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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 29th January 2020

No. 717—IR(ID)-23/2017-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th January 2020 in Industrial Dispute Case No.28 of 2017 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Jajpur Irrigation Division, Jajpur and their Workmen, represented through General Secretary, Jajpur Irrigation NMR Employees' Union, At/P.O./Dist. Jajpur was referred to for adjudication is hereby published :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 28 OF 2017

Dated the 18th January 2020

Present :

Shri Goutam Sharma, M.A., LL.B.,
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of .. First Party—Management
Executive Engineer,
Jajpur Irrigation Division, Jajpur.

And

Its Workmen, represented through .. Second Party—Workmen
General Secretary, Jajpur
Irrigation NMR Employees' Union,
At/P.O./Dist. Jajpur.

Appearances :

Shri A. K. Sahoo, Advocate	..	For the First Party Management
Shri S. K. Mishra, Advocate	..	For the Second Party Workmen

AWARD

The Government of Odisha, Labour & E.S.I. Department invoking Section 12(5), read with Clause (d) of Section 10(1) of the Industrial Disputes Act, 1947 (hereinafter referred as 'the Act') have sent the following schedule of reference for adjudication vide their Letter No. 8692—IR(ID)-23/2017-LESI., dated the 13th November 2017 :

"Whether the denial to the demand of the General Secretary, Jajpur NMR Employees' Union, Jajpur by the Government in Water Resources Department, Odisha in regard to bringing to Shri Guru Ch. Sahoo & 72 other NMR workers to work charge establishment of the Executive Engineer, Jajpur Irrigation Division, Jajpur despite the availability of vacancies and in escapable requirement of maintenance job thereof is legal and/or justified ? If not, what relief Shri Guru Charan Sahoo & 72 other NMRs are entitled to ?"

2. The case of the second party workmen numbering 73, who are being represented through a registered trade union namely, Jajpur Irrigation NMR Employees' Union, in short, is that they were all working uninterruptedly for more than two decades under the first party being engaged in different capacities such as Mate, Khalasi, Gauge Reader, Progress Recorder, Work Sarkar, River Guard etc. and during their continuance as such they were refused employment with effect from the 21st November 2003, for which a dispute was raised on their behalf by the Union and the said dispute ultimately referred to this Tribunal for adjudication, which was registered as I.D.Case No.8 of 2004. Upon adjudication of the same this Tribunal passed an Award directing reinstatement of all the second party members. Challenging the said Award, while the first party preferred W. P. (C) No. 457 of 2010 before the Hon'ble High Court of Orissa, the second party preferred W.P.(C) No. 3613 of 2010. Both the writ applications being heard analogously disposed of by the Hon'ble Court on the 20th June 2012 in their common judgment. The Hon'ble Court in their common judgment, dated the 20th June 2012 while dismissing W.P.(C) No. 457 of 2010 preferred by the first party, allowed W.P.(C) No. 3613 of 2010 preferred by the second party and modified the Award, dated the 8th July 2009 passed by the Industrial Tribunal and directed the first party to pay Rs. 30,000 to each of the second party member as lump sum compensation in lieu of back wages. The first party thereafter carried the matter to the Hon'ble Apex Court in S.L.P. No. 3402-03 of 2013, which was dismissed. When the dispute in I. D. Case No. 8 of 2004 was set at rest after the judgement of the Hon'ble High Court in W. P. (C) No. 3613 of 2010 , 75 Nos. of second party

members were reinstated in their previous post and were also paid lump sum compensation of Rs. 30,000 each in lieu of their back wages. It is asserted by the second party union that soon after implementation of the Award in I. D. Case No. 8 of 2004 when it was found that similarly placed NMRs, whose date of initial engagement was after the cut-off date i. e. the 12th April 1993, have been conferred with work charged status, it made several representations to the Authorities to bring them to the work charged establishment which were forwarded by the first party with necessary recommendations in favour of the second party members, indicating the requirement of work charged staff in the Division. It is stated that despite such positive action of the first party, the Deputy Secretary to Government, Water Resources Deptt. vide letter, dated the 30th June 2017 refused to confer work charged status on the second party members on the plea that the Finance Department have regretted on the proposal of the Water Resources Deptt., as all of the second party members were engaged after the 12th April 1993. It is the specific case of the second party union that around 111 Nos. of NMRs have been engaged after the cut-off date i. e. the 12th April 1993 and in the meantime some of them have also been brought over to the work charged establishment as per the policy of the Government, whereas the second party members have been deprived of their legitimate right. Being aggrieved with the inaction of the Authorities of the first party, the second party union raised a dispute before the labour machinery which culminated into the present reference. The second party union has therefore laid its claim that the action of the first party in denying its claim to confer work charged status on all the 73 second party workmen with retrospective effect, i.e. from 2009, when their counterparts were conferred with work charge status, be declared as illegal and unjustified.

