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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 22nd April 2017

No. 3265—IR(ID)-46/2015-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2017 in Industrial Dispute Case No. 63 of 2015 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Narveram Power & Steel Ltd. Gundichapada, Dist. Dhenkanal and their Workman Shri Samanta Bindu Ranjan Dhir & 40 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 63 OF 2015

Dated the 28th March 2017

Present :

Shri Saroj Kumar Sahoo, o.s.J.s. (Jr. Branch),
Presiding Officer, Labour Court, Bhubaneswar.

Between :

Management of .. First Party—Management
M/s Narbheram Power & Steel Ltd.,
Gundichapada, Dist. Dehenkanal.

And

Shri Samanta Bindu Ranjan Dhir & 40 others .. Second Party—Workmen
C/o Narbheram Power & Steel Pvt. Ltd.,
At Plot Nos. 11 & 13, P.O. Gundichapada,
Dist. Dhenkanal.

1. Bijaya Kumar Ray
2. Dillip Kumar Naik
3. Bijayananda Prusty

4. Prasant Kumar Sahoo
5. Bharat Bhusan Pattnaik
6. Bamapoda Roy
7. Samanta Bindu Ranjan Dhir
8. Gokulananda Pattaniak
9. Sanjay Kumar Pradhan
10. Purna Chandra Mahanta
11. Monaranjan Sitha
12. Goutam Chandra Giri
13. Rajkishre Khatua
14. Dhananjaya Patra
15. Suresh Ch. Tripathy
16. Raj Kumar Palo
17. Saroj Kumar Behera
18. Saroj Kumar Brahma
19. Santosh Pradhan
20. Bipin Bihari Behera
21. Priyabrata Nayak
22. Manas Ranjan Nayak
23. Sanjit Kumar Mohanta
(Deleted vide order Dt. 16-12-2015).
24. Saroj Kumar Baral
25. Mukesh Chandra Samal
26. Pravat Sethy
27. Abdul Jabbar Khan
28. Rajendra Kumar Sahoo
29. Soubhagya Ranjan Barik
30. Binayak Sahoo
31. Nagendra Nath Baral
32. Trupti Ranjan Gochhayat
33. Rabindra Kumar Das
34. Biranchi Narayan Rout
35. Satynarayan Sahoo
(Deleted vide order Dt. 16-12-2015).
36. Diganta Swain
37. Abhaya Charan Behera
38. Biswajit Dwibedy
39. Kailash Chandra Samal
40. Rajkamal
41. Indramani Naik

Appearances :

Shri Debanarayan Mohanty . . . For the First Party—Management
 Authorised Representative

Shri B. B. Behera & Others . . . For the Second Party—Workmen
 Authorised Representatives

AWARD

The Government of Odisha in the Labour & E. S. I. Department in exercise of powers conferred upon it by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') have referred the following dispute for adjudication by this Court vide their Letter No. 7093—IR(ID)-46/2015-LESI., dated the 14th August 2015.

“(a) Whether Shri Samanta Bindu Ranjan Dhir & 40 other employees (As per Annexure-A) of M/s Narbheram Power & Steel Ltd., Gundichapada, Dist. Dhenkanal are “workmen” as defined under Section 2(s) of the Industrial Dispute Act, 1947.

(b) If yes, whether the termination of services of these workmen (As per Annexure-A) with effect from the 31st January 2015 by virtue of separation order dated the 14th January 2015 by the Management of M/s Narbheram Power & Steel Ltd., Gundichapada, Dist. Dhenkanal is legal and/or justified ? If not, to what relief these workmen are entitled ?”

2. The case of the members of the 2nd party is that they were working under the 1st party management uninterruptedly till the 31st January 2015 on various posts like AJO, AJO (Security), Charge Man, Pharmacist, Junior Chemist, Engineer, Asst. Engineer, Manager, Deputy Manager, Engineer-Maintenance, DET, Junior Officer and Asst. Manager (Sale Tax). The 1st party management illegally refused their employment with effect from the 31st January 2015 without complying the provisions of Industrial Dispute Act, 1947. The refusal of employment of the members of the 2nd party by the management was on the ground of circumstances beyond its control including scarcity of principal raw materials. The Industrial Establishment of the 1st party management was previously owned by M/s. SCAW Industries Pvt. Ltd. Most of the 2nd party members were under the pay roll of the said M/s SCAW Industries Pvt. Ltd. and irrespective of their designations they were doing either supervisory, manual or clerical jobs. Their jobs were never managerial or administrative in nature. They had no authority to recommend for taking any disciplinary action against any employee. They were also not empowered with recommending the management for any increment or hike of salary of any employee nor anybody was working under them. None of them had recommended any leave application of the employees of the management. However, occasionally some of them were doing some supervisory work. They are coming under the definition of “workmen” as defined under Section 2(s) of I. D. Act, 1947. Due to the policy decision of the State Government as the said erstwhile company had no mines to obtain raw materials to run the said unit and though the present company had mines, but no factory to process the minerals it purchased the said industrial establishment

