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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th February 2005

No. 1431–li/1(B)–249/1992–L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th December 2004 in Industrial Dispute Case No. 226/1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Orissa Lift Irrigation Corporation, Bhubaneswar and its workman Shri Bharat Sasmal was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 226 OF 1994
Dated the 29th December 2004

Present :

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

Between :

The management of .. First Party–Management
Orissa Lift Irrigation Corporation
Bhubaneswar.

And

Its Workman .. Second Party–Workman
Shri Bharat Sasmal.

Appearances :

For the First Party–Management .. Shri S. Praharaj, Jr. Clerk

For the Second Party–Workman .. Shri S. B. Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c)/(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. 16623(5)-L. E., dated the 22nd December 1994 for adjudication and Award.

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

“Whether the termination of services of Shri Bharat Sasmal by the management of Executive Engineer, Lift Irrigation Division, Bhubaneswar is justified and/or legal ? If not, what relief Shri Sasmal is entitled to ?”

3. The workman under the present reference has challenged the legality and justifiability of the action of the management of Executive Engineer, Lift Irrigation Division, Bhubaneswar (in short the management) in terminating his services as claimed. According to the workman, he was initially appointed as work-charged Pump Driver of Diesel Pump, vide order No. 1955, dated the 13th November 1967 of the Block Development Officer, Puri Sadar, Puri and was posted in Harekrushnapur Grama Panchayat to perform his duty. Subsequently the power was deligated to the present management and he continued to work under the Assistant Engineer, Lift Irrigation Division, Bhubaneswar as per order No. 2130, dated the 1st March 1973 as work-charged Helper. He had also worked under the control of the Junior Engineer, Lift Irrigation Section, Khurda as per the order No. 80, dated the 22nd March 1973. The management subsequently without any rhyme or reason terminated him from service with effect from the 27th May 1973 on the ground of non-availability of work in Khurda Section. Thereafter he made several representations for his reinstatement in service and infact he was engaged as N. M. R. worker in the year 1981, vide office order No. 180, dated the 15th July 1981. Subsequently the management engaged him as Cultivator’s Representative with effect from December, 1986 till June, 1989. He approached many a times to consider his case with regard to the payment of differential wages but to no avail. Finally the management terminated him from service with effect from June, 1989 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). On the above backgrounds he has prayed for his reinstatement in a service with full back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. While admitting the engagement of the workman, the management has categorically averred that the workman absconded with effect from the 31st May 1989 and did not turn up for joining his duty. According to the management no termination order had been issued to the workman rather he voluntarily abandoned the job with effect from the 1st June 1989. It is further averred in the written statement that the workman had rendered service as Cultivator’s Representative till the 31st May 1989 and he was paid his honorarium and thereafter he voluntarily abandoned the job and did not turn up for joining his duty. Since the workman voluntarily abandoned the job, he is not entitled to get any relief. In the above premises, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the termination of second party workman by the first party management is justified and/or legal ?
- (ii) If not, what relief the workman is entitled to ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as, office order, dated the 13th November 1967 of the Block Development Officer, Puri, Office order, dated the 1st March 1973, Office order, dated the 22nd March 1973, Office order, dated the 25th May 1973, letter of the Sub-Assistant Engineer, Lift Irrigation Section, Puri addressed to the Assistant Engineer, Lift Irrigation Subdivision, Bhubaneswar letter of the Assistant Engineer on different dates, certificate issued by the Block Development Officer, Banapur and copy of the letter, dated the 11th April 1990 from Senior Administrative Officer and Deputy Director of Lift Irrigation, Orissa Lift Irrigation Corporation Ltd., Bhubaneswar addressed to Executive Engineer, Lift Irrigation Division, Bhubaneswar marked as Exts. 1 to 6 respectively. On the other hand the management has examined two witnesses namely, Arun Kumar Mohapatra and Sunil Chandra Patnaik as M. Ws. 1 and 2 respectively but has not relied upon any document in support of its case.

