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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 7th February 2024

S.R.O. No. 77/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 30th December 2023 passed in the ID Case No. 16 of 2014 by the Presiding Officer, Labour Court, Bhubaneswar, to whom the industrial dispute between the Rajesh Grover, Employer of M/s Everest Homoeo Laboratory, B-3, Industrial Estate, Balaosre and Sk. S. Ahmed, Secretary, Everest Homoeo Employees Union, B-3, Industrial Estate, Balasore, Pin-756001 was referred to for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 16 of 2014

Dated the 30th December 2023

Present :

Smt. Aparna Mohapatra,
Presiding Officer, Labour Court,
Bhubaneswar. [JO CODE-OD-0408]

Between :

Rajesh Grover,
Employer of M/s Everest Homoeo Laboratory,
B-3, Industrial Estate, Balaosre.

.. First Party—Management

And

Sk. S. Ahmed,
Secretary, Everest Homoeo Employees Union,
B-3, Industrial Estate, Balasore, Pin-756001.

.. Second Party—Workman

Appearances :

Sk. Sujat Ali, Advocate

.. For the 1st Party—Management

Shri S. K. Das, Advocate

.. For the 2nd Party—Workman

AWARD

The Government of Odisha in the Labour and E.S.I. Department in exercise of the 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 Memo No. 5330/LESI dated the 5th July 2014.

"Whether the demand of Shri Jayanta Dey and 13 others workmen of M/s Everest Homoeo Laboratory, B-3, Industrial Estate, Balasore for wage enhancement of Rs. 2400 per month with effect from the 1st April 2012 is legal and/or justified? If not, what should be the details?"

2. The Factual Matrix of the statement of claim of the members of the second party workmen is that the 1st party management being an 'Industry' having more than 100 employees, appoints different technical and non-technical staffs and pays salary to them who produce finished goods using raw materials. The present disputants were engaged as workmen for production of Homeopathic Medicines from the raw materials supplied to them in a systematic process on the supervision and guidance of the management. The 1st party management has started its business since 1968 and due to the co-operation of the workmen, it has become manifold. Initially, the turnover was about 1.5 lakh whereas at present, it is more than 2.5 crores. Though the present workmen by utilising best of their efforts took part in the highest production, the management did not fulfil their legitimate dues rather threatened for their disengagement in case they raise their voice. The 2nd party workmen however, submitted a 14 points charter of demand dated the 26th March 2012 to the 1st party management in which the demand No.1 relates to 'wage enhancement'. The previous settlement (of wages) was up to the 31st March 2012. In the Annexure to the Charter of Demands, the 2nd party workman specified the wages enhancement of each workman. In spite of receipt of the charter of demand, the 1st party management did not take any steps to resolve the same with the sole object to make undue gain. So, the members of the 2nd party approached the local labour authorities for conciliation. In course of conciliation, the 1st party management adopted a delaying tactics with an ulterior motive to deprive the second party members from their statutory benefits. But, on the 17th December 2012, during conciliation, the 1st party management offered to increase salary by Rs. 2400 per month in respect of each of the workmen 'prospectively'. On the other hand, the 2nd party workmen demanded to make the same operative from the date of expiry of the previous settlement. In the meantime, the management has retired some workmen and removed/terminated/ dismissed these workmen in violation of the statutory provisions due to their union activities. At the time of their retirement or settlement, the management has paid certain amount which does not include the wages for the claim period as raised by the disputants. The management has also taken signature on the receipt from the workers. All the present disputants were working under the management at the particular point of time i.e., 2012-2014 and they are eligible to get the benefits as per the charter of demand. It is superficially claimed by the 2nd party disputants that though in the charter of demand, amount of increment of wages was not found place, but demand has been made by them for the enhancement of wages. As such, their specific demand is that they are entitled to enhancement/increase of/in their salary @ Rs. 2400 per month with effect from the 1st April 2012. Further, as the 1st party has utilized the said amount in its business, the 2nd party disputants are also entitled to interest at commercial rate.