from erstwhile company namely, M/s SCAW industries Pvt. Ltd. on the 24th July 2007. As per the mutual understanding with the Union/Members and in terms of proviso under Section 25-FF of the Industrial Dispute Act, 1947 the services of the members of the 2nd party were not been interrupted in view of such transfer of ownership. The 1st party management had sufficient raw materials to continue with the production process. It can also procure further required raw materials from Odisha Mining Corporation and other Mining Companies/Owners to run the Industrial Establishment uninterruptedly. For the reason best known to the 1st party management the production process of the 1st party was stopped since the 25th December, 2014 on the plea of non-availability of raw materials to run the said Unit. The 1st party management started terrorise the members of the 2nd party and other employees and informed them that their services will be terminated after the 31st January 2015. The DGM, HR of the 1st party management wanted to serve the letter of termination on S. B. Ranjan Dhir and others on the 15th January 2015 and also disclosed them that their services will no more be required after the 31st January 2015. Knowing so the members of the 2nd party along with others wanted to discuss with the matter with DGM, HR, but he refused to discuss. He disclosed that the management has desired to reduce the manpower. There are around 444 employees working under the 1st party management and for their retrenchment prior permission of the appropriate Government under Section 25-N(1) (b) of Industrial Dispute Act, 1947 is required to be obtained by the management from the appropriate Government by submitting an application under Section 25-N(2) of ID Act, 1947 r/w Rule 82(1) of Orissa Industrial Dispute Rules, 1955. Apprehending illegal refusal of employment the members of the 2nd party along with others had raised an industrial dispute before DLO, Dhenkanal on the 17th January 2015 with a request to immediately intervene into the matter. Notice was issued to the 1st party management by the Labour Machinery directing the management to appear on the 22nd January 2015 for a joint discussion. After a joint discussion the proceeding was adjourned to the 30th January 2015 and finally on the said date on being satisfied as to the existence of Industrial Dispute the DLO, Dhenkanal was pleased to admit the complaint dated the 20th January 2015 for conciliation and issued Form-D to the management fixing the 30th January 2015 for conciliation. There is a prohibition under Section 33 of ID Act, 1947 to alter the service condition of the workmen while the conciliation proceeding is pending. In spite of such prohibition the 1st party management did not allow the members of the 2nd party to enter into the plant premises by affixing their names in the Noticeboard of the Time Office near the NH Gate of the factory and also terrorised them by calling other co-workmen and police personnel. The refusal of service to the members of the 2nd party is also in contravention of Section 25-M and Section 33 of ID Act, 1947. It is also contrary to Section 25-G of ID Act, 1947 r/w Rule 83 of Orissa Industrial Disputes Rules, 1959. The management has violated the principle of "last come first go". The members of the 2nd party had filed a complaint in Form-M under Section 33-A of ID Act, 1947 before the DLO-cum-Conciliation Officer, but the management intentionally avoided to file its reply. The members of the 2nd party had approached the Collector and Head of the District Administration, Dhenkanal for intervention. They sat in peaceful Dharana followed by hunger strike

before the Collector Office. The refusal of service of the members of the 2nd party was without any prior notice, retrenched compensation as prescribed under Section 25-F of ID Act, 1947. The management has adopted unfair labour practice as defined under Section 2(ra) r/w Fifth Schedule of ID Act, 1947. The members of the 2nd party are entitled for reinstatement in their service with full back wages.

