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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th April 2005

No. 3863—li/1(BH-I)-16/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th September 2004 in Industrial Dispute Case No. 105/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Utkal Polymers Ltd., Ganeswarpur, Balasore and its workman Smt. Parbati Nayak was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 105 OF 1992

Dated the 8th September 2004

Present :

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

Between :

The Management of M/s Utkal Polymers Ltd. . . First Party—Management
Ganeswarpur, Balasore.

And

Their workman . . . Second Party—Workman
Smt. Parbati Nayak.

Appearances :

For the First Party—Management . . . None

Second Party—Workman herself . . . Smt. Parbati Nayak

AWARD

The State Government in exercise of 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 matter in dispute to this Court in the Labour & Employment Department Memo No. 11432(4)-L. E., dated the 2nd September 1992 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 Utkal Polymers Ltd., Ganeswarpur, Balasore in terminating the services of Smt. Parbati Nayak, workman by way of refusal of employment with effect from the 21st November 1988 is legal and /or justified ? If not, what relief the workman is entitled to ?”.

3. The brief facts giving rise to the present case are that workman Smt. Parbati Nayak was engaged by the management of M/s Utkal Polymers Ltd., Ganeswarpur, Balasore (in short the management) as a workman with effect from the 10th April 1987. She continued to work as such till the date of her termination by way of refusal of employment by the management on the 21st November 1988. According to the workman she was working under the management with much sincerity, devotion and to the utmost satisfaction but the management without any rhyme or reason had illegally terminated her from service by way of refusal of employment with effect from the 21st November 1988 without giving any notice or notice pay and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). It is alleged that although she had joined under the management with effect from the 10th April 1987 at the rate of Rs. 750 per month but infact she was receiving her wages at the rate of Rs. 300 per month and when she demanded the actual wages, she was refused employment with effect from the 21st November 1988. While challenging the legality and justifiability of the action of the management in terminating her service by way of refusal of employment with effect from the 21st November 1988, she has now also claimed for her reinstatement in service with monetary benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. According to the management, the workman has only worked for 173 days with effect from the 11th April 1988 till the 21st November 1988 and she was paid her wages for the days she had worked. The Management had not terminated her service by way of refusal of employment rather she voluntarily abandoned her service with effect from the 21st November 1988. Since the workman had not completed 240 days of continuous service, the provisions of Section 25-F of the Act are not attracted and she is not entitled for any relief as claimed. On the above back grounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

Although the management filed its written statement but did not contest the present case rather the management was set *ex parte*. The *ex parte* hearing commenced on the 12th June 2002.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the action of the management of M/s Utkal Polymers Ltd., Ganeswarpur, Balasore in terminating the services of Smt. Parbati Nayak, workman, by way of refusal of employment with effect from the 21st Novemeber 1988 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?”.

6. During *ex parte* hearing the workman in support of her case has exmined herself as W. W. 1 but has not relied upon any document. The management has been set *ex parte*.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

The perusal of the evidence of the workman clearly emerges that she joined in the services of the management about 14 years back and was receiving her wages at the rate of Rs. 300 per month. She had completed one and half years of service under the management. When she demanded overtime wages she was refused employment on the 21st November 1988. It is also in her evidence that while she was refused employment, she was not given any notice or notice pay and retrenchment compensation for which she has now prayed for her reinstatement in service with back wages. No rebuttal evidence has been adduced by the management to controvert the evidence of the workman. In absence of any rebuttal evidence, absolutely I find no cogent reason to disbelieve her testimony in the above context. Rather it is clearly evident from her evidence that she had rendered continuous service for about one and half years and the management while refusing employment had not given any notice or notice pay and retrenchment compensation which, in my view, are in complete violation of mandatory provisions of Section 25-F of the Act. It is well settled 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 service with effect from the 10th April 1987 till she was terminated from service by way of refusal of employment on the 21st November 1988. The evidence of the workman in the above context has nowhere been challenged by the management. Therefore in absence of any rebuttal evidence, I find no cogent reason to disbelieve the sworn unchallenged testimony of the workman. After carefully examining the sole testimony of the workman, 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 21st November 1988 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.

8. The perusal of the schedule of reference clearly reveals that the workman has been terminated from service with effect from the 21st November 1988 by way of refusal of employment and there is no cogent matterial on record to prove and establish that she has

been gainfully employed elsewhere with effect from the date of her termination. In that view of the matter, the workman is entitled to 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 issues are answered accordingly.

9. Hence it is ordered:

That the action of the management of M/s Utkal Polymers Ltd., Ganeswarpur, Balasore in terminating the services of Smt. Parbati Nayak, workman, by way of refusal of employment with effect from the 21st November 1988 is neither legal nor justified. The workman Smt. Nayak is entitled to be reinstated in service with a lump sum compensation of Rs. 5,000 (Rupees five thousand only) in lieu of back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me.

P. K. SAHOO
8-9-2004
Presiding Officer
Labour Court, Bhubaneswar

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Presiding Officer
Labour Court, Bhubaneswar

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