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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 24th January 2024

S.R.O. No. 48/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 28th February 2023 passed in the ID Case No. 08 of 2014 by the Presiding Officer, Industrial Tribunal, Rourkela to whom the industrial dispute between the Plant Manager, M/s BOC India Ltd., Presently, Linde (I) Ltd., Rourkela-7, Fertilizer Area, P.S. Tangarpali, Dist. Sundargarh and 1. Shri Paramananda Das, At Tarapur, Filter House Colony, Rourkela-7, Dist. Sundargarh, 2. Shri Pradeep Kumar Pati, At Panposh, Bangala Tata, Near Circuit House, Rourkela-4, Dist. Sundargarh was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ROURKELA

INDUSTRIAL DISPUTE CASE No. 08 OF 2014

Dated the 28th February 2023

(In the matter of a reference under Section 10 & 12 of the Industrial Disputes Act, 1947)

Present :

Shri Malaya Ranjan Dash, O.S.J.S.,
Presiding Officer,
Industrial Tribunal, Rourkela, (JO Code : OD 00028).

Between :

Plant Manager, M/s BOC India Ltd.,
Presently, Linde (I) Ltd., Rourkela-7,
Fertilizer Area, P.S. Tangarpali,
Dist. Sundargarh. . . First Party—Management

And

1. Shri Paramananda Das,
At Tarapur, Filter House Colony,
Rourkela-7, Dist. Sundargarh. . . Second Party—Workmen
2. Shri Pradeep Kumar Pati,
At Panposh, Bangala Tata, Near Circuit
House, Rourkela-4, Dist. Sundargarh.

Appearances :

Shri T. K. Sahu, Advocate	. .	For the 1st Party—Management
Shri A. Dutta, Advocate and Shri T. Mohanty, Advocate	. .	For the 2nd Party—Workmen
Date of Argument	. .	24-02-2023
Date of Order	. .	28-02-2023

AWARD

The Government of Odisha, in the Labour & E.S.I. Department in exercise of their powers conferred by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute vide their Order No. 10394/LESI, Bhubaneswar, Dated the 20th December 2014 for adjudication:—

“Whether the action of the management of M/s BOC India Ltd., Presently Linde (I) Ltd, Rourkela-7, Fertilizer Area, P.S. Tangarpali, Dist. Sundargarh, Odisha in terminating the services of Shri Paramananda Das and Shri Pradeep Kumar Pati, Night Watchers with effect from the 1st April 2013 is legal and/or justified ? If not, what relief these workmen are entitled to ?”

2. Pursuant to the notice issued, the 2nd party workmen appeared and filed their statement of claim separately but with identical pleas. According to them, they joined as watchmen in the 1st party management's Company on the 1st December 2010 with a salary of Rs. 5,000 per month and their work was to watch and ward the premises of the Company which is an 'industry' functioning to produce various products like Oxygen, Nitrogen and Argon and finished products for the purpose of selling to various sectors. The 2nd party workmen discharged their duties with utmost sincerity and honesty and uninterruptedly from the 1st December 2010 to the 31st March 2013 and they were never served with charge sheet for any misconduct but suddenly they were retrenched from service with effect from the 1st April 2013 whereas the 1st party management behind their back, appointed 40 workmen in their Company. While retrenching them from service, the 1st party management had not followed the provisions of Section 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act, 1947 for brevity). So, the action of the management in refusing employment to the 2nd party workmen without following the basic principles of natural justice and in gross violation of the provisions of the I.D. Act, 1947 is arbitrary, illegal and unjustified and as such the 2nd party workmen are entitled to be re-instated in service with full back wages and consequential service benefits.

3. The 1st party management appeared and filed its written statement denying all the averments made in the statement of claims of the 2nd party workmen. According to the 1st party management, there was no employer and employee relationship between the parties as the 2nd party workmen were working under a contractor i.e., Srikali Enterprises and hence, the question of refusing them employment by the 1st party management does not arise rather the reference is not maintainable against them and accordingly, prayed to answer the reference against the 2nd party workmen.

4. In their rejoinder, jointly filed by the 2nd party workmen, they stoutly denied the allegation of the management that they were working under contractor Srikali Enterprises and according to them, in connivance with said contractor, the 1st party management has forged documents behind their back though the 2nd party workmen were receiving salary from the management directly

and in order to wriggle out of the claim of the 2nd party workmen, such false pleas has been taken by the management, which is to be outrightly rejected.