3. In pursuance of notice issued by this Court, the 1st party management entered its appearance before this Court and filed its written statement. The case of the 1st party management is that the members of the 2nd party are not coming under the definition of “workmen” as defined under Section 2(s) of ID Act, 1947. There is no existence of “industrial dispute” as defined under Section 2-K of ID Act, 1947, for which the reference is not maintainable. The members of the 2nd party were not coming under the definition of “workmen”, but they were Executives under the 1st party management. The natures of the job performed by the members of the 2nd party were managerial, administrative and supervisory in nature. The salary drawn by them is more than Rs. 10,000 per month. Mining has been stopped since May, 2014, coal block allotted to the establishment of the 1st party management was cancelled in September, 2014 and production activities ceased since October, 2014 and have come to a grinding halt since mid December, 2014. All the efforts of the 1st party management to secure necessary raw material for operation of the industry being unsuccessful and the production activities having stopped completely since October, 2014, individual letters were issued to the members of the 2nd party through Regd. Post with AD in their respective address informing them the decision of the 1st party management for separation of workforce in an attempt to downsize the same and their services would not be required after the 31st January 2015. The conciliation proceeding initiated by the DLO, Dhenkanal is also not maintainable in the eye of law. The provision of Section 33 of ID Act, 1947 is also not applicable to the members of the 2nd party as they were Executives under the 1st party management and not workmen. The separation order was communicated to all the members of the 2nd party separately through Regd. Post with AD on the 14th January 2015 which was in terms of their appointment order. The members of the 2nd party were not allowed to enter into the plant premises on the 1st February 2015 as they had accepted their salaries in view of their separation which was in terms of their appointment orders. Section 25-N, 25-G, 25-F and Section 33 of ID Act, 1947 are not applicable to the members of the 2nd party as they were not workmen under the 1st party management at the time of their separation. The 1st party management has not adopted unfair labour practice at all. Seven Executives out of the members of the 2nd party have received their full and final amount along with additional benefits. The statement of claim filed by the members of the 2nd party is grossly bad by law of limitation. The separation of service of the members of the 2nd party with effect from the 31st January 2015 is legal and justified.

4. In view of the pleadings of the parties the following issues are framed :—

ISSUES

- “(i) Whether Shri Samanta Bindu Ranjan Dhir & 40 other employees (As per Annexure-A) of M/s Narbheram Power & Steel Ltd., Gundichapada, Dist. Dhenkanal are “workmen” as defined under Section 2(s) of the Industrial Dispute Act, 1947 ?

- (ii) If yes, whether the termination of services of these workmen (As per Annexure-A) with effect from the 31st January 2015 by virtue of separation order, dated the 14th January 2015 by the Management of M/s Narbheram Power & Steel Ltd., Gundichapada, Dist. Dhenkanal is legal and/or justified ?
- (iii) If not, to what relief the workmen are entitled ?”

5. As many as three witnesses have been examined on behalf of the members of the 2nd party and Exts. 1 to 27 are marked. On the other hand, three numbers of witnesses have been examined on behalf of the management and Exts. A to Ext. L are marked.

FINDINGS

6. *Issue No. (i)*—Under this issue, it is to be decided whether the members of the 2nd party are coming under the definition of “workmen” as defined under Section 2(s) of ID Act, 1947. When in the Statement of Claim the members of the 2nd party claimed that they coming under the definition of “workmen” as defined under Section 2(s) of ID Act, 1947 the 1st party management has claimed that they are not coming under the said definition. On perusal of the copy of the Failure Report which has been received along with the reference from the Government, it transpires that since the initiation of proceeding before the Conciliation Officer the 1st party management is taking the plea that the members of the 2nd party are not coming under the definition of “workmen” for which the dispute raised by them under Industrial Dispute Act, 1947 is not maintainable. From the evidence of the witnesses examined on behalf of the members of the 2nd party and the documents relied on by them, it is clear that initially they were engaged as workmen under the 1st party management but subsequently promoted to the post of Executives. It is also clear from the evidence led by the 1st party management that initially the members of the 2nd party were engaged as workmen, who were promoted to the post of Executives prior to filing of their complaint petition before the Conciliation Officer. The specific plea of the 1st party management is that after they were promoted to the post of Executives they ceased to be coming under the definition of workmen as defined under Section 2(s) of ID Act, 1947. It is also admitted that some of the members of the 2nd party were redesignated after their promotion. Admittedly after the members of the 2nd party were promoted to the post of Executives they ceased to be members of the Labour Union and had applied to the Executive Director of the 1st party management vide their letter, dated the 10th October 2011 intimating the management about formation of Narbheram Officers Welfare Associations. It is also clear from the evidence of the witnesses examined by the 2nd party that they were engaged in the similar nature of work after their promotion which they were performing prior to their promotion. It is also clear from the evidence on record that the 1st party management failed to produce and prove any document to show that after redesignation/promotion the members of the 2nd party were performing managerial and supervisory work. On the other hand, MW. 3 at paragraph 16 of his evidence during cross-examination, admitted that after redesignation of the members of the 2nd party they continued to perform the same work which they were performing earlier to their redesignation and he has seen