3. Contesting the claim the first party filed its written statement admitting the first round of litigation between it and the second party union in I.D.Case No.8/2004. It is further admitted by it that upon an Award passed in the said dispute, the matter was carried to the Hon'ble High Court and thereafter to the Hon'ble Apex Court and only thereafter the dispute in I. D.Case No. 8 of 2004 was set at rest as per the judgment of the Hon'ble High Court in W.P. (C)No.3613 of 2010, inasmuch as, pursuant to the direction of the Hon'ble Court all the second party members were re-engaged as NMR workers vide its order, dated the 27th August 2013 and also a lump sum compensation amounting to Rs.30,000 was paid to each of them.

With regard to the present dispute raised by the second party union, it is stated by the first party that in the year 2009 a policy decision was taken by the Government to bring over the existing NMRs to work charged establishment and accordingly name of 5702 Nos. of NMRs were approved for bringing them to the work charged establishment. Since names of the present disputant workmen were not there owing to their retrenchment and pendency of a dispute before this Tribunal in I. D. Case No. 8 of 2004 concerning the retrenchment, their names were not in the approved list to bring them to the work charged establishment. The first party also admits in the written statement that although it has forwarded the representation of the second party with all details to the Government for consideration, yet the Government in Finance Department regretted on the proposal on the

ground that all of them have joined after the cut-off date, i. e. the 12th April 1993. It is their further stand that 111 Nos. of NMRs engaged after the 12th April 1993 have not been retrenched but allowed to continue, as their services were essential and out of them 18 Nos. of NMRs under Prachi Division have been converted to work charged establishment for maintenance of Rajeeb Bhawan and 25 Nos. of NMRs of Subarnarekha Irrigation Project have been converted to work charged establishment as displaced persons. It is stated by the first party that names of the present disputant workmen was not there in the list of 111 Nos. of NMRs, who were engaged with due concurrence of the Finance Deptt. with the averments, as above, the first party prayed for dismissal of the claim as advanced on behalf of the second party union.

4. A rejoinder to the written statement of the first party is filed by the second party union mostly reiterating the stand already taken by it in the claim statement.

5. On the basis of the pleadings of the parties, the following issues have been framed for determination :—

ISSUES

“(i) Whether the case is maintainable ?

(ii) Whether the denial to the demand of the General Secretary, Jajpur NMR Employees, Union, Jajpur by the Government in Water Resources Department, Odisha in regard to bringing to Shri Guru Ch. Sahoo & 72 other NMR workers to work charge establishment of the Executive Engineer, Jajpur Irrigation Division, Jajpur despite the availability of vacancies and in escapable, requirement of maintenance job thereof is legal and/or justified ?

(iii) If not, what relief Shri Guru Charan Sahoo & 72 other NMRs are entitled to ?”

6. In order to substantiate their respective stand, while the second party union has examined Shri Guru Charan Sahoo, one of the NMR workmen as W.W.1 also placed reliance on the documents marked Exts. 1 to 22, the first party examined Shri Dhaneswar Samal, Executive Engineer, Jajpur Irrigation Division as M.W. 1 and relied on documents marked as Exts.A to C.

FINDINGS

7. *Issue No. (i)*— Although an issue relating to maintainability of the case is framed, but during the course of argument the first party remained content and did not press the issue for determination. On a close scrutiny of the materials available on record, it seems, there is no dispute over the fact that the first party is an ‘industry’ and the second party are ‘workmen’ within the definition of the Industrial Disputes Act,1947. Moreover, as per the settled proposition of law, the Tribunal being a creature of the statute it lacks competency to sit over the action of the Government which has referred the dispute for adjudication, inasmuch as, only after the subjective satisfaction of the Government the reference in question has been referred for adjudication to this Tribunal and therefore, this Tribunal holds the proceeding to be maintainable in this forum.

8. *Issue No. (ii)*—Under the present issue, the Tribunal is required to adjudicate upon the legality and justifiability of denial of the first party to the demand of the second party union to confer work charged status on its members, despite availability of vacancies and in-escapable requirement of maintenance job.

