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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th July 2011

No. 6399—li/1(BH)-4/2000-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th May 2011 in Industrial Dispute Case No. 203/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Giriraj Industries, Kuruda, Balasore and its workman Shri Pradeep Kumar Bagudai was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 203 OF 2008

(Previously registered as I. D. Case No. 40 of 2000 in the file of the Presiding Officer, Labour Court, Bhubaneswar)

Dated the 9th May 2011

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Managing Director,
M/s Giriraj Industries,
Kuruda, Balasore.

.. First Party—Management

And

Shri Pradeep Kumar Bagudai,
At Jharanaghati, P.O. Jumuna,
Via Raj Nilagiri, District Balasore.

.. Second Party—Workman

Appearances :

S. S. Ali, Advocate	..	For First Party—Management
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Shri Trilochan Lenka, Authorised Representative	..	For Second Party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the 'Act') made by the Government of Orissa in Labour and Employment Department vide their Order No. 3698—li/1 (BH)—4/2000-LE., Dated the 9th March 2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21—32/2007-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the action of the employer of M/s Giriraj Industries, Kuruda, Balasore in refusing employment to Shri Pradeep Kumar Bagudai with effect from 29-12-1997 is legal and/or justified ? If not, to what relief he is entitled ?"

2. The second party workman in his claim statement has pleaded that he had been employed by the first party as an Assistant Supervisor continuously from 1-11-1995 to 28-12-1997. But on 29-12-1997, he was refused employment by not allowing him to perform his duties. The refusal of employment amounts to illegal retrenchment inasmuch as, the provisions contained in Section 25-F of the Act were not complied with, nor any disciplinary action was taken against him before terminating his services.

3. The first party in its written statement has admitted that the second party was working under the first party. But, it is specifically contended that he was engaged as a casual unskilled labourer and that while working as such he remained absent from duties with effect from Dt. 28-12-1997. The Management waited for about three and a half months but when the workman did not report for duties his name was struck off its Roll with effect from Dt. 15-3-1998. It is further contended that after few days of striking off his name the second party voluntarily came and collected his unpaid dues. It is also contended that for a long period he did not raise any dispute over the alleged refusal of employment. It is the specific case of the first party that after leaving the employment the second party engaged himself in more gainful employment by driving commercial vehicles.

4. Following issues have been settled :—

ISSUES

- (i) "Whether the action of the employer of M/s Giriraj Industries, Kuruda, Balasore in refusing employment to Shri Pradeep Kumar Bagudai with effect from Dt. 29-12-1997 is legal and/or justified ?
- (ii) If not, to what relief he is entitled ?"

5. The workman has examined himself as W. W. No. 1. On the other hand, the Management has examined two Witnesses. M. W. No. 1 is the Manager of the first party and M. W. No. 2 is an outsider who speaks on the workman's gainful employment elsewhere.

FINDINGS

6. *Issue No. (i)*—It is admitted by the first party to the extent that the second party was a casual unskilled labourer. So, he comes within the definition of 'workman'. The Management has not denied it in its written statement that the workman was engaged continuously from 1-11-1995 to 28-12-1997 which is little more than two years of continuous employment. Therefore, in the event of termination of his employment the Management was required to comply with the provisions of Section 25-F of the Act. However, it is found from M. W. No. 1's affidavit evidence that the workman was engaged as a casual labourer for the period from 1-8-1997 till 28-12-1997 when the workman voluntarily absented from his work. But this oral evidence needs no consideration inasmuch as, it is beyond the pleadings. In the written statement there is no averment denying the assertion on the workman's continuous employment for more than two years. On the facts and in the circumstances, it is to be held that the second party had been in continuous employment under the Management for more than two years by the time his employment came to an end.