the other workmen (other than the persons named Paragraph 4 of his affidavit evidence) working in the computer and doing manual work. It is settled principle of law that the designation of a person is not decisive for consideration whether he is a workman or not, but the nature of work performed by him is material. In the case in hand, the members of the 2nd party were not entrusted with any managerial or supervisory work. The 1st party management failed to discharge the onus on it to prove that they were entrusted with managerial and supervisory work. After analysing the evidence on record, it is clear that the members of the 2nd party are coming under the definition "workmen" as defined under Section 2(s) of ID Act, 1947. This issue is answered accordingly in favour of the members of the 2nd party.

7. *Issue No. (ii)*— The engagement/appointment of the members of the 2nd party is admitted by the 1st party management. It is also admitted that by a letter, dated the 14th January 2015 the services of the members of the 2nd party were separated from the management with effect from the 31st January 2015. The letters of separation are marked Ext. D to Ext. D/32. On perusal of those letters, it transpires that the management had assured to pay a specific amount towards special retrenchment/separation compensation as one time compensation through a specific cheque number and has enclosed another cheque towards full and final settlement along with those separation letters issued to the members of the 2nd party. Ext. L is the copy of Minutes of meeting held on the 3rd April 2015 at 1-00 P.M. at Conference Hall of M/s Narbheram Power and Steel Pvt. Ltd. in between representatives of the 1st party management and the representatives of the members of the 2nd party. On perusal of Ext. L., it transpires that the representatives of the members of the 2nd party had requested the management to consider their legal payments for one time settlement and the management had offered to pay additional 10% of retrenchment compensation. It is also clear from Ext. L that the management has insisted the representatives of the members of the 2nd party to consider a workable and agreeable demand. It is also admitted that from the separated employees, nine persons have received their full and final settlement from the management. It is also clear from the evidence on record that due to circumstances beyond the control of the management including scarcity of principal raw materials the management was bound to stop the production. Although the management has offered certain amounts to the members of the 2nd party as retrenchment/separation compensation and some amount towards full and final settlement, there is no basis for calculation of those amounts. However, the management has failed to prove that the said amount was paid to the members of the 2nd party at the time of their separation, i.e. on the 31st January 2015. It is also clear from the materials on record that the 1st party management has not served notice on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette as prescribed under Section 25-F(c) of ID Act, 1947. The 1st party management has not complied Section 25-F of ID Act, 1947. Hence, the termination of the services of the members of the 2nd party by the 1st party management with effect from the 31st January 2015 is illegal. This issue is answered accordingly in favour of the members of the 2nd party.

8. *Issue No. (iii)*—Under issue No. 2, I have hold that there were sufficient grounds for termination of the services of the members of the 2nd party by the 1st party management. However at the time of termination, the 1st party management has not complied Section 25-F of ID Act, 1947. From the evidence on record, it transpires that now the establishment of the 1st party management has started functioning. The members of the 2nd party had served under the 1st party management for considerable periods. After the organisation of the 1st party management started functioning it will require more staffs for the jobs performed by the members of the 2nd party during their engagement under the 1st party management. As the termination of the services of the members of the 2nd party is illegal they are entitled for reinstatement in their service. However as the establishment of the 1st party management was closed for shortage of principal raw materials and the members of the 2nd party had not contributed anything to the management after their separation, the members of the 2nd party are not entitled to back wages. The 1st party management is directed to reinstate the members of the 2nd party within two months from publication of the Award by the Government.

The reference is disposed of accordingly.

Dictated and corrected by me.

SAROJ KUMAR SAHOO
28-03-2017
Presiding Officer
Labour Court, Bhubaneswar

SAROJ KUMAR SAHOO
28-03-2017
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. NAYAK
Deputy Secretary to Government