5. Upon consideration of the rival contention of the parties, following issues are settled for adjudication :—

ISSUES

- “(i) Whether the reference is maintainable ?
- (ii) Whether there is employer employee relationship between the parties ?
- (iii) Whether the 1st party has refused employment to the 2nd party ?
- (iv) Whether the 2nd party workmen are entitled to any relief ?”

6. During the course of hearing, both the 2nd party workmen were examined from their side as W.W. 1 and W.W. 2 and tendered some documents which were marked as Ext. 1 to Ext. 4. On the other hand, three witnesses were examined from the side of the 1st party management as M.W. 1 to M.W. 3 and they tendered documents which were marked as Ext. A to Ext. Q.

7. Learned advocate for the 2nd party workmen contended that since the workmen were in continuous service for more than 240 days in a year preceding to their illegal retrenchment, they were entitled for regularisation in the rolls of the service of the company as regular workers. On the contrary the management refused their employment without any rhyme or reason and violating the mandatory provisions of the I.D. Act, more particularly Section 25-F and 25-G of the I.D. Act, which is illegal and *abinitio* void. Therefore, the 2nd party workmen are entitled to reinstatement in their service with full back wages.

8. On the other hand, learned advocate for the 1st party management submitted that the 2nd party workmen could neither prove the master and servant relationship between them nor that they were in continuous service for more than 240 days under 1st party management preceding to the date of their alleged termination in order to get benefits under Section 25-F of the I.D. Act. Therefore, the reference is not maintainable and the reliefs claimed by them are not to be granted.

FINDINGS

9. *Issue Nos. (i), (ii) & (iii)*—The above issues being interlinked are taken up together for adjudication. This is a case of illegal termination from service, as claimed by the 2nd party workmen against the 1st party management. Being a beneficial legislation, the I.D. Act, 1947 provides certain safeguards to protect the workmen from illegal and arbitrary termination. Though termination is not defined but ‘Retrenchment’ is defined in Section 2(oo) of the I.D. Act. As per such definition, termination of service of a workman by the employer by any reason whatsoever, otherwise than, as punishment, by way of disciplinary action, would constitute retrenchment except in cases (a) a voluntary retirement of a workman; (b) retirement of workman on reaching the age of superannuation; (c) termination of service as a result of non-renewal of contract; and (d) termination of the service on the ground of continuous ill health of the workman. Unless these reasons are pleaded and proved, termination of the workman on any ground would constitute retrenchment. In case of retrenchment, the employer has to follow the provisions of Section 25-F of the I.D. Act. To take shelter under the umbrella of the provisions of Section 25-F of the I.D. Act, the workman has to first prove the employee and employer relationship between him and the management to entertain an industrial dispute within the meaning of Section 2(k) of the I.D. Act, 1947 and that the establishment was an ‘industry’ within the meaning of the I.D. Act, 1947, where he was working and he was in ‘continuous service’ for not less than one year within the meaning of Section 25-B of

the I.D. Act, 1947 which means that the workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days as per Clause (2)(a) of Section 25-B of the I.D. Act.

10. As such the first and foremost duty of the Tribunal is to find out if there was employer and employee relationship between the 1st party management and the 2nd party workmen. It is the specific case of 2nd party workmen that they were working under the 1st party management as watchmen since the 1st December 2010 whereas denying such fact the 1st party management asserts that the 2nd party workmen never worked under them rather they were working under a contractor establishment namely, Srikali Enterprises. However, it is not at all in dispute that the 1st party management's Company is an 'Industry' within the meaning of Section 2(j) of the I.D. Act and the nature of employment of the 2nd party are such that they falls within the definition of the 'workman' under Section 2(s) of the I.D. Act, 1947.

11. It is the settled principle of law that the obligation to lead evidence to establish an allegation made by a party is on the party making the allegation. The test would be who would fail if no evidence is led. It must seek an opportunity to lead evidence and to lead evidence contention to substantiate which evidence is necessary, has to be pleaded. Thus, the initial burden is on the 2nd party workmen to prove that they were working directly under the 1st party management and not under any contractor as alleged by the 1st party management. In order to discharge such burden it is at least required for the 2nd party workmen to prove that the employer was paying salary to them in regular interval and the employer was having control and supervision over the work of the employee/workman.

