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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 10th August 2023

S.R.O. No. 545/2023—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 13th July 2023 passed in the ID Case No. 17 of 2020 [u/s 2-A(2)] passed by the Presiding Officer, Labour Court, Bhubaneswar on the industrial dispute between Shri Jagabandhu Parida, Proprietor of M/s. Maa Bateswari Expert Service, At Jemadei, P.O. P. N. College, Dist. Khurda, Odisha-752 057, 2. The General Manager, M/s. United Breweries Ltd., Plot No. B/1, Khurda Industrial Estate, Dist. Khurda and Shri Sadananda Behera, At Gadakhurda, P.S./ Dist. Khurda, is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 17 of 2020 [UNDER SECTION 2-A(2)]

Dated the 13th July 2023

Present :

Smt. Aparna Mohapatra,
Presiding Officer,
Labour Court, Bhubaneswar.
(JO Code :- OD-0408)

Between :

1. Shri Jagabandhu Parida, . . . First Party—Managements
Proprietor of M/s. Maa Bateswari Expert Service,
At Jemadei, P.O. P. N. College,
Dist. Khurda, Odisha-752 057.
2. The General Manager,
M/s. United Breweries Ltd., Plot No. B/1,
Khurda Industrial Estate, Dist. Khurda.

And

Shri Sadananda Behera, . . . Second Party—Workman
At Gadakhurda, P.S./Dist. Khurda-752 055.

Appearances :

Shri Subrat Mishra & Shri B. P. Dash, Advocates.	. . .	For the First Party—Management No. 1
None	. . .	For the First Party—Management No. 2
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Shri Satyananda Behera, Authorised Representative.	. . .	For the Second Party—Workman

AWARD

Challenging refusal of employment with effect from the 8th October 2018 by the first party management No.1, the second party workman has approached this Labour Court resorting to the provisions of Sec.2-A(2) of the Industrial Disputes Act,1947(in short 'the ID Act' or 'the Act') with a prayer for his reinstatement in service with full back wages coupled with continuity of service and other benefits.

2. The story as narrated in the claim statement in short is that the first party management No.2 is a Foreign Liquor Company and is operating its plant at Khurda Industrial Area. Above 340 numbers of unskilled, semi-skilled and high-skilled workers/workmen are/were engaged in permanent and perennial nature of work under the management No.2. Likewise, the second party was also engaged under the management No.2 through an outsourcing agency i.e., the management No. 1 for the period from the 2nd January 2011 to the 8th October 2018 continuously and in this way, he has completed more than 240 days of work in each calendar year. He was also covered under EPF and ESI Schemes. But on the 8th October 2018 he was refused employment by the management No.1 in gross violation of the provisions of Sec.25-F, 25-G and 25-H of the Act and without adhering to the principles of natural justice. Although the second party was issued with an Identity Card in his favour by the management No.1, but the workers were not provided payment slips towards payment of wages, weekly holidays, National & Festival Holidays, overtime wages, so also safety materials. Add to it, the second party further alleged that the management was also not depositing the PF dues of the workers before the concerned authority in due time. It is averred in the statement of claim that when his verbal requests for his reinstatement in service before the managements did not yield any result, on the 28th November 2018 the second party compelled to raise an industrial dispute before the ALO, Khurda stating his illegal refusal of employment and requested for his intervention. But, as the dispute could not be resolved by the labour machinery within the stipulated period for forty five days he filed the present application u/s.2-A(2) of ID Act before this Court directly for adjudication. According to the second party, the refusal of his employment having been effected without due compliance of the provisions of the Act, the same is illegal & unjust, hence prayed for his reinstatement in service with full back wages, continuity in service and other benefits.