7. Now it is to be decided as to how the employment of the second party came to an end. According to the workman, it is a case of denial of employment. But, according to the Management it is a case of voluntary abandonment of job. There is no dispute that the employment of the second party got terminated with effect from 29-12-1997. The copy of the conciliation failure report annexed to the order of reference reflects that the workman in his petition dated the 12th January 1998, addressed to the District Labour Officer, had alleged that he was refused employment with effect from Dt. 29-12-1997. Thus, it is found that soon after the termination of employment the workman had raised the dispute alleging that he had been refused employment. The conciliation failure report further reflects that the Management took the stand before the Conciliation Officer that since the workman did not obey the orders of his authority, the Management sustained financial loss and for that reason the Management decided to dispense with the services of the workman. Since the workman raised the dispute immediately after his termination of service, it cannot be believed that he would have voluntarily left his employment. On the other hand, it is the Management to establish that the workman had abandoned his job. It is neither pleaded nor proved that the Management served any notice on the workman asking him to resume duties within the prescribed date line. In *M. G. Patel Vrs. Mastan Baug Consumers Co-operative W&R Stores Ltd.* and another, 1997, Lab. I. C. 2537, (Bombay High Court), it is observed that the burden lies on the employer to establish and prove that the employee had abandoned service. It is further held that even in the case of abandonment of service, the employer has to give notice to the employee calling upon him to resume his duties and if the employee does not turn-up despite such notice, the employer should hold enquiry on that ground and then pass appropriate order of termination. In the case on hand, the aforesaid steps have not been taken by the first party. Abandonment of service cannot be presumed when employment is scarce. In the facts and circumstances, the plea taken by the workman be preferred to the plea taken by the Management.

M. W. No. 2 has adduced oral evidence saying that the workman voluntarily left service in March 1998. In his cross-examination he says that since 2004 he has got acquaintance with the workman. He has further stated that he had never seen the workman working in the Rice Mill of the first party. In cross-examination he has further stated that from the workman he came to know that the former had left his job. The testimony of this witness does not seem to be trustworthy. When he had no acquaintance with the workman prior to 2004 and had not seen the workman working in the Rice Mill at any point of time, his claim that the workman voluntarily left his job is hearsay in nature. His claim that the workman told him to have left the job is not believable. He is an educated person. In his affidavit he has mentioned about the voluntary abandonment giving an impression that he himself had direct knowledge about the abandonment but subsequently during cross-examination when he realised that he was found to be speaking falsehood he has tried to make his evidence believable by saying that it was the workman who had told him to have voluntarily left the service. Evidence of such nature is not to be accepted.

8. It is pointed out that on Dt. 28-9-2010 this Tribunal on a petition filed by the second party, directed the first party to produce documents such as Staff Attendance Register, Labour Attendance Register, Staff Payment Register, Labour Payment Register and Muster Roll, all for the period from November 1995 to December 1997. But, the Management failed to produce the same. Therefore, it is submitted, adverse inference is to be taken against the Management. It is submitted that if these documents were produced the Court would have ascertained the period of actual engagement of the second party. The submission is quite forceful. Adverse inference should be taken against the Management. It gives further supports to this Tribunal finding that the workman had worked continuously for more than two years.

9. Admittedly, neither any disciplinary proceeding was taken against the workman nor was there compliance of Section 25-F of the Act. As a result, the termination of service which is the subject matter of this reference is held to be illegal. Since it is the case of the first party that after striking off the workman's name, a new casual unskilled workman has been engaged by the first party. It is to be presumed that work was available for the second party but he was refused employment. So, the termination of service of the second party is unjustified as well.

Thus, Issue No. 1 is answered against the Management.

10. *Issue No. (ii)*—According to the workman, he had served under the first party for little more than two years. By the time he was terminated he was aged about 36. For about last 13 years he has not rendered any service for the first party. In the claim statement there is no averment that he was not gainfully employed during the relevant period. But, in his affidavit evidence he has stated so. The Management has adduced evidence to prove that the workman after leaving the job took-up employment under Travel Agent and earned more than Rs. 5,000.00 per month but such evidence is not convincing. As already stated, M. W. No. 2 is not a trustworthy witness and it is through him the Management has tried to prove the factum of gainful employment. However, it is not believable that a person like the second party remained out of employment from 1997 till date.

It appears, the first party is still running the Rice Mill wherein the second party was employed. Taking all these facts and circumstances into consideration, this Tribunal directs reinstatement of the second party without any back wages but with a compensation of Rs. 15,000.00 (Rupees fifteen thousand) only in lieu of back wages. The first party to implement the Award within a period of two months of the date of its publication in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
9-5-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar.

RAGHUBIR DASH
9-5-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar.

By order of the Governor

T. K. PANDA

Under-Secretary to Government