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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th April 2005

No. 3990—li/1(B)-67/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2005 in Industrial Dispute Case No. 63 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Mahila Vikash Samabaya Nigam, Bhubaneswar and its workman Shri Bijaya Ketan Barik was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 63 OF 1999

Dated the 31st March 2005

Present :

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

Between :

The Management of .. First Party—Management
Mahila Vikash Samabaya Nigam
Bhubaneswar.

And

Its Workman .. Second Party—Workman
Shri Bijaya Ketan Barik.

Appearances :

For the First Party—Management .. Shri K. C. Dash

For the Second Party—Workman himself .. Shri B. K. Barik

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. 9151(5)-L.E., dated the 9th July 1999 for adjudication and Award.

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

“Whether the termination of services of Shri Bijaya Ketan Barik, Attendant with effect from the 1st May 1996 by the management of Mahila Vikash Samabaya Nigam, Bhubaneswar is legal and/or justified ? If not, to what relief Shri Barik is entitled ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present reference is that workman Shri Bijaya Ketan Barik was engaged by the management of Mahila Vikash Samabaya Nigam, Bhubaneswar (in short the management) as an Attendant-cum-Peon with effect from the 5th September 1994. He had performed his duties with much sincerity, devotion and to the utmost satisfaction of the management till the date of his termination on the 1st May 1996. According to the workman he had rendered continuous uninterrupted service for the above said period but the management without any rhyme or reason illegally terminated him from service with effect from the 1st May 1996 without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). Despite of his representation as no fruitful result was forthcoming he approached the labour machinery by raising a dispute but the effort made in this respect bore no fruit. The conciliation proceeding initiated by the Assistant Labour Officer, Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the Government for adjudication. The workman while challenging the action of the management in terminating him from service with effect from the 1st May 1996 has now prayed for his reinstatement in service with 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 *inter alia* contended that in the year 1984 the management undertook a project sponsored by one Ford Foundation of United States of America for a period of two years only. The said project was nothing but a training programme for elected women officials in Orissa. Basically the project work was carried out by the adjustment of some staffs from the management and in the month of September, 1994 on the approach of the workman the management engaged him to work under the said project on daily wage basis at the rate of Rs. 25 per day. Before giving engagement, the workman was explained about his engagement and the authority had clearly explained to the workman that his engagement was purely temporary for the purpose of Ford Foundation Project only and he would be disengaged just with the closure of the project work which the workman accepted and joined in the said project as an Attendant with effect from September, 1994 and received his wages as per his work. It is further averred in the written statement that the time bound training programme of the Ford Foundation Project was closed on the 31st March 1996 and the workman received his last wages for the month of April, 1996. Since the Ford Foundation Project was a time bound training programme which was closed on the 31st March 1996, the

workman was disengaged with effect from the 1st May 1996 with the closure of the said project work. According to the management, the action in terminating the services of the workman with effect from the 1st May 1996 was quite legal and justified and the workman is not entitled to any relief as prayed for. Accordingly the management has prayed for rejection of the claim of the workman under the present reference.

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

ISSUES

- (i) Whether the termination of services of Shri Bijaya Ketan Barik, Attendant with effect from the 1st May 1996 by the management of Mahila Vikash Samabaya Nigam, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief Shri Bark is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 but has not relied upon any document. Similarly the management has examined one Renubala Rath as M. W. 1 and has relied upon the xerox copies of the documents such as, sanction order of Ford Foundation Project indicating the terms and conditions of the said project, attendance register for the month of September, 1992, June, 1992 and September, 1994. Acquittance Roll statement showing payment of wages to the workman, acquittance roll for the month of May and June, 1996 indicating the receipt of the wages by the employees working under the management marked as Exts. A to G/1, respectively 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 joined in the services of the management in the month of September, 1994 and worked till he was refused employment on the 31st March 1996. It further reveals from his evidence that before refusal of such employment the management had not given any notice or notice pay and retrenchment compensation to him. It has been suggested to him by the management during cross-examination that he was working in a time bound scheme and that he is not entitled to be reinstated in service with back wages to which he has given a negative reply. The management, on the other hand, through M. W. 1 has successfully proved that the management undertook a project in the year 1994 sponsored by Ford Foundation of United States of America for a period of two years only and the said project was nothing but a training programme for elected women officials in Orissa. The evidence led through M. W. 1 clearly shows that the workman was engaged in the said project as a daily wager and rendered continuous service with effect from September, 1994 till the 30th April 1996. After closure of the said scheme which was nothing but a time bound training programme of Ford Foundation Project, the services of the workman were terminated with effect from the 1st May 1996. He was also paid his wages for the days he had worked under the said project. M. W. 1 in her evidence has categorically stated that the project started with effect from the 11th February 1994 and closed on the 31st March 1996 in which the workman was working with effect from September, 1994 till the 30th