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 reveals that he had rendered continuous service with effect from the 15th July 1981 till he was terminated from service in the month of June, 1989. He has categorically stated that although he was initially appointed as work-charged Pump Driver but infact the management was paying the wages as N. M. R. worker. Subsequently he was given wages as Cultivator Representative which he protested resulting his termination from June, 1989. Nothing material and substantial has been elicited in cross-examination so as to disbelieve the evidence of the workman. Rather the evidence in cross-examination clearly goes to show that he had rendered continuous service for the aforesaid period. On the other hand, the evidence of M. W. 1 clearly goes to show that he was working as Junior Engineer, Lift Irrigation Subdivision, Puri from July, 1986 to June, 1989 and during the above said period the workman was working under the management as Cultivator Representative assisting the Pump Driver. In this regard the workman was receiving his honorarium in each year regularly. During cross-examination he has denied his knowledge as to which Pump Driver the workman was assisting and if prior to formation of Lift Irrigation Corporation, the Pump Drivers were engaged by the concerned Block Development Officers. He clearly admits in his cross-examination that although the workman was working as Cultivator Representative but he cannot produce any document to that effect. The evidence of M. W. 2 clearly shows that he was working as Assistant Engineer in Puri Division from the 10th October 1984 to the 23rd June 1986 and from the 1st November 1987 to the 30th August 1991. During the year 1981 the workman was engaged to run the pump for irrigation purpose. He has clearly stated in his evidence that during May, 1989 the workman voluntarily abandoned the job and did not report for duty but he had received the wages for the period he had

worked. During cross-examination he has denied his knowledge if the workman was working as N. M. R. or work-charged employee. He has also further denied to have any knowledge relating to the wages received by the workman but he can produce the document to that effect. On perusal of the evidence of M. WS. 1 and 2 it is clearly evident that the workman was working under the management continuously with effect from the 1981 till the May, 1989 when he voluntarily abandoned the job.

8. Both the parties have led evidence in support of their respective cases. The management has taken a stand before this Court that the workman was not terminated from service rather he voluntarily abandoned the job with effect from June, 1989. The further plea taken by the management is that the workman was working as Cultivator Representative and was paid his honorarium and therefore, he is not entitled to get any further relief. On the other hand, it is stated by the workman that he had rendered continuous service with effect from 1981 till June, 1989 when his services were terminated by the management and the management while terminating his services had not given any notice or notice pay and retrenchment compensation. It is further stated by the workman that he had not voluntarily abandoned the service but the management had illegally terminated him from service without following the mandate of Section 25-F of the Act. The perusal of the evidence led by the management clearly shows that the workman had voluntarily abandoned the job with effect from June, 1989. But in this respect I am of the opinion that even if the case set up by the management is taken to be correct that the workman has abandoned the job then also his services cannot be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act. Apart from that no cogent material is placed before me to come to an irresistible conclusion that the workman was working as Cultivator Representative. The management in his respect has not made any endeavour or any effect to establish the above fact by adducing documentary evidence. In absence of such it cannot be definitely said that the workman was working as Cultivator Representative rather the evidence of the workman clearly goes to show that he had rendered continuous service with effect from 1981 till he was terminated from service in the month of June, 1989 and the management while terminating his services had not complied with the provisions of the Act which, in my view are in complete violation of the mandatory provisions of Section 25-F of the Act. In that view of the matter, the plea taken by the management to effect that the workman was working as Cultivator Representative and that he had voluntarily abandoned the job with effect from the June, 1989 in my opinion are without substance. On the other hand, the perusal of the documents already relied upon by the workman clearly emerges that he was working under the management prior to 1981 and continued to work till June, 1989. The evidence of the workman in this context clearly shows that he had rendered continuous uninterrupted service till May, 1989. Besides, the management while terminating the services of the workman had not followed the mandatory provisions as contemplated under Section 25-F of the Act and therefore, the terminating having been made in violation of the mandatory provisions in Section 25-F of the Act, in my opinion is void *ab initio*.

9. The settled position of law is that under Section 25-F of the Act a workman 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. Compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. Therefore, Section 25-F of the Act being a beneficial legislation, it has to be strictly complied

with and is a mandatory precondition. In the present case, as it reveals, such condition precedent has not been followed by the management while terminating the services of the workman. 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*. After carefully examining the evidence on record, the documents already relied upon by the workman and keeping in view the settled position of law, I am of the view that the action of the management in terminating the services of the workman was 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 present reference has been communicated to this Court for adjudication in the year 1994. In the meantime about 10 years have already been elapsed. Nowhere it has been proved and established that the workman has been gainfully employed elsewhere with effect from the date of his termination. Under such circumstances, the workman is entitled to be reinstated in service, but on the facts and circumstances of the present case, as the workman had not worked with effect from the date of his termination, he is entitled to get lump sum compensation to the tune of Rs. 3,000 in lieu of back wages, which in my view, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

11. Hence it is ordered :

That the termination of service of Shri Bharat Sasmal by the management of Executive Engineer, Lift Irrigation Division, Bhubaneswar is neither legal nor justified. The workman Shri Sasmal is entitled to be reinstated in service with a lump sum compensation of Rs. 3,000 (Rupees three thousand only), in lieu of back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
29-12-2004
Presiding Officer
Labour Court
Bhubaneswar.

P. K. SAHOO
29-12-2004
Presiding Officer
Labour Court
Bhubaneswar.

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