12. Admittedly there is no notice of recruitment, interview cards or appointment letter/ orders issued by the 1st party management in favour of the 2nd party workmen. In order to prove that the 2nd party were working under the 1st party management, apart from their oral evidence they relied upon the documentary evidence i.e., the salary slips and gate passes. Workman Shri Paramananda Das has been examined as W.W.1 who stated that he had worked under 1st party management from the 1st December 2010 till the 31st March 2013 continuously without any interruption or any break in service till he was illegally refused employment without any basis. According to him, he was retrenched from service with effect from the 1st April 2013 without following principle of natural justice and even in violation of the provisions of I.D. Act, 1947, more particularly Section 25 F and 25 G of the I.D. Act, 1947. He also denied to have ever worked under contractor Srikali Enterprises and getting wages from him and that the contractor ever deposited E.S.I. and E.P.F dues for him. However, the 1st party management challenged such evidence of M.W. 1 during cross-examination. W.W. 1 during cross-examination has stated that he joined the management Company when it was under construction and most of time, he was working in night shift duties. By the time the boundary wall of the Company was already completed and the production of the Company was started in the year 2013 approximately. He admitted that some employees working under the contractor were taken for permanent employment by the management Company when production was started. He admitted that Srikali Enterprises was one of the contractors under the 1st party management and had deposited provident funds for him but after the alleged termination. He further admitted that he came to know about such deposit in the year 2013. He conceded that he had not given any written letter to the authority of provident fund regarding the illegal deposit of provident fund in his name rather he had personally met one Mandal Sir for the purpose. He denied the suggestion that he had never met one Mandal Sir for the purpose of

deposit of provident fund. As regards to the documentary evidence, W.W. 1 proved petty cash vouchers under Ext. 1 Series and the copy of the gate pass under Ext. 2. W.W.2, Pradeep Kumar Pati also adduced the similar evidence as that of W.W. 1 and proved some documents, i.e. petty cash vouchers under Ext. 3 Series and the copy of the gate pass under Ext. 4. Ext. 1 Series and Ext. 3 Series were marked as exhibits with objection from the side of the management. During cross-examination also management questioned those documents and suggested that the documents were obtained and thereafter signed by them. It is also suggested that Ext.1 Series and Ext. 3 Series are not official vouchers of the Management-Company. On perusal of those petty cash vouchers, it is found that the vouchers are supposed to be attached with the bills but no such bills were proved by the 2nd party workmen and as such those are incomplete documents. Though the vouchers contain the logo of the Company but there is neither any official seal affixed or signature of the officer/staff available on it who had issued those vouchers. There is no mention of the name of the guard in whose favour expenses as mentioned in those vouchers were issued, though the signature of the 2nd party workmen is available in the respective vouchers showing them as receivers. Except vouchers dated the 29th March 2012 and the 10th March 2012 in Ext.1 Series and Ext. 3 Series, no other voucher bears the signature of the accountant. Though the vouchers dated the 29th March 2012 and the 10th March 2012 in Ext.1 Series and Ext. 3 Series which bears short signature of a person above the word 'Accountant' but it is nowhere pleaded by 2nd party workmen as brought into the evidence the full name of such person and if he was in fact working in the Company. All the vouchers are xerox copies. Once those were disputed by the other side, it was incumbent on the 2nd party workmen to prove those documents through the maker's thereof. But no such official of the 1st party management as alleged to have issued those documents were called by the 2nd party workmen into the witness box to vouchsafe the truth of those documents. Therefore, those documents cannot be held to be genuine and sufficient to prove that the 2nd party workmen were getting their remuneration directly from the 1st party management. Apart from that in the column specified for particulars in the said documents it is clearly mentioned that 'being expenses incurred towards payment of guards.' The simplest meaning of such particular is that the expenses had already been incurred by the time the voucher was passed and not that through the said vouchers the guards were paid their expenses. Moreover, 'expenses' may connote more than merely 'remuneration' or 'wages'. Besides it is the specific case of the 2nd party workmen that they were joined the management's Company as 'watchmen'. If that is so, then it is not clear as to how could they receive remuneration as 'Security Guards'. Thus, for a moment if it is accepted that those vouchers were genuinely passed by the 1st party management, then also it cannot be concluded that those were issued towards the monthly wages of the 2nd party workmen. Therefore, analyzing in any angle, Ext. 1 Series and Ext. 3 Series falls short to prove that the 2nd party workmen were working under the 1st party management and were being regularly paid by them. Although the Gate Pass under Ext. 2 and 4 are not objected by the 1st party management but it is submitted by the advocate for the 1st party management that those Gate Passes without any other corroborative evidence cannot prove the fact that the 2nd party workmen were working under the 1st party management's Company and not by contractor Srikali Enterprises. According to him, by admitting Ext. 2 and Ext. 4 into evidence, the 2nd party workmen rather admits that they were working under a contractor as they have put their respective signatures on Ext. 2 and Ext. 4 in the space provided for the 'contact labour' with designation security. M.W.2 has further explained the position as to under which circumstances such Identity Cards were issued. M.W. 2, Shri Ashok Kumar Chaudhury was the site-in-charge at Rourkela of M/s BOC India Ltd., now M/s Linde India Ltd. In his evidence-in-chief, he has stated that the "1st party management regulate the

