improve till the 22nd March 1999 and so the management was constrained to declare lock-out as the situation could not be controlled from the

23rd March 1999. Ext. CC is the copy of the notice declaring lock-out in the industry and subsequently the lock-out was lifted on the 14th October 1999 when the 2nd party workmen resumed work and Ext. DD is the copy of the lifting of lock-out order. M. W. 4 is the Chief Executive Officer of the industry and his evidence reveals that after purchase of the industry the Gangpur Synthetic Spinning Shramik Union had signed a settlement with the management on the 23rd August 1995 which was a tripartite settlement. But after signing the same agreement the above Union submitted a charter of demand after three years vide Ext. T and after a gap of 25 days the 2nd party Union had submitted their charter of demands to the management vide Ext. U. So both the charter of demands were admitted into conciliation by the Conciliation Officer, Rourkela. But there could not be any settlement on those charter of demands because of inter-Union rivalry. So on the 10th March 1999 the workers belonging to 2nd party Union had worked only in one side of the machine instead of four sides and six sides of the Ring Frame machine as they were working earlier and they continued to work on one side in the Ring Frame machine till the 22nd March 1999 'C' Shift. So the management had paid them their wages for running one side of the machine only for the above days. The evidence of this witness discloses that though he had talked with the workers to work in four sides/six sides of the machine, they reported that they were performing in one side of the machine as per the instruction of the Secretary of their Union. The evidence of M. W. 3 also goes to show that spinning is a technology having three main processes like pre-spinning, spinning and post spinning. In pre-spinning work like mixing, carding draw frames and simples are carried on spinning process contains Ring Frame only and post spinning contains doubling, cone binding and packing. This witness is a Technical Manager of the industry and according to him if the workers of any of these sections strike work, the whole process will be blocked resulting in stoppage of entire function of the industry because the works of all the sections are interlinked. This evidence of M. W. 3 has got ample corroboration in the evidence of W. W. 4. Ganesh Ch. Choudhury who in his deposition at Para. 3 has clearly stated that it is a fact that all the units of the company are inter-related and if the work of any units is affected it also affects the work of other units.

4. Before dealing with issues it is needless to say that initially one Union of the workers was operating known as Gangpur Synthetics and Spinning Mills Shramik Union under the leadership of Shyam Sundar Mishra and the present Union, i. e. Ashoka Synthetics Spinning Mills Workers Union got itself registered in the Registrar of Trade Union on the 30th June 1997 and thereafter rivalry started between two Unions which is evident from the testimony of W. W. 2 Ananda Chandra Naik who has candidly admitted that both the Unions were trying to enroll more and more workers to their respective Union. On the face of such inter-Union rivalry the 1st party management became a victim. Admittedly both the Union had submitted their respective charter of demands before the management. But the 2nd party Union had submitted their charter of demands and threatened to resort to strike unless their demands are fulfilled. It is evident from the testimony of W. W. 2, dated the 24th October 2013 at Para. 2. So keeping the above mentioned background in mind now this Tribunal has to consider the issues.

5. Admittedly W. W. 5 Shri Jenamani Patel was working as sider in Ring Frame Department and he has stated that they were regularly working in four/six sides and were getting wages for four sides when they were working in four sides and were getting wages for six sides when they were working in six sides. He has also admitted that the wages for six sides was more than the wages of four sides and at no occasion they had worked on less than four sides. But the evidence of M. W. 1 Ramakanta Sharma discloses the agitational activities of the 2nd party Union from the day of its operation in the 1st party management as he has deposed that the General Secretary of the Union had conducted a gate meeting on the 10th March 1999 and had instructed the workers not to leave the meeting till it was over. He has further deposed that the workers of the Ring Frame Department had operated one side only instead of four sides/six sides as a result of which the machines of other sides had remained idle and such go slow work process by the workers had continued till the 22nd March 1999. According to him as the situation did not improve in spite of various notices and appeals to the workers of the Union by the management as evident from Exts. Z, Z/1, JJ to JJ/4, the management had no other alternative but to declare lock-out. The management has also produced various reports received from the production department marked Exts. GG to GG/52 which shows that the workers had worked only on one side from the 20th March 1999 to the 22nd March 1999 and Ext. HH series are the attendance registers for the month of January 1999 to March 1999 which indicates that the workers were working in four sides or six sides where as from the 10th March 1999 to the 22nd March 1999 they have worked only in one side. The management has further filed the returns of the Company to the Central Excise Department marked as Ext. PP which will disclose that the production has come down considerably during the go slow period followed by the workmen. Further as per direction of the Hon'ble Court the Conciliation Officer has produced the conciliation file for better appreciation of the problem at hand and the said conciliation file reveals that the Dy. Labour Commissioner vide his letter No. 3621, dated the 24th March 1999 had submitted a report to the Labour Commissioner indicating the labour situation prevailing in the 1st party establishment file form page 60 to 62. In the last Para. at page No. 2 of the said letter the Dy. Labour Commissioner has described the steps taken by him after receipt of the notice of lock-out which runs as follows :

“On receipt of lock-out notice, he had visited the mill in the evening of 23rd March 1999 and discussed with the management and Union representatives in presence of Tahasildar, Sundargarh. In the said meeting to justify the slow down the Union representatives stated that due to no designation given to Badli workers and siders there was discontentment among them and as a gesture of slow down they resorted to go slow”.

The aforesaid fact clearly establishes that the workers of the Ring Frame Department had resorted to go slow from the 10th March 1999 to the 22nd March 1999 and the situation had not improved in spite of various notices and appeals by the management undoubtedly Ext. NN is the certified standing order of the 1st party management and Clause 25 to 27 of the Standing Order deals on strike in the establishment. Clause 27 of the Standing Order clearly stipulates that slowing

down of the work shall be deemed to be a strike. In the aforesaid premises since the workers of Ring Frame Department had resorted to go slow it was deemed to be a strike and so the management had resorted to lock-out as the situation did not improve in spite of various notices.

6. From the above facts and circumstances it is crystal clear that the workers are primarily responsible for the situation leading to lock-out the factory and as such they are not entitled to any wages for the lock-out period commencing from the 23rd March 1999. This Tribunal has arrived at such a conclusion basing on the decision of the Hon'ble Apex Court in the case of H. M. T. Vrs. Head Office Staff Association as reported in 11-SCC-319 and A. I. R.-1997-SC-585 where the Hon'ble Apex Court has held that declaration of lock-out will not be illegal when the employees reported to illegal strike. In case at hand, from the available records it is evident that the 2nd party Union had not only submitted a charter of demands before the management but had also given a threatening to resort to strike unless their demands are fulfilled and the workers had also resorted to go slow process and had worked in one side instead of four sides/six sides as they usually were doing during the period from the 10th March 1999 to the 22nd March 1999, as a result of which the machines of other sides remained idle and there was less production than the usual and in spite of notice and appeal of the management to the workers, the workers did not pay any heed to it and as according to Clause 27 of the Standing Order slowing down of work shall be deemed to be a strike which was found to be illegal, the management had no other alternative not to declare lock-out with effect from the 23rd March 1999 and as per the decision of the Hon'ble Apex Court cited above, such declaration of lock-out by the management is not illegal and as the workers are primarily responsible for such lock-out, they are not entitled to any wages during the lock-out period as claimed by them before different forums vide Exts. 12, 13, 14, 16 and 17. Issue Nos. III & IV are answered accordingly. The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHANTY
16-04-2014
Presiding Officer
Industrial Tribunal, Rourkela

S. K. MOHANTY
16-04-2014
Presiding Officer
Industrial Tribunal, Rourkela

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