It is clearly mentioned in the consolidated pleadings by the 2nd party workmen that three of the present disputants of this case namely Uttam Prasad Yadav, Sambhunath Panda and Maguni Bhoi are not interested to contest the dispute as they already settled/compromised their claim with the management. So, now there are only 11 numbers of disputants.

3. The 1st party management entered its appearance and filed Written Statement (WS) thereby challenging the claim statement on the ground of maintainability, cause of action etc. It also challenged the reference made by the Government as non-est in the eye of law and the statement of claim is misconceived and unwarranted in the eye of law. This case has been filed by people who have superannuated and retired from service taking all their legal dues accrued to them by executing proper documentation like money receipts, signed voucher and taken their full and final settlements along with *ex-gratia* from the management, for which the 2nd party workmen are stopped to proceed further with this proceeding. The retired employees can neither be treated as workmen nor affected or impeded the industry. So, the present 11 disputants are not coming under the purview of 'workman' as defined under Section 2(s) of the ID Act. The rest three workmen namely, Uttam Prasad Yadav, Sambhunath Panda and Maguni Bhoi have already settled the charter of demands presented to the management and they even executed the settlement in Form-K. On retirement, an employee ceased to be a workman. There cannot be any industrial dispute at his instance. An industrial dispute must be raised by an existing workman/workmen.

M/s. Everest Homeo Lab of the management is a partnership firm registered under the Indian Partnership Act of which Mr. Rajesh Grover and Pranav Grover are partners. The Firm is engaged in business manufacturing Homeopathic Medicines having their establishment at Balasore. There exists no recognized or registered Trade Union in the Firm of the 1st party management. The 1st party management has always functioned to the utmost satisfactions of all the authorities.

Prior to the reference dated the 5th July 2014 and charter of demand dated the 26th March 2012 by the non-existent unrecognized and unregistered Union and even prior to the initiation of any conciliation, one of the present workmen namely Jatindra Pradhan had superannuated upon attaining the age of retirement and retired from service on the 6th July 2012 which was also before submission of any conciliation failure report and before the reference of any dispute was made/referred by the State Government before this Court, as such, he is ceased to be a workman/employee of the management. He had already received Rs.1,10,377 as his full and final dues from the management. So, it is the claim of the management that the name of Shri Jatindra Pradhan was already dropped from the charter of demand before completion of the conciliation proceeding.

Likewise, Shri Jayant Kumar Dey, another 2nd party workman of this case retired from service upon superannuation on the 1st October 2012 and took a sum of Rs. 1,79,772 as his full and final dues from the management before completion of conciliation proceeding and before the reference dated the 5th July 2014. So, he also ceased to be a workman. His name was also dropped from the conciliation proceeding, but his name has been mentioned in the reference.

Similarly, one of the 2nd party workmen namely Shri Rabindra Nath, who retired from service upon superannuation on the 6th November 2012 and received a sum of Rs.1,79,772 as his full and final dues from the 1st party management and as such he ceased to be a workman.

Further, Shri Satya Narayan Das, who is one of present disputants in this case, left the service on the 4th December 2012 and took a sum of Rs. 12,516 as his full and final dues. Accordingly, he also ceased to be a workman.

Again, in the same way, the 2nd party workmen namely Shri Rabindra Mohan Das, Umakanta Mahalik, Harihar Barik, Sarbeswar Pati and Akshaya Kumar Maharana, retired from their respective services under the management upon their superannuation on the 1st April 2013, the 11th April 2013, the 1st January 2014, the 9th February 2016 and the 15th July 2020 respectively and they have already received Rs.1,42,908, Rs. 2,10,000 (including an amount of Rs. 27,808 as

an *ex-gratia*), Rs.70,551, Rs.1,37,159 and Rs. 2,17,338 (including an amount of Rs. 34,170 as an *ex gratia*) respectively from the management and as such they are ceased to be workmen.