Before proceeding to analyse the oral as well as the documentary evidence adduced by the parties on this issue, it is apt to place on record the background of facts which prompted the second party union to approach the labour machinery to make the present reference. It stands admitted by both the parties that prior to raising of the present dispute, the union had espoused the cause of the second party members in I. D. Case No. 8 of 2004, in which the Government had made a reference to this Tribunal to adjudicate on the question of legality and justifiability of the action of the first party in terminating the services of the second party members with effect from the 21st November 2003. By an Award, dated the 8th July 2009 the said reference was disposed of by this Tribunal with a direction to the first party management to absorb all the second party members under its Division in a phased manner according to their seniority within a period of three months from the date of the Award. The said Award was challenged by the first party as well as by the second party before the Hon'ble High Court in two separate Writ Applications bearing Nos. W.P. (C) No. 457 of 2010 and W.P. (C) No. 3613 of 2010, respectively. The Hon'ble Court heard both the Writ Applications analogously and passed a common judgment on the 20th June 2012 whereby both the Writ Applications were disposed of. For better appreciation the relevant portion of the judgment of the Hon'ble Court is reproduced below:—

“12. xx xx xx xx

Applying the law as it stands with regard to payment of back wages and considering the facts of the present case as well as the submission made by Mr. Mishra on behalf of the workmen, this Court finds that it would be just and proper to direct the management to pay compensation of Rs.30,000 (rupees thirty thousand) each to the retrenched workmen, in lieu of back wages.

13. In view of the above, W. P. (C) No.457 of 2010 stands dismissed with a direction to the petitioner management to reinstate the disputant available workmen in their previous place as NMR employees from where they were retrenched in a phase manner according to their seniority as per the list to be prepared in accordance with the letters of the Government quoted above. Such exercise shall be completed within a period of three months hence. W.P. (C) No. 3613 of 2010 is disposed of by modifying the impugned Award and directing that in addition to the directions issued/reliefs granted to the workmen as above, each of the workmen shall be paid Rs. 30,000 (rupees thirty thousand) as lump sum compensation, in lieu of back wages, by the management. Such payments shall also be made within the period as stipulated above.

xx xx xx xx xx” .

The first party thereafter carried the matter to the Hon'ble Apex Court in SLP No. 3402-03 of 2013 but the same was dismissed vide order, dated the 8th March 2013. Consequent upon dismissal of the SLP by the Hon'ble Apex Court, as per the judgment, dated the 20th June 2012 of the Hon'ble Court in W.P. (C) No.3613 of 2010, the members of the second party were taken back to employment and were paid Rs.30,000 each as lump sum compensation in lieu of back wages. On their reinstatement since the second party members found that persons junior to them have been brought over to the work charged establishment, they made a representation to the first party and ultimately when their demand was not considered, they approached the labour machinery which culminated into the present reference.

9. In the above scenario, the second party union while claims that they are eligible/entitled to be conferred with the work charged status retrospectively w.e.f. 2009 at par with their counterparts, the first party contesting the claim asserts that since the name of the second party members were not there in the approved list of 2009, the Government in the Finance Deptt. has rightly regretted the claim. Besides, the claim of the second party members for conferring them work charged status at par with 18 Nos. of NMRs of Prachi Division and 25 Nos of NMRs of Subarnarekha Division out of the list of 111 Nos. of NMRs is not tenable as because those 111 Nos. of NMRs who have been engaged after the cut-off date, i.e. the 12th April 1993 are continuing with due concurrence of the Finance Department and Government approval.

10. Taking stock of the situation and keeping in view the rival claims advanced on behalf of the parties, now it is to be examined as to whether the second party union has got any genuine cause behind its demand for conferment of work charged status on its members at par with their counterparts.

11. W. W.1 examined on behalf of the second party union in his Examination-in-Chief has stated mostly reiterating the assertions of the claim statement and proved copies of some official correspondences of the first party management and the higher officials recommending to confer work charged status on the members of the second party, which are marked as Ext.6, Ext.9, Ext.10, Ext.12 & Ext.17. Although W.W.1 has been cross-examined at length by the first party, nothing substantial is brought from his mouth to discredit his version. On the other hand, the witness examined on behalf of the first party in his Examination-in-Chief has admitted that in February, 2009 as per the policy decision of the Government, names of 5,702 Nos. of existing NMRs were approved to bring them to the work charged establishment and by that time since the disputant second party members had already been retrenched and a dispute in that regard was pending adjudication before this Tribunal in I.D.Case No.8 of 2004, their names were not there in the approved list. He has further deposed that after re-engagement of the second party members in the year 2013 a representation was made on their behalf to bring them to the work charged establishment which was forwarded to the Government, but ultimately the Water Resources