ingress and outgress of its staff and workers, including the workers employed by their contractors engaged inside its premises for which it issued Identity Cards to the workers with their respective photos on it with their respective names. Contractors also used to apply for identity cards to their workers and accordingly such cards in blank are supplied to contractors to be issued to their workers. After fixing the photo of respective workers with other requirements mentioned in the Identity Card/gate pass from the workers, the contractor used to send the same to the 1st party management for approval. The workers were asked to put the card in their neck so that the same would be visible to identify a worker. The Identity Card vide Exhibit Nos. 2 and 4 are issued to the workmen Shri Paramananda Das and Shri Pradeep Kumar Pati respectively *prima facie* show that they are issued to contractor and the workmen have put their signature over the caption "signature of Contract Labour". Any employee/worker whether of the 1st party management or of a Contractor is not allowed inside the premises of the 1st party management without a gate pass. This clearly shows that the said two workmen were engaged under a contractor and were not the workmen of the 1st party management". This evidence of M.W.2 was gone unchallenged. M.W.2, during his cross examination although admitted that Ext. 4 bears seal of the company and signature of the official of BOC India Ltd., but stated that the contractor was authorized to issue such identity card to his contract labour. No other supporting material was produced by the 2nd party workmen to prove their relationship with the 1st party management. Even no endeavour was made by them to call for the muster roll, attendance register, wage register from the possession of the 1st party management which could have thrown any light on their relationship as master and servant. Thus, there is no impediment in holding that the 2nd party workmen failed to discharge their initial burden to prove that they were having servant and master relationship with the 1st party management.

13. At one hand when the 2nd party workmen failed to prove that they were working under the 1st party management, the evidence adduced from the side of management assumes lot of significance, which is in conformity to their stand that the 2nd party workmen were working under M/s Srikali Enterprises. They have proved the same through M.W. 1, Sricharan Samal, who was working as a site-in-charge of contractor Srikali Enterprises, M. W. 2, Shri Ashok Kumar Choudhury, the then site-in-charge of M/s BOC India Ltd and M.W. 3, James Roy, Site Assistant, Administration-cum-Accounts of Burnpur site of Linde India Ltd., on behalf of the Company. M. W.3 produced his letter of authority issued by the Managing Director and constituent Attorney of Linde India Ltd. at Ext. E and Certificate of Registration issued under the Contract Labour (R & A) Act in favour of BOC India Ltd. in the year 2011 under Ext. F, Service order issued in favour of Srikali Enterprises vide order dated the 27th October 2010 for fixation of electrical fittings and hardware for permanent building of RSP under Ext. G, Service order dated the 16th May 2011 under Ext. H, Service order dated the 26th October 2011 with Bill of Quantities for Civil work and unit rates under Ext. J, Service order dated the 9th February 2012 with Bill of Quantities for Electric erection work outside plant and unit rates under Ext. K, Service order dated the 3rd May 2012 with Bill of Quantities for supply of electrician under Ext. K. He has also produced the Service order dated the 22nd August 2009 for supply of security guard in favour of G4 Security Services (India) Pvt. Ltd. under Ext. M, Service order dated the 30th June 2011 for security services under Ext. N, Service order dated the 2nd April 2012 for security services under Ext. P. Service order dated the 27th February 2013 for security services under Ext. Q. These documents are moved without any objection from the side of the 2nd party workmen and sufficient to conclude that these two contractors, i.e. Srikali Enterprises and G4 Security Services (India) Pvt. Ltd. were working under the 1st party managements company at the relevant time. M. W. 1, Sricharan Samal, the site-in-charge of the Contractor Srikali Enterprises in support of the stand of the 1st party management stated that their establishment was supplying