In the like manner, Shri Bidyadhar Mishra and Sushanta Kumar Swain, the two other 2nd party workmen have tendered their resignation vide their letters dated the 13th November 2014 and the 13th April 2015 respectively and received a sum of Rs.53,324 (including *ex gratia* of Rs.12,550 and Rs.16,219 towards full and final dues from the management respectively and as such, they are ceased to be employees and workmen under the management.

Correspondingly, one Shahnewaz Ahmed, one of the 2nd party disputants entered into settlement and received a sum of Rs. 3,30,000 by executing 'Form-K settlement' in this Court on the 21st October 2019 which was subsequently published in the Gazette Notification vide No. IR(D)09-2020/1710-LESI, dated the 3rd March 2020 as full and final dues from the management and as such, he ceased to be a workman.

It is falsely submitted by the 2nd party workmen that more than 100 employees are working under the management and the 1st party is carrying its business since 1968 having initial turnover of Rs.1.5 lakh and the present turnover of more than 2.5 crores and there was no demand for enhancement of Rs. 2400 per month with effect from the 1st April 2012 in the charter of demand and the charter of demand dated the 26th March 2012 has already been settled by the workman. It is also denied by the management that on the 17th December 2012 in course of conciliation the 1st party offered to increase salary by 2400 per month in respect of each workman, but the management agreed to increase the salary prospectively.

4. In view of the above schedule of reference made by the appropriate Government, so also as per the rival pleadings of the parties, the issues emerge for determination are as follows:—

ISSUES

- (i) Whether the demand of Shri Jayanta Dey and 13 others workmen of M/s Everest Homeo Laboratory, B-3, Industrial Estate, Balasore for wage enhancement of Rs. 2400 per month with effect from the 1st April 2012 is legal and/or justified ?
- (ii) If not, what should be the details ?

5. To substantiate their case the members of the second party have examined five numbers of witnesses as WW Nos.1 to 5 and placed reliance on certain documents which are marked as Exts.1 to 5/a on their behalf. Similarly, the management in its turn has examined one witness namely, Shri Pranav Grover one of the partners of the management as MW No.1 and exhibited certain documents vide Exts. A to U/1.

FINDINGS

6. Issue Nos. (i) and (ii)—Before proceeding to decide the case, again, it is noteworthy to reflect here and read carefully the 'Schedule of Reference' dated the 5th July 2014 made by the Government of Odisha in Labour and ESI Department, i.e., as follows:—

"Whether the demand of Shri Javanta Dey and 13 others workmen of M/s Everest Homeo Laboratory, B:-3, Industrial Estate, Balasore for wage enhancement of Rs. 2400 per month with effect from the 1st April 2012 is legal and/or justified ? If not, what should be the details ?"

At this stage, it is pertinent to mention here that in the instant case the management not only challenged the above reference made by the appropriate Government, but also emphatically disputed the status of the members of the second party as workman as per the provisions envisaged under Section 2(s) of the ID Act. The materials available on the case record reveal that the management being dissatisfied by the above schedule of reference had taken the shelter of the Hon'ble Court by preferring a Writ Petition vide WP(C) No.19482 of 2014 on the plea that the above order of reference has not been passed in consonance with the demand raised by the members of the second party before the concerned DLO, so also on the other ground i.e., the same is complete non-application of mind and lacking subjective satisfaction of the authority and the same came to be disposed of by a Judgment dated the 10th August 2021 (though the same is not exhibited, yet taken into judicial notice) with the following observation:

"Thus, the order of reference as referred by the State Government for adjudication by the Labour Court does not warrant any interference. In view of the discussions made above, the writ petition is dismissed being devoid of merit. All interim orders passed stand vacated."