Department vide its Letter No.15451, dated the 30th June 2016 (Ext.A) has intimated that the Finance Department have regretted on the proposal as the second party members were engaged after the 12th April 1993. Admitting about continuance of 111 NMR employees, who have been engaged after the cut-off date i. e. the 12th April 1993 and conferment of work charged status on 18 of such NMRs under Prachi Division and 25 of such NMRs under Subarnarekha Irrigation Project, M.W.1 deposed that they are so continuing with the concurrence of Finance Department and with Government approval. During cross-examination M.W.1 has stated that he has not filed the list of 5,702 numbers of NMRs and their initial date of engagement who have been brought to the work charged establishment. He has fairly conceded during cross-examination that the services of the NMRs who are members of the second party union are highly required for proper functioning of the Jajpur Irrigation Division. He has also admitted in his cross-examination that the members of the second party union are continuously working under the concerned Junior Engineers from the date of their reinstatement.

12. Learned counsel appearing for the second party union drew attention of this Tribunal to the judgement passed by the Hon'ble Court in W.P. (C) No.3613 of 2010, reported in [2013 (136) FLR 840] and advanced an argument that owing to reinstatement of the second party members in their former post in the year 2013, the first party ought to have published a fresh gradation list enlisting the names of the second party members and only thereafter it should have decided to confer work charged status on the eligible persons. He further argued that since the second party members have been reinstated in service by virtue of the orders of the Hon'ble Court they have got every right to challenge the approved list of 5,702 Nos. of NMRs who have been conferred with the status of work charged employees in sheer disregard to their seniority.

13. Although both the parties have laid much emphasis on the said list of 5,702 Nos. of NMRs but curiously enough no such list with details about their date of engagement as NMRs is filed so as to examine this aspect. In absence of such list, it is difficult on the part of this Tribunal to determine the seniority of the second party members. Further, as admitted by both the parties, the Government as a matter of policy when decided and fixed a cut-off date i.e. the 12th April 1993 for consideration of conferment of work charged status on the existing NMRs, in absence of details of such 5,702 NMRs it is difficult to ascertain that some persons out of them having joined after the cut-off date have also availed such benefits and thereby the first party has victimised the disputant second party members. For the assigned reasons, the argument advanced on behalf of the second party members is not tenable.

14. It is further argued by the learned counsel for the second party union that NMRs engaged after the cut-off date i.e. the 12th April 1993 though have been allowed to continue and brought over to the work charged establishment by virtue of Government orders, the demand of the second party members for such status is not being considered despite repeated recommendations of the

higher officials, which exhibits the arbitrary and whimsical attitude of the concerned Authorities. Referring to the clear-cut admission of the first party in its written statement on this score, it is argued that considering the recommendation of the first party and so also its suggestion regarding requirement of manpower in the work charged establishment as per the letter Ext.12, the demand of the second party union needs a favourable consideration. To this no rebuttal argument is canvassed on behalf of the first party.

15. On going through the pleadings of the parties and the evidence both oral and documentary, it is clear that 111 Nos. of NMRs who were engaged after the cut-off date i.e. the 12th April 1993 have not only been allowed to continue in employment but also some of them have already been absorbed under work charged establishment of the Prachi Division and Subarnarekha Irrigation Division by virtue of Government orders. This admission itself shows the discrimination of the Authority in the matter of conferment of work charged status on a group of persons ignoring the genuine demand of the second party members, who are continuing in employment uninterruptedly since more than two decades. As there is a clear admission of the first party that there is requirement of work charged staff for smooth functioning of the Division, the demand of the second party union for conferment of work charged status at par with their counterparts holds good.

16. In the light of the discussions held in the preceding paragraphs, it is held that the denial to the demand of the second party union by the Government in the Water Resources Department, Odisha to bring them to the work charged establishment of the first party management despite availability of vacancies and inescapable requirement of maintenance job thereof is neither legal nor justified.

17. *Issue No. (iii)*—In view of the findings on issue No.(ii) the first party management is directed to take step to bring the second party members to its work charged establishment within three months hence.

The reference is answered accordingly.

Dictated and corrected by me.

GOUTAM SHARMA

18-01-2020

Presiding Officer

Industrial Tribunal, Bhubaneswar

GOUTAM SHARMA

18-01-2020

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

SANTOSH KUMAR MOHANTY

Under-Secretary to Government
