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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 14th March 2005

No. 2742—li/1(S)-20/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th January 2005 in Industrial Disputes Case No. 35/2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of the Divisional Forest Officer (K. L.) Athamalick, Dist. Angul and its workman Shri Sambhu Prasad Gadtia, Munshi through the Secretary, Orissa Kendupatra Karmachari Sangha, Sambalpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 35 OF 2002

Dated the 27th January 2005

Present :

Shri G. N. Patra, LL. B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of .. First Party—Management
the Divisional Forest Officer (K. L.)
Athamalick, Angul, Dist. Angul.

And

Its workman .. Second Party—Workman
Shri Sambhu Prasad Gadtia,
through the Secretary, Orissa Kendupatra
Karmachari Sangha, Sambalpur.

Appearances :

For the First Party–Management . . . Shri D. R. Khillar, S. D. F. O., (K. L.)
Rampur Subdivision.

For the Second Party–Workman . . . Shri Gokul Meher, Secretary, Orissa
Kendu Patra Karmachari Sangha.

AWARD

1. This case arises out of the reference made by the Government of Orissa in Labour & Employment Department, under Sections 10 & 12 of the Industrial Disputes Act, 1947 vide Memo No. 5936(5), dated the 10th May 2002 for adjudication of the disputes scheduled below :

“Whether the refusal of employment to Shri Sambhu Prasad Gadtia, Munshi by the D. F. O. (K. L.), Athamallick with effect from the February 1977 is legal and/or justified ? If not, to what relief Shri Gadtia is entitled ?”

2. The case of the second party workman in brief is as follows :—

The second party workman was working as a Munshi from the year 1973 in Kadaligarh Phadi under the first party management and performing his duty to the utmost satisfaction of the first party management. During February 1997 at the beginning of Kendu leaf working season, the second party workman offered to join in his service as he was doing in every working season from 1973. But to his misfortune, he was not allowed to join in his duty by the then Range Officer (K.L.), Kadaligarh without assigning any reason. On being asked by the second party workman, the Range Officer replied that the D. F. O. (K.L.), Athamallick had given him direction not to allow him (second party workman) to join on duty. On the other hand, the first party management engaged another person in his place. Although the second party workman has rendered more than 24 years of continuous service, the management refused employment in violation of the provisions under Section 25-F of the Industrial Dispute Act, 1947. According to the second party workman the action of the first party management in refusing employment to him is illegal and void *ab initio*. After refusal of employment, the second party workman personally approached and requested the concerned authorities for redressal of his grievances, but in vain. Therefore, the second party workman through his Union tried to settle the matter. But when it failed his Union raised an Industrial Dispute before the Assistant Labour Commissioner, Sambalpur. During conciliation proceeding before Labour Officer, the management agreed to settle the matter amicably. But subsequently did not appear before the Conciliation Officer and as a result conciliation failed. Hence the present dispute. In the circumstances, the second party workman prays for his reinstatement in the service with retrospective effect and with all service benefits and other reliefs.

3. The first party management contested the case and filed written statement *inter alia* denying the allegation of the second party workman in his statement of claim, except that the

second party workman was working as Munshi under the management that he was refused employment in the year 1997 during Kendu Leaf season and that another person was engaged in his place. According to the management, the second party workman was not a workman in continuous service but he was only a seasonal workman, working as Munshi only for a period of one to two months in a year. He has never gone to Range Officer (K. L.), Kadaligarh in the year 1997 during Kendu Leaf season to work as Munshi. The second party workman has neither rendered 24 years of continuous service nor the management has terminated his services by way of refusal of employment nor he has approached the management for work in the year 1997 during Kendu Leaf season. Since the second party workman was not doing continuous service for 240 days in a year, the provisions of Section 25-F of the Industrial Dispute Act is not attracted as there is no retrenchment in the eye of law. Further according to the first party management, the second party workman was doing the work of Munshi for about 40 days during Kendu Leaf season, beginning in the month of April and May. As the collection of Kendu Leaf is purely a manual work in nature, the local people of the area are generally engaged for cutting, plucking and binding of the Kendu Leaf. The local villagers filed several complaints against the second party workman and as such the second party workman was not offered any work from 1997 Kendu Leaf season and at the will of local people, another person was engaged as Munshi only during that season in the interest of Kendu Leaf trade. The second party workman has been otherwise gainfully employed and as such he is not entitled to any relief prayed for by him. In the circumstances the first party management prays to answer the reference in its favour.

