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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th April 2005

No.4000–li/1(BH)-83/2000-LE.— In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Award dated the 28th February 2005 in I.D. Case No. 39/2001 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Executive Engineer, Baripada Electrical Division, Baripada and its workman Shri Sudhansu Sekhar Barik was referred for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 39 OF 2001

Dated the 28th February 2005

Present:

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

Between:

The Management of
Executive Engineer,
Baripada Electrical Division,
Baripada. . . First-party—Management

And

Its Workman
Shri Sudhansu Sekhar Barik. . . Second -party—Workman

Appearances:

For the First-party—Management . . Shri A. K. Mohapatra

For the Second-party—Workman . . Smt. Alora Kar

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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.14347 (5)-LE., Dt.6-1-2001 for adjudication and Award.

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

“Whether the termination of services of Shri Sudhansu Sekhar Barik, ex-Typist by the Executive Engineer, Baripada Electrical Division (NESCO), Baripada with effect from 1-8-1994 is legal and/or justified ? If not, what relief Shri Barik is entitled to ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present referencè are that workman Sudhansu Sekhar Barik was engaged as Typist under the management of Executive Engineer, Baripada Electrical Division (NESCO), Baripada (in short the management) with effect from October, 1991 on consolidated pay of Rs. 500 per month. He continued to work as such till the date of his termination on 1-8-1994. According to the workman although he had rendered continuous uninterrupted service for more than two and half years with much sincerity, devotion and to the utmost satisfaction of the authority but the management without any rhyme or reason had illegally terminated his service with effect from 1-8-1994 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). After such termination he approached the labour machinery but to no avail. The matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. The workman while challenging the action of the management in terminating his service with effect from 1-8-1994, 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. According to the management, the workman was never engaged by the management at any point of time and he was never an employee under the management. It is averred in the written statement that since the workman was not an employee under the management the provisions of Section 25-F of the Act were not attracted and there was no question of payment of compensation. On the above backgrounds the rejection of the claim of the workman has been prayed for by the management 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 Sudhansu Sekhar Barik, ex-Typist by the Executive Engineer, Baripada Electrical Division (NESCO), Baripada with effect from 1-8-1994 is legal and/or justified ?

(ii) If not, what relief Shri Barik 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, some office letters, representations and the letter of the Deputy Manager, Dt. 22-9-1998 addressed to the Executive Engineer, Baripada Electrical Division, Baripada marked as Exts.1

to 4 respectively. The management, on the other hand, has examined one Sridhar Rout as M.W.I but has not relied upon any documents 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 emerges that he was working as Typist under the management with effect from October, 1991 till July, 1994 on a consolidated pay of Rs. 500 per month. While he was working under the management some vacancies arose and he made representation through proper channel to the Superintending Engineer, Electrical Circle, Balasore vide Ext. 2 to absorb him as N.M.R. till the posting of Typist *cum*-Clerk-B. It is also in his evidence that he had also sent another representation vide Ext.3 to the Deputy Manager (H.R.), GRIDCO, Bhubaneswar to absorb him in the post of Typist *cum*-Clerk-B. In response to his representation the Deputy Manager (H.R.), GRIDCO, Bhubaneswar sent a letter to the Executive Engineer, Baripada Electrical Division, Baripada vide Ext.4 requesting him to furnish the detailed information with regard to the engagement of the workman. Although he had worked till 31-7-1994 but the management refused employment without assigning any reason. He has categorically stated that the management while terminating his services had not given any notice or notice pay and retrenchment compensation. During evidence he has proved certain letters of different years in which his first name has been typed-out marked as Exts.1 to 1/e respectively. He admits during his cross-examination that he was not issued with any letter for his appointment as Typist under the management but he was verbally told by the management to work as Typist and thereafter he had worked under the management for a period of three years from October, 1991 to July, 1994 continuously. On the other hand, the evidence led by the management through M.W.1 clearly goes to show that the workman had never worked as Typist from October, 1991 to July, 1994. Even no appointment letter had been issued to the workman to work as Typist. He admits in his evidence that the representation of the workman had been forwarded to Superintending Engineer, Electrical Circle, Balasore and the Deputy Manager (H.R.), GRIDCO, Bhubaneswar had written a letter to the Executive Engineer, Baripada Electrical Division, Baripada requesting him to furnish the detailed information about the engagement of the workman. He further admits in his evidence that Exts.1 to 1/e are the official letters.