3. On receipt of notice, the first party management entered its appearance and filed its written statement thereby challenging the maintainability of the application filed u/s.2-A(2) of the Act owing to the fact that it is not a case of refusal of employment as alleged, rather in fact, it is case of transfer and the same does not come within the ambit of Section 2-A(2) of the ID Act. The present case is also not maintainable on the ground of non-filing of any application before the Conciliation Officer of the appropriate Govt. as per Section 2-A(2) of the ID Act. However, basing upon the complaint petition raised by the second party before the ALO, Khurda, an enquiry was

made on the 19th March 2019 to that effect and on the said date as per the consent of the second party he was issued with an appointment letter to work in 'Godrej Agrovet Ltd.', Khurda Industrial Estate, Khurda. But, the second party did not turn up for his duty under the management No.1, for which on the 20th April 2019 he was again asked in writing to join his duty, but in vain.

It is further averred in the written statement that with effect from May, 2011, the second party was initially engaged under the management No.2 as an unskilled labourer by the management on daily rated basis. That apart, his engagement was also intermittent. But, in the month of November, 2016 the second party tendered his resignation and settled his EPF dues from his EPF Account having A/c No.OR-BBS-5980/926. Further, on his approach, the second party was engaged afresh by the management No.1 under the management No.2 as an unskilled worker for the period from January, 2017 to the 7th October 2018 as and when required t basis. During the said period, he was covered under a new EPF Account bearing No.OR-BBS-5980/1555. It is also averred in the WS that on his consent the second party was transferred to work under M/s.Godrej Agrovet Ltd. on the 19th March 2019, but instead of joining there he has filed the present case on the allegation of his refusal of employment which is neither true nor based on facts. The second party has not rendered continuous service in each calendar year as claimed. Further the dispute raised by the second party before the ALO, Khurda was resolved amicably on the 19th March 2019. Moreover, the second party has suppressed the fact that he is a gainfully employed under M/s.Subham Associates, Khurda having ID No. ORBBS0013742000 and member ID No. ORBBS 00137420000011040 under EPF organisation. With the above backdrop, prayer has been made to reject the claim of the second party.

As the management No.2 did not take part during hearing it was set *ex parte* vide order, dated the 10th February 2023, for which the WS filed by it needs no consideration.

4. In the rejoinder filed to the WS of the management No.1, the second party has stated that on being selected through an oral interview he engaged under the management No.2 by the management No.1 for the period from the 2nd January 2011 to the 8th October 2018 and completed more than 240 days of continuous service in each calendar year. He was getting Rs. 7,150 per month towards his salary. The case is very much maintainable as he has raised the industrial dispute before the conciliation officer and the same was not settled. In fact, the second party was not issued with any transfer order, rather he was issued with an 'appointment letter' to join in M/s.Godrej Agrovet Ltd. to which he refused to accept and to that effect he has also informed to the management, so also to the Conciliation Officer. It is alleged by the second party that due to the treatment of his father he requested the management to give him some advance amount, but the management despite giving any amount to him towards advance, told him to sign EPF Form and by playing mischief the management mentioned there about his resignation, for which he was later newly enrolled under EPF Scheme.

5. Taking into consideration the pleadings advanced by the parties the following issues have been settled for proper adjudication of the dispute.

ISSUES

- “(i) Whether the action of the first party management No. in terminating the service of the second party workman by way of refusal of employment with effect from the 8th October 2018 is legal and/or justified?

- (ii) Whether the application filed u/s.2-A(2) of ID Act, 1947 by the second party is maintainable?
- (iii) Whether there exists employer-employee relationship between management No.2 and the workman?
- (iv) If not, what relief the workman is entitled to?"

6. In order to substantiate their respective stands both the contesting parties have adduced oral as well as documentary evidence on their behalf.

The second party besides examining himself as WW No.1 has adduced evidence of one another witnesses as WW No.2 and exhibited 05 numbers of documents under Exts.1 to 5. *Per contra*, the management No.1 has examined its Manager as MW No.1 and filed certain documents which are marked as Ext.A to Ext.F.

FINDINGS

7. *Issue Nos. (i) to (iv)*—For the sake of convenience all the issues are taken up together as the facts involved therein are inter-linked on common facts.