five numbers of security guards to the 1st party management during construction stage including the 2nd party workmen. He stated that with completion of the boundary wall and decrease in construction activities, the demand of security guards reduced and work was not extended after March, 2013 and they did not employ any guard to the 1st party management with effect from the 1st April 2013 as their contract was not renewed. According to M.W. 1, since there was no work in the site of BOC India Ltd. site, they called the 2nd party workmen for discussion but they did not attend for which they offered them Rs. 30,996 each towards full and final settlement of their dues. Having not received the same, the matter was intimated to the District Labour Officer, Rourkela vide letter dated the 25th January 2014 under Ext. C. Srikali Enterprises was also depositing its E.P.F. contribution for the 2nd party workmen as evident from Ext. B Series and Ext. C Series. There is no evidence that either the 2nd party workmen submitted any grievance petition before the E.P.F. Authority or before the Labour Authority challenging the action of the contractor Srikali Enterprises recognizing the 2nd party workmen as their workmen and even W.W.1 and W.W.2 admitted that they engaged when the construction work was going on and construction completed and production started in the year 2013. Moreover, it is their case that they were working as watchmen which is also evident from the evidence of M.W. 1. The preponderance of the aforesaid evidence makes it crystal clear that the 2nd party workmen never worked directly under the 1st party management and since the 2nd party workmen failed to prove the employer and employee relationship between them, the natural corollary is that there is no industrial dispute exists between the 1st party management's Company and 2nd party workmen and as such the reference is not maintainable.

14. Once it is held that the reference is not maintainable, the question as to if the 2nd party workmen were in 'one year of continuous service' within the meaning of Section 25-B of the I.D. Act under 1st party management becomes redundant. However, to arrive at a definite conclusion on this point, it is seen that it is the consistent case of the 2nd party workmen that they were working under M/s BOC India Ltd. with effect from the 1st December 2010 till the 31st March 2013. Learned advocate for the 1st party management however, vehemently objected such stand of the 2nd party workmen on the ground that burden of proof being on the workmen to prove that they had worked for not less than 240 days in a calendar year preceding to the date of alleged retrenchment which they could not discharge, it cannot be held that they have satisfied the condition enumerated in Section 25-B of the I.D. Act regarding continuous service and eligible to avail the benefit under Section 25-F of the I.D. Act.

15. Save and except the self-serving statements of W.W. 1 and W.W. 2 that the workmen were discharging their duty continuously in the Company from the 1st December 2010 till the 31st March 2013, there is nothing in the record to vouchsafe such statement, when it is challenged by the 1st party management. As observed in the preceding paragraph, even the 2nd party workmen did not make any endeavour to call for relevant documents from the 1st party management to prove their stand except Ext. 1 Series to Ext. 4 which are also found not adequate to prove their employment under the 1st party management's company, it is to be held that the 2nd party workmen could not prove that they had completed 240 days service in the requisite period to constitute continuous service within the meaning of Section 25-B of the I.D. Act so as to get protection under Section 25-F of the I.D. Act. Therefore the 2nd party workmen failed to discharge their initial burden that they were in 'continuous service' within the meaning of Section 25-B of the I.D. Act for 240 days prior to their alleged retrenchment and as such, the termination of their employment with effect from the 1st April 2013 cannot be held to be unjustified and illegal.

16. As regards to the claim that while disengaging the concerned workmen from service illegally, the 1st party management had retained the service of workmen junior to the 2nd party workmen thereby violated the provision of Section 25-G of the I.D. Act, such stand also fails in view of the findings that there is no master servant relationship between the parties. Even otherwise no evidence adduced by them to prove such stand and the witnesses from the side of the workmen have not whispered the name of any such workman junior to them who, were retained by the management and as such there is no evidence to prove that actually they were junior to the 2nd party workmen and engaged by the 1st party management.

Therefore, all the above issues are answered against the 2nd party workmen.

17. *Issue No. (iv)*— In view of the findings arrived in respect of *Issue Nos. (i), (ii) & (iii)*, the 2nd party workmen are not entitled to any relief as claimed by them. This issue is answered accordingly against the 2nd party workmen.

18. Resultantly, the 2nd party workmen, namely Shri Paramananda Das and Shri Pradeep Kumar Pati having failed to prove the employer and employee relationship between M/s BOC India Ltd. and them, it is to be held that no industrial dispute exists between them and as such they are not entitled to any relief claimed in the statement of claim.

The reference is answered accordingly, on contest.

Dictated and corrected by me.

MALAYA RANJAN DASH
28-02-2023
Presiding Officer
Industrial Tribunal, Rourkela

MALAYA RANJAN DASH
28-02-2023
Presiding Officer
Industrial Tribunal, Rourkela

[No. 600—LESI-IR-ID-0064/2023-LESI.]
By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government