So, in view of the above observation of the Hon'ble Court, as the question of maintainability of the order of reference has already been reached its finality before the Hon'ble Court, there is no need to discuss further on that issue as posed by the management in the present case. However, in the case of Nityananda Panigrahi Vrs. General Manager (Mines) M/s Tata Iron and Steel Co. Ltd. and another 2006 (Supp.-I) OLR 933, the Hon'ble Court held that "Reference-Validity/maintainability of industrial Tribunal is a creation of statute and it gets jurisdiction on the basis of a reference-A Tribunal cannot go into the question of validity of a reference".

The management also pointed out that Everest Hornoeo Employees Union not being registered under Trade Union Act cannot claim benefit in representative capacity. But, as per the settled position law an unregistered Union can validly raise an industrial dispute as per Section 2(k) of the Act.

It is also trite to mention here that pursuant to the above order of reference, 14 numbers of members of the second party (disputants) had filed a joint statement of claim, but subsequently 11 numbers out of 14 numbers of members of the second party (as three numbers of the disputants namely, Uttam Prasad Yadav, Sambhunath Panda and Maguni Bhoi are not interested to contest the case on the account of fact that they have already settled their dispute with the management) have filed their joint consolidated claim statement. Accordingly, the above statement of claim is only confined to the 11 numbers of disputants excluding the above three. But, the management in this case thoroughly challenged the status of the members of the second party as workman. Hence, it needs a vivid discussion on this score. In this context, it is specifically contended on behalf of the management that as the members of the second party have already been separated from its Firm by way of retirement on attaining the age of superannuation, some left the service by submitting resignation etc. and also received their full and final settlement dues as per their entitlement, they are not coming under the definition of 'workman' as defined in Section 2(s) of the Act. It needs to point out here that the Hon'ble Court also in the above Judgement dated the 10th August 2021 in the WP(C) No. 19482 of 2014 have been pleased to observe that the petitioner (present management) neither disputes the status of claimants as workman in terms of the definition contained in Section 2(s) of the ID Act nor its own status amenable to the ID Act. Admittedly, the members of the second party were in service as on the 1st April 2012 i.e., the date of their claim. The members of the second party while in their statement of claim with vehemence contended that they are workmen within the meaning of Section 2(s) of the ID Act as they used to work of

production of Homeopathic Medicines and the management used to appoint different technical and non-technical staffs for the said work, the management seems to have failed in its attempt (by adducing oral or documentary evidence) to disprove such assertion advanced by the members of the second party regarding their nature of duties. Rather, the management simply taken a stand that the retired employees cannot be entitled to claim the status of workmen. It may be reiterated here that all the members of the second party are not now in service, but the alleged relief as claimed by them in the present case relates to their engagement period. On the above aspect, the management has drawn attention of this Court on the provisions enumerated in Section 2(s) of the ID Act. But, nowhere in the said section, it has either been mentioned or construed that the retired employees are not workmen. However, it is appropriate for reproduction of the provisions of Section 2(s) of the ID Act which read as under:—

Section 2(s) of the ID Act: “workman” means any person including an apprentice employed in any industry to do any manual, unskilled’ skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or, the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.”

On a bare reading of the above provisions, it is crystal clear that an employee performing manual, unskilled, skilled, technical, operational, clerical or supervisory work is considered to be a ‘workman’ as per the provisions of the Act. But, nothing has been suggested on behalf of the management that the members of the second party have never performed any work viz., manual, unskilled, skilled, technical, operational, clerical or supervisory during their employment, rather the ground taken by the management says other things i.e., the members of the second being retired employees cannot claim status of workman which is not found place in the above provisions. To establish such ground, the management has also relied upon four numbers of decisions of the Hon’ble Apex Court in the case of *A. K. Bindal & Anr. Vrs. Union of India & Ors.*, *Burn & Co., Calcutta Vrs. Their Employees*; *Purandaran vrs. Hindustan Lever Ltd.* and *Oshiar Prasad & Ors. Vrs. Emp. In Rel. To Mgt. of S. C. Washery*. But, as a matter of fact, the facts of the above cases are totally different from the present case as nowhere in the above cases the Hon’ble Apex Court have been pleased to hold that the retired employees are not workmen, rather in the above cases, it has been observed that after introduction of VR Scheme by the management, if any employee opt for voluntary retirement under that scheme and is received any amount after acceptance of the same, then he leaves with all his rights and there is no question of his again agitating for any kind of his past rights with his erstwhile employer. But, in the present *lis*, none of the second party workmen