At the outset, it is apt to mention here that as per the pleadings of the Management No.2, Issue No. (iii) i.e., whether there exists employer-employee relationship between the management No.2 and the workman. But, at the cost of repetition, it would not be out of place to mention here that as the management No.2 did not participate in hearing it was set *ex parte*, for which the WS filed by it was not taken into consideration. However, the management No.1 in its WS clearly stated that on being sponsored by it the second party was under the management No.2. Hence, it is held that when the management No.2 was the principal employer of the second party, the management No.1 is his employer.

As far as the maintainability of the case is concerned, it is emphatically stated by the management No.1 at para-2 of its WS that the case filed by the 2nd party disputant is not maintainable at the threshold as the same does not relate to refusal of employment as alleged, but in reality, it is a case of transfer, for which Section 2-A(2) of the ID Act is not attracted. In this context, it is specifically contended by the management No.1 at para-3 of its WS that on mutual understanding between the workman and the management No.1 before the ALO on the complaint of workman, on the 19th March 2019 the 2nd party was issued with an appointment letter to work in M/s. Godrej Agrovat Ltd., Khurda, Industrial Estate, Khurda on his consent in the same capacity as transfer. To fortify its stand the management No.1 has focused on Ext.A (Xerox copy of note sheet dated the 19th March 2019 maintained by the ALO, Khurda) and Ext.B (the Xerox copy of the "appointment letter" dated the 19th March 2019 of the second party). Admittedly, the second party was engaged under the management No. 2 by the management No.1 and he had worked there till the 8th October 2018. But, Ext. B clearly indicates that the second party was issued with an appointment letter on the 19th March 2019 with a direction to join under M/s. Godrej Agrovat Ltd. which is admittedly a different establishment from the management No.2. Further, Ext B is not a 'transfer order', rather the same is clearly appearing as an 'appointment letter'. Moreover, the same has been issued in

favour of the second party after lodging a complaint by him before the concerned authority vide Ext.3 regarding his alleged refusal of employment. So, in view of the above discussions, Ext. B cannot be at all stated to have a transfer order, rather the same is a fresh appointment letter. MW No.1 during his cross-examination averred that he has not submitted any document before this Court relating to any written direction from the management No.2 regarding transfer of the disputant. Accordingly, this Court is of the humble view that this is not a case of transfer, so the present case is maintainable on that score only.

What have been stated above, the management No.1 has also challenged the maintainability of the present case thereby submitting *inter alia* that under whom the dispute filed by the second party was not the Conciliation Officer. The second party WW No.1 with reference to Ext.3 (Xerox copy of his complaint petition dated the 28th November 2018) assiduously testified that with regard to his refusal of employment he approached the ALC & ALO, Khurda for their intervention. Ext.3 clearly corroborated the above contention of the second party. Admittedly, basing upon the complaint petition of the second party, notice was issued to the management No.1 and in pursuance to such notice, the management No.1 attended the conciliation proceeding before the ALO, Khurda as revealed from Ext.A. The MW No.1 during his cross-examination also clarified that the disputant has preferred a dispute before the concerned labour authority for conciliation and that the management No.1 has also received the notice from the office of the DLO regarding conciliation. But, there is nothing on record evidencing that the management No.1 during conciliation proceeding has challenged the authority of the ALO, Khurda as a Conciliation Officer. Further, the management No.1 failed to produce any document to show that the ALO, Khurda was not the Conciliation Officer at the time of filing of Ext. 3 by the second party. Hence, the argument advanced to that effect by the management No.1 *sans merit* and accordingly, the case is also maintainable on the above reason.

