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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th December 2004

No. 11367–li/1(B)-125/1996-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st August 2004 in Industrial Dispute Case No. 164/1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s R.S. Sahoo & Co., Bhubaneswar and its workman Smt. Pramila Dei was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 164 OF 1996

Dated the 31st August 2004

Present :

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

Between :

The Management of M/s R. S. Sahoo & Co. . . . First Party—Management
Bhubaneswar.

And

Their Workman . . . Second Party—Workman
Smt. Pramila Dei.

Appearances :

For the First Party—Management . . . Shri S. R. Panda

Second Party—Workman herself . . . Smt. Pramila Dei

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department memo No. 17301(4)-L. E., dated the 9th December 1996 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :-

“Whether the action of the management of M/s R. S. Sahoo & Co., Bhubaneswar in terminating the services of Smt. Pramila Dei, by way of refusal of employment with effect from the 17th August 1995 is legal and /or justified ? If not, what relief Smt. Pramila Dei is entitled to ?”

3. Stating in a little detail the case of the workman Smt. Pramila Dei is that she was engaged by M/s R. S. Sahoo & Co., Bhubaneswar (in short the management) to work as Sweepress and Peon with effect from the 1st June 1990. She continued in the employment till the date of termination by way of refusal of employment on the 17th August 1995. According to the workman she had performed her duties most sincerely, efficiently and with much devotion and to the utmost satisfaction of the management. Although she had rendered continuous uninterrupted service for more than five years but the management without any rhyme or reason had illegally terminated her from service by way of refusal of employment with effect from the 17th August 1995 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). The workman while challenging the legality and justifiability of the action of the management in terminating her from service by way of refusal of employment with effect from the 17th August 1995 has also prayed for reinstatement in service with full back wages and other service benefits. Hence the reference.

4. The management although entered its appearance but filed no written statement.

5. The sole point that now arises for consideration as to :-

(i) Whether the action of the management of M/s R. S. Sahoo & Co., Bhubaneswar in terminating the services of Smt. Pramila Dei, by way of refusal of employment with effect from the 17th August 1995 is legal and/or justified ?

(ii) If not, what relief Smt. Pramila Dei is entitled to ?

6. The workman in support of her case has examined herself as W. W. 1 but has not relied upon any document. Similarly, the management has examined one Gyanaranjan Panda as M. W. 1, but has not relied upon any document in support of its case.

FINDINGS

7. It is in the evidence of the workman that she was working as Sweepress under the management with effect from the 1st June 1990 till the 17th August 1995 continuously. On the 17th August 1995 she was disengaged by the management and at the time of retrenchment the management had not given any notice or notice pay and retrenchment compensation to her. Since the action of the management in terminating her from service by way of refusal of employment was illegal and unjustified, she has now claimed for her reinstatement in service with full back wages. Nothing material and substantial has been elicited by the management

during cross-examination of the workman (W. W. 1) to show that she was not working under the management with effect from the 1st June 1990 till she was refused employment on the 17th August 1995. On the other hand, the perusal of the evidence of M. W. 1 emerges that the workman had never worked under the management and the management had neither terminated her service nor refused employment to her. He has denied his knowledge if the action of the management in terminating the services of the workman by way of refusal of employment was legal or illegal. He has categorically stated that he does not have any knowledge about the termination of the workman with effect from the 17th August 1995. It has been suggested during cross-examination that the workman was working under the management with effect from the 1st June 1990 till the date of her termination by way of refusal of employment on the 17th August 1995 and that the management terminated her from service without any prior notice or notice pay and retrenchment compensation and that the management had illegally terminated her from service to which he has given negative replies.

8. The perusal of the evidence of the workman clearly emerges that she had rendered continuous uninterrupted service with effect from the 1st June 1990 till she was terminated from her service by way of refusal of employment on the 17th August 1995. Nowhere it has been elicited by the management that the workman was not working under the management during the above said period. Although the evidence led by the management through M. W. 1 shows that the workman was not working under the management, but no cogent material in this respect is placed before me to prove and establish that the workman had not rendered service to the management for the above said period. In spite of the opportunity given to the management, the management has not filed the written statement to have a say that the workman was not working under the management with effect from the 1st June 1990 till the 17th August 1995. In absence of any pleading to that effect, the mere testimony of M. W. 1 cannot be safely relied upon. Admittedly no documentary evidence has been adduced by the workman in support of her case but absolutely I find no cogent reason to disbelieve her evidence with regard to the service having been rendered by her with effect from the 1st June 1990 till the 17th August 1995 in the establishment of the management. Rather it is clearly evident that the workman had rendered continuous uninterrupted service for more than five years and the management while terminating her service had not given any notice or notice pay and retrenchment compensation to her, which in my view, are in complete violation of the mandatory provisions of Section 25-F of the Act.

9. It has been settled in catena of decisions that Section 25- F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition. The compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. There is also no dispute that a workman under Section 25-F of the Act is entitled to one month's notice before retrenchment or one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. In the present case, on perusal, it is seen that the workman was not given any notice or notice pay in lieu of notice or retrenchment compensation which clearly leads me to arrive at a conclusion that the condition precedent as contemplated under the provisions of Section 25-F of the Act has not at all been followed by the management while terminating the services of the workman. In a decision reported in AIR 1983 Supreme Court 1320 in the matter of Karnatak State Road Transport Corporation, Bangalore Vrs. M. Boraish and another, the Hon'ble Apex Court has consistently

taken the view that “The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*”. In the present case, the workman has successfully proved that she had rendered continuous uninterrupted service with effect from the 1st June 1990 till she was terminated from service on the 17th August 1995. On the other hand, the management has taken a stand that the workman had never worked under the management and her services were not terminated by the management, but such plea taken by the management appears not convincing. Keeping in view the settled position of law and on careful scrutiny of the evidence already led by the parties, I am of the view that the action of the management in terminating the services of the workman by way of refusal of employment with effect from the 17th August 1995 is illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter the workman is entitled to the relief of reinstatement.

10. The perusal of the schedule of reference clearly shows that the workman has been terminated from service with effect from the 17th August 1995 and the management has nowhere proved and established that the workman has been gainfully employed elsewhere with effect from the date of her termination. In such premises, the interest of justice would be best served if the workman be reinstated in service. But on the facts and circumstances of the present case, I am of the view that as the workman had not worked with effect from the date of her termination, she is entitled to get a lump sum compensation to the tune of Rs. 5,000 in lieu of back wages. Both the above points are answered accordingly.

11. Hence it is ordered:

That the action of the management of M/s R. S. Sahoo & Co., Bhubaneswar in terminating the services of Smt. Pramila Dei by way of refusal of employment with effect from the 17th August 1995 is neither legal nor justified. The workman concerned is, therefore, entitled to be reinstated in service with a lump sum compensation of Rs. 5,000 (Rupees five thousand only) is lieu of back wages which in my opinion, would serve the ends of justice in the instant case.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
31-8-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
31-8-2004
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government