have opted VR Scheme or taken any amount to that effect. Rather, the document exhibited under Ext. 5 (marked with objection on the ground that the existence of such document has not been mentioned by the workmen in their statement of claim, so also the signature available thereon is not the signature of the partner of the management) from the side of the second party goes to show that this is a letter issued to one of the members of the second party namely Jatindra Pradhan who had already retired from his service wherein it has been written as follows:

“It is to be noted here that in the light of on the ongoing wage negotiation at the Assistant Labour Commissioner Office, Salasore, the management would like to assure you that when a settlement is to be arrived in course of the negotiation if applicable to you any difference amount generated will be provided then and there post settlement. Hence, you are requested to take your legal dues from the office premises without further delay today i.e., the 26th June 2012.”

Thus, in view of the above discussions, it is clear that the nature of duties performed by the members of the second party bring them within the purview of ‘workman’ as defined under Section 2(s) of the Act.

In the present case, the crux of the point or the core issue rests on the determination of the question as to whether the demand of Shri Jayanta Dey and 13 others workmen of M/s Everest Homeo Laboratory, B-3, Industrial Estate, Balasore for wage enhancement of Rs. 2400 per month with effect from the 1st April 2012 is legal and/or justified. In this regard, it has been specifically claimed by the present workmen (11 numbers), except Uttam Prasad Yadav, Sambhunath Panda and Maguni Bhoi, who are contesting the case that they had submitted a 14 points charter of demand dated the 26th March 2012 to the 1st party out of which one point was the vital point of charter of demand i.e., the demand No.1 which relates to the ‘wage enhancement’. Said charter of demand is marked as Ext.1. On perusal of the demand No.1 of Ext. 1, it is found that the grievance was by the 15 members of the Homeo Employees Union as named there that although they have worked as ‘skilled workers’ under the 1st party management, but the amount paid to them was less than the amount fixed for non-skilled/unskilled workers, It is also mentioned in Ext.1 that even after working more than 30 years, such technical persons are getting less than Rs. 6,000 in gross. As per the last agreement, their enhanced wages period expired by the 31st March 2012. So, they have demanded for the enhancement of their wages as per the Annexure of Ext.1. But, on scrutiny of the Annexure attached to the Ext. 1, it is found that only the requisite salary is mentioned in respect of each of these 15 numbers of employees ‘and further, only five of these employees have worked for more than 30 years, not all and there is no specific mention of either the amount of enhancement of Rs. 2400 per mensem or the date with effect from the 1st April 2012.

During argument, the learned counsel appearing for the management vehemently submitted that there is neither any recognised or registered Union under the management nor there was any demand by Union rather it was a demand of these persons in their individual capacity and there was not specific demand of hike of Rs. 2400 per month. Such argument of the management regarding the demand of these persons in their individual capacity seems to be justifiable while taking into consideration of the above submission.