4. On the pleadings of both the parties, the following issues are settled for adjudication of the dispute :—

ISSUES

- (i) “Whether the refusal of employment to Shri Sambhu Prasad Gadtia, Munshi by the D. F. O. (K.L.), Athamallick with effect from February, 1997 is legal and/or justified ?
- (ii) To what relief, Shri Gadtia is entitled ?”

FINDINGS

5. Both the parties examined one witness each in support of their respective case. The second party workman examined himself as W. W. 1 and proved the letter with acknowledgement sent by his Union to the first party management requesting for his reinstatement and back wages, which are marked as Ext. A and Ext. A/1. The first party management on the otherhand has examined one Shri D. R. Khillar, S. D. F. O., (K.L.) Rampur Subdivision as M. W. 1 and proved the complaints of the local villagers and consequential report of the Range Officer (K. L.), Kadaligarh which are marked Exts. 1 to 4 and also the relevant entries in the cash books of Kadaligarh Kendu Leaf Range which are marked as Exts. 5 to 23.

6. *Issue Nos. i & ii*—Both the issues are interlinked with each other and therefore taken up together for the sake of convenience. It is not disputed that the second party workman was working as Munshi under the first party management during Kendu Leaf season prior to 1997. That during the Kendu Leaf season of the year 1997, he was refused employment by the first party management in the year 1997 and that another man was engaged as Munshi by the first party management, which also finds support from the documentary and oral evidence adduced on behalf of the first party management. According to the first party management, the second party workman was refused employment in the year 1997 as the local people of Kadaligarh Kendu Leaf range, who were working with the second party workman, made complaints vide Exts. 1 to 3. As it reveals from the evidence of M. W. 1 during cross-examination, admittedly, the copies of Exts. 1 to 3 have not been supplied to the second party workman nor any explanation has been called for from him on the said complaints nor even the matter has been duly enquired upon in presence of the second party workman. Moreover neither the Range Officer, Kadaligarh (K. L.) Range who received the alleged complaints and said to have enquired in to the matter, has been examined nor even the persons who had allegedly made the complaints have been examined to substantiate the plea of the first party management that such complaints were made by the local people and enquiry was made by the Range Officer. On perusal of the Exts. 1 to 3 it goes show that Exts. 1 to 3 neither bear the official seal, signature of receiving clerk, diary number, issue number nor anything in support of the claim of the first party management that the same have been received and acted upon in due official procedure. This fact has also been admitted by M. W. 1. Moreover Ext. 4 discloses that the second party workman was refused employment by the Range Officer, Kadaligarh (K.L.) Range even prior to so called intimation to the D. F. O. (K.L.), Athamallick and he even did not wait for approval or order from the higher Authorities in the matter. The manner and circumstances in which the Range Officer, Kadaligarh (K.L.) Range refused employment to the second party workman appears to be arbitrary and in violation of the principles of natural justice. I am therefore of the opinion that refusal of the employment to the second party workman by the first party management during Kendu Leaf season for the year 1997 is unjust, improper and in violation of the principles of natural justice and fair play. It speaks of whimsical and *mala fide* intention of the Range Officer, Kadaligarh (K.L.) Range in refusing employment to the second party workman who is a senior and experience man and in engaging another man in his place. According to the second party workman he was engaged with effect from the year 1973 whereas according to the first party management the second party workman was engaged from the year 1979. Be that as it may I am not going to embark upon an enquiry to ascertain the year of engagement of the second party workman as because it is out of the scope of the present reference. In the circumstances the refusal of employment to the second party workman Shri Sambhu Gadia by the first party management with effect from February 1997 during Kendu Leaf season is held to be illegal and unjustified. The first party management is directed to provide the work of Munshi to the second party workman with effect from ensuing Kendu Leaf season and to pay him a lump sum compensation of Rs. 10,000 (Rupees ten thousand only) in lieu of unemployment and harassment suffered by him during the years he was unemployed as Munshi under the first party management.

AWARD

The reference is answered on contest but in the circumstances without costs. Refusal to give employment to the second party workman Shri Sambhu Prasad Gadtia as Munshi by the D. F. O. (K.L.), Athamallick with effect from February 1997, but not February 1977 as mentioned in the schedule of the reference is illegal and unjustified. The management is directed to offer the work of Munshi to the second party workman Shri Sambhu Gadtia in the ensuing Kendu Leaf season with compensation of Rs. 10,000 (Rupees ten thousand only) and with continuity of service as per relevant rules. Hence the Award.

Dictated and corrected by me.

G. N. PATRA
(27-1-2005)
Presiding Officer
Labour Court, Sambalpur

G. N. PATRA
(27-1-2005)
Presiding Officer
Labour Court, Sambalpur

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