April 1996. Due to closure of the said project. The services of the workman were terminated by the management. During her evidence she has proved the sanction order of Ford Foundation Project indicating the terms and conditions of the said project, attendance register, acquittance roll, statements showing payment of wages to the workman with effect from September, 1994 to April, 1996 and the acquittance roll showing the receipt of wages by the employees working under the management marked as Exts. A to G/1. It is in her evidence that the workman was working under the said scheme which was closed on the 31st March 1996, and therefore the workman is not entitled to get any relief as prayed for. Nothing material and substantial has been elicited during cross-examination by the workman so as to discard her evidence. Rather the evidence in cross-examination clearly goes to show that the time bound training programme of the Ford Foundation Project started functioning with effect from the 11th February 1994 and it was closed on the 31st March 1996. Due to closure of the said scheme the services of the workman were terminated by the management with effect from the 1st May 1996.

8. Both the management and the workman have led evidence in support of their respective cases. It is the definite case of the workman that he had rendered continuous service under the management with effect from September, 1994 till the 31st March 1996 in terms of the statutory provisions of the Act but the management without any prior notice or notice pay and retrenchment compensation had illegally terminated him from service with effect from the 1st May 1996. On the other hand, the perusal of the evidence of the management clearly emerges that the management in the year 1994 undertook a project sponsored by Ford Foundation to start a scheme for two years only from the 11th February 1994 till the 31st March 1996 to impart training where the workman was engaged with effect from September, 1994 till the 30th April 1996. The time bound training programme of the Ford Foundation was closed with effect from the 31st March 1996 and with the closure of the said scheme the services of the workman were terminated. It is therefore abundantly clear that the above project was a time bound training programme and the services of the workman were terminated due to automatic cessation of the said project work. Since the workman was engaged under a particular time bound scheme with limited fund and when the said time bound training programme was closed on the completion of the scheme, I am of the considered view that the workman is not entitled to get any relief in the present case. In that view of the matter, the claim of the workman for his reinstatement in service due to non-compliance of the provisions of Section 25-F of the Act, is not tenable in the eye of law. In such premises, there is no scope of application of Section 25-F of the Act in such cases of termination. The Hon'ble Apex Court in the case of *State of Himachal Pradesh Vrs. Shri Suresh Kumar Verma* and another reported in 1996 (72) FLR 804 has consistently taken the view that "The Project in which the respondents were engaged had come to an end and that, therefore they have necessarily been terminated for want of work. The Court cannot give any directions to re-engage them in any other work or appoint them against existing vacancies. Otherwise, the judicial process would become other mode of recruitment de-here the rules". After examining the evidence adduced from both the sides, the documents relied upon by the management and keeping in view the settled position of law. I am of the view that the workman is not entitled to any relief as prayed for. Both the above issues are answered accordingly.

9. Hence it is ordered :

ORDER

That the termination of services of Shri Bijaya Ketan Barik, Attendant with effect from the 1st May 1996 by the management of Mahila Vikash Samabaya Nigam, Bhubaneswar is legal and justified. In that view of the matter, the workman Shri Barik is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
31-3-2005
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
31-3-2005
Presiding Officer
Labour Court, Bhubaneswar

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