Now it is to discuss on the merit of the claim advanced by the second party. The second party claimed to have worked under the management No.2 being engaged through the management No.1 for the period from the 2nd January 2011 to the 8th October 2018 continuously. But, resisting to such contention of the second party, the management No.1 has strenuously contended that he was initially engaged under the management No.2 for the period from May, 2011 to November, 2016 when he tendered his resignation and settled his EPF dues from his EPF Account. Thereafter, on his approach, the second party was engaged afresh for the period from January, 2017 to the 7th October 2018 with a new EPF Account number. Admittedly, the second party has not whispered about the alleged resignation, so also settlement of his EPF dues neither in his complaint petition under Ext. 3 nor in his statement of claim. However, in his rejoinder to the WS of the management No.1, the second party stated that due to the treatment of 'his father he requested the' management to give some advance for the said purpose, but the management instead of sanctioning the same told him to sign in, an EPF Form wherein without his knowledge the management had written about his resignation and withdrawal of his EPF amount. However, it came to light thereafter. If the second party was aware about such fact, then it is not understood as to why he did not raise any complaint before any corner. That apart, the reason best known to him for non-mentioning such

fact in his complaint petition as well as in his statement of claim. Admittedly, after withdrawal of his EPF amount he was also provided with a new EPF number. Further, on this aspect, a suggestion was given to the management-witness (MW No.1) to which he denied that the second party disputant had worked under the management No.2 since 2011 to the 8th October 2018 continuously. In reply, MW No.1 also stated that the second party worked continuously from 2011 to 2016, he had worked for the second time from the year, 2017 (January, 2017) till the 8th October 2018 and the second party did not work for the period from 2016 to 2017. The record also seems that the second party has neither filed a piece of paper nor called for any document from the possession of the managements which could have suggested that he has worked under the managements for the period from 2011 to the 8th October 2018 continuously. Rather, the second party WW No.1 himself during his cross-examination at para-15 categorically submitted that he was initially engaged since May 2011 under the management No.1; tendered his resignation in the month of November, 2016 and also withdrew the final PF amount from the management No.1. He also volunteers that due to the illness of his mother he tendered his resignation. He further submitted that he cannot remember the exact date of his re-employment. Hence, it is quite clear that the second party was initially engaged under the management No.2 through the management No.1 for the period from May 2011 to November 2016 and thereafter, again he was engaged for the period from January 2017 to the 8th October 2018. So, the initial period of the second party cannot be taken into consideration relating to the present case in dispute.

Now it is incumbent upon the Court to see as to whether at any point of time the second party was refused employment with effect from the 8th October 2018 as alleged by him. There is no controversy to the fact that the second party has worked from January 2017 to the 8th October 2018 under the management No. 2 through management No.1 for the second time. On the above aspect, while the second party alleged that with effect from the 8th October 2018 he was refused employment, the management No.1 has stated that at no point of time he was refused employment as alleged, rather he was transferred. As discussed *supra*, this Court has already held that the second party was not at all transferred as claimed by the management. Rather, the MW No.1 during his cross-examination stated that after the 8th October 2018 the second party was not given any work as during that period there was no work. He further stated that he has not filed any document relating to transfer of any other employees working under the management No.2 through the management No.1 as the same is not required for the present case. From the evidence of the MW No.1, it is also forthcoming that the management No.1 had engaged the second party, so also some other workers under the management No.2. But, there is nothing on record to show that as to whether the other employees of the management No.1 engaged under the management No.2 were also not given any work like the second party as during that period there was no work. The MW No.1 during his cross-examination also stated that the second party was the junior most employee of the management No.1, but the management has not filed any gradation list to prove such contention. So, from the discussion made above, it emerges that after the 8th October 2018 the second party was not given any work and in this way, the second party was refused employment with effect from the 8th October 2018. It is an admitted fact that the second party had worked for the 2nd time from the year 2017 (January 2017 to the 8th October 2018 and as such during that

period he must have worked 240 days under the managements. But, there is nothing on record which could have shown that the management No.1 has complied Section 25-F of the ID Act at the time of the refusal of employment to the second party workman, It is held that the refusal of employment to the workman amounts to termination as defined under the ID Act and the said termination being made without compliance of ID Act is apparently illegal and unjustified.