In view of the above fact, now the materials, so also the evidence of the parties available in this case are to be looked into in order to find out the legality of the demand of the members of the second party towards the enhancement of their wages. That means, if the present workmen are legally entitled to such claim. It is also to be seen as to whether the members of the second party are able to substantiate their claim through any cogent and credible evidence in this case. The

members of the second party relying upon Ext.1 as stated above in the consolidated claim statement, so also in the affidavit evidence (examination-in-chief) of WW Nos.1, 5, it has been stated that all of them are entitled to increase the salary @ Rs. 2400 per month with effect from the 1st April 2012 as mentioned in the Schedule of Reference to which the 1st party management has strongly objected by saying that the members of the second party are not entitled to the reliefs claimed by them in this case. But, it emerges from the whole case of the members of the second party that with regard to their above claim, they laid much emphasis on Ext. 2 (xerox copy of Failure Report issued to the parties by the Conciliation Officer-*cum*-Balasore through his forwarding letter dated the 6th September 2013) and Ext. 3, (information obtained through RTI Act). Although the management vehemently objected to the document marked vide Est. 3, but at the same time no objection has been raised by it on the marking of Ext. 2 as exhibit which clearly speaks that with regard to the demand No.1 of Charter of Demand (Ext. 1), the conciliation proceeding was taken by the concerned Conciliation Officer; during the conciliation proceeding when the members of the second party demanded for enhancement of their salary @ Rs. 2800 per month, the representative of the management had agreed to enhance the wage/salary @ Rs. 2400 per month for each category of workers over and above the existing wage/salary. Admittedly, nothing is available in the case record evidencing that if at all the management has ever challenged the Failure Report before any Forum after receipt of the copy of the same. So, it can well be presumed that the management in a state of mind during conciliation proceeding i.e., on the 17th December 2012 had agreed to enhance the wage/salary @ Rs. 2400 per month of each category of workers over and above the existing wage/salary. But, there was a dispute regarding the date to make effective of the proposed enhancement of Rs. 2400 per month, for which the conciliation was failed. It is highly essential to mention here that during conciliation proceeding, the members of the second party when demanded for making effective of the above enhancement amount-retrospectively' i.e., from the 1st April 2012, but the management while agreeing to enhance of the above amount i.e., Rs. 2400 per month put a condition that the same salary shall be effective from the date of settlement as offered by the Assistant Labour Commissioner, Balasore during conciliation proceeding on the 15th November 2012. But, there is reason to hold that the above demand of the workmen is genuine one. In this connection, it felt apposite to mention here that in every two years, the wages of the employees are usually enhanced and agreements are executed accordingly between them. From the materials available on the case record, basically from Ext. 1, it transpires that the last agreement/settlement period relating to the enhancement of wages of the members of the second party was expired on the 31st March 2012. But, there is nothing on record to show that any further agreement/settlement as has been arrived at between the parties relating to the enhancement of wages the management paid the wages of the members of the second party in any enhanced rate after the 31st March 2012. So, in that view of the matter, this Court feels it proper that the members of the second party are entitled to Rs. 2400 per month with effect from the 1st April 2012. At this stage, it may be stated here that the management has also taken a plea that one of the workmen namely Shahneswar Ahmed had entered into a settlement before this Court and took a sum of Rs. 3,30,000 by executing a Form-K marked vide Ext. B. But, the same (Ext. B) clearly indicates that upon his termination he had filed an ID Case No.14 of 2015 before this Court and he was paid the above amount since all the disputes relating to ID Case. No.14 of 2015 have been mutually settled out of the Court. But, nothing has been written in Ext. B about the present case or claim of enhancement of wages as per the charter of demand or regarding relinquishment of such claim by him. Hence, Shahnewaz Ahmed is also entitled to the above benefits.

Accordingly, the management is directed to compute the differential wages of the contesting 11 numbers of members of the second party only @ Rs. 2400 per month from the 1st April 2012 till the last date of their work/service under it i.e., the date of their retirement, resignation etc., as the case may be and to disburse the same within a period of three months from the date of publication of the Award else each of the members of the second party is entitled for interest @ 6% per annum on their actual entitled amount till it is paid to them.

The reference is disposed of accordingly.

Dictated and corrected by me.

APARNA MOHAPATRA
30-12-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
30-12-2023
Presiding Officer
Labour Court, Bhubaneswar

[No. 1041—LESI-IR-ID-0007/2024-LESI.]

By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government