8. Both the parties have led evidence in support of their respective cases. The evidence led by the workman being coupled with the proved documents clearly shows that the workman was working under the management as Typist and while he was working under the management, he made representation to the Superintending Engineer, Electrical Circle, Balasore for his absorption in the post of Typist *cum*-Clerk-B. It is also clearly evident from his evidence that he had made another representation to the Deputy Manager (H.R.), GRIDCO, Bhubaneswar and in response to his representation the Deputy Manager (H.R.), GRIDCO, Bhubaneswar sent a letter to the Executive Engineer, Baripada Electrical Division, Baripada requesting him to furnish the detailed information with regard to the engagement of the workman. The evidence of the workman being coupled with the proved documents clearly goes to show that he was working under the management as Typist with effect from October, 1991 till 31-7-1994 continuously but the management without any rhyme or reason had illegally terminated him from service without giving prior notice or notice

pay and retrenchment compensation. Admittedly the workman was not issued with any appointment letter for his appointment as Typist under the management but the fact with regard to the service having been rendered by the workman in the establishment of the management has not been challenged by the management anywhere in the evidence. Rather W.W.1 admits in his evidence that the management had forwarded the representation of the workman officially to the higher authority for his absorption in the post of Typist *cum*-Clerk-B, which clearly leads me to arrive at a conclusion that the workman was working under the management as Typist for the above said period. Apart from that the first name of the workman in the official letters have nowhere been disputed and challenged by the management anywhere in the evidence which also clearly leads me to believe that it is non-else but the workman concerned had typed-out the above official letters. Therefore the mere oral evidence to the effect that the workman had never worked as Typist can not be regarded as sufficient evidence to come to an irresistible conclusion that he was not working under management as Typist for the above said period. Rather, the workman has successfully established that although he had rendered continuous service for about three years but the management refused employment without assigning any reason and while terminating his services, the management had not given any notice or notice pay and retrenchment compensation, which in my view, are in complete violation of the mandatory provisions of Section 25-F of the Act.

9. Law is well settled that a workman is entitled to one month's notice before retrenchment or one month's pay in lieu thereof under Section 25-F of the Act. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. Therefore 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 Section 25-F of the Act being a beneficial legislation, it has to be strictly complied with and is a mandatory pre-condition. But as it reveals from the present case such condition precedent has not at all been followed by the management while terminating the services of the workman. In this respect the Hon'ble Apex Court in the matter of Karnataka State Road Transport Corporation *vs.* M. Boraiah reported in AIR 1983 (Supreme Court) 1320, Ganmon India Ltd. *vs.* Niranjana Das reported in 1984 (48) FLR 310 and Workmen *vs.* Food Corporation of India reported in AIR 1985 (Supreme Court) 670 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 after carefully examining the evidence led by the parties, the documents relied upon by the workman and keeping in view the settled position of law, I am of the considered view that the action of the management in terminating the services of the workman with effect from 1-8-1994 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 perusal of the schedule of reference clearly emerges that the workman has been terminated from service with effect from 1-8-1994. Nowhere, it has been proved and established by the management that the workman had been gainfully employed elsewhere with effect from the date of his termination. In such premises 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 a lump sum compensation to the tune of Rs. 5,000 in lieu of back wages, which in my opinion, would meet the ends of justice in the instant case. Both the above issues are answered accordingly.

11. Hence, it is ordered:

ORDER

That the termination of services of Shri Sudhansu Sekhar Barik, ex-Typist by the Executive Engineer, Baripada Electrical Division (NESCO), Baripada with effect from 1-8-1994 is neither legal nor justified. The workman Shri Barik 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.

Dictated and corrected by me

P. K. SAHOO
28-2-2005
Presiding Officer,
Labour Court,
Bhubaneswar.

P. K. SAHOO
28-2-2005
Presiding Officer,
Labour Court,
Bhubaneswar.

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