At this juncture it cannot be overlooked that in connection with his refusal of employment the second party approached the concerned labour authority vide Ext. 3. In this context, the argument is well advanced on behalf of the management No.1 that basing upon Ext.3 the second party was issued with a transfer order during conciliation proceeding. WW No.1 who is none other than the second party himself stated during his cross-examination that he has been transferred by the management No.1 from the establishment of the management No. 2 to another establishment (Godrej Agrovet Ltd., Industrial Estate, Khurda) to which he did not agree. But, in the next breath, the second party at para-13 categorically submitted that on the 19th March 2019 a proceeding was effected in presence of the ALO, Khurda, his Employer and himself. Ext. A is proof of it. He further admitted to the fact that he is a signatory to Ext.A and that he has put his signature along with endorsement as to the acceptance of the appointment letter dated the 19th March 2019. The second party volunteers that he has put the signature with a compulsion by one Pani Babu, the then ALO as he was busy in the 11th day of death ceremony of his sister-in-law. But on being asked, he stated to have not raised any complaint before any authority against such compulsion by the then ALO, Pani Babu. But, surprisingly enough, the second party nowhere in his statement of claim has mentioned the above development happened during the conciliation proceeding. However, after filing of WS mentioning above such fact by the management, the second party in his rejoinder to such WS asserted that he was issued with appointment letter to join in M/s. Godrej Agrovet Ltd., but he refused the same and accordingly informed the same in writing to the management as well as the Conciliation Officer, but the second party has not substantiated the same through any documentary evidence. That apart, the second party WW No.1 during his cross-examination at para-14 submitted that as he did not join under the Godrej Agrovet Ltd. as per the appointment letter dated the 19th March 2019 for the second time the management No.1 also issued another letter directing him to join in the Godrej Agrovet Ltd. In view of the discussions made above, it is apposite to peruse the documents under Exts.A (Xerox copy of note sheet dated the 19th March 2019 maintained by the ALO, Khurda) and B (Xerox copy of appointment letter dated the 19th March 2019 issued in favour of the second party). Both the documents are marked without objection. On perusal of Ext.B, it transpires that vide such document the second party was directed to work under M/s.Godrej Agrovet Ltd. which has been received by the second party by putting his signature thereon during the conciliation proceeding dated the 19th March 2019 as revealed from Ext.A. Ext.A clearly reveals that on mutual understanding by and between the parties the complainant i.e., the second party received the appointment letter to work in his new assigned place of work.. Indeed, the second party is the signatory of Ext.A and Ext.B, and on the 19th March 2019 a proceeding was effected in presence of the ALO, Khurda, his employer i.e., management No.1 and the second party and such fact has been admitted by the second party during his cross-examination. So, the plea of the second party to the fact that he has refused the same as stated above cannot be accepted in absence of positive documentary evidence from his side, so also

due to suppression of such fact in his claim statement. Be that as it may, as the second party has already received Ext. B on the 19th March 2019 by putting his signature thereon that too during the conciliation proceeding there exists no industrial dispute between the parties with effect from the 19th March 2019 and as such he is not entitled to any relief from that day. Further, the second party has also acceded to the fact that he has already joined in a new organisation with effect from the 19th March 2020.

However, from the date of his refusal of employment i.e., on the 8th October 2018 till the date of issuance of appointment letter in his favour i.e., on the 19th March 2019, the second party was entitled to back wages as he was out of his employment illegally during that period. Thus, considering his last drawn salary i.e., Rs.7,150 (as claimed by the second party and the same is not disputed by the management) so also the fact that the second party has not rendered any service to the management No.1 who is the employer of the second party as an outsourcing agency or the management No.2 during his unemployment period, the first party management No.1 is directed to pay a lump sum compensation of Rs. 20,000 (Rupees twenty thousand) only to the second party within a period of one month from the date of publication of the Award, failing which the amount of back wages awarded in favour of the second party would carry a simple interest of 6% per annum till it is paid to him.

The application is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
13-07-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
13-07-2023
Presiding Officer
Labour Court, Bhubaneswar

[No. 7649—LESI-IR-ID-0115/2023-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government