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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th June 2005

No. 5330–li/1(B)-146/1999-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th May 2005 in Industrial Dispute Case No.5 of 2000 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s General Industrial Security and Investigators, Calcutta (P) Ltd., Calcutta-20 and its workmen Shri Dharendra Giri and Shri Bipin Giri was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 5 OF 2000

Dated the 19th May 2005

Present :

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

Between :

Managing Director . . . First Party–Management
M/s General Industrial Security and
Investigators, Calcutta (P) Ltd.
238-B Labour Circular Road
Calcutta-20.

And

Shri Dhurendra Giri . . . Second Party–Workmen
S/o Shri Ramapukar Giri
Vill. Sauri Mouza, P. O. Sauri Buxizee
Via-Sauri Jalapur, Dist. Chhapra (Bihar).

Shri Bipin Giri
S/o Shri Ramapukar Giri
Vill. Sauri Mouza, P. O. Sauri Buxizee
Via Sauri Jalapur, Dist. Chhapra (Bihar).

Appearances :

For the First Party–Management	..	None
For the Second Party–Workman himself	..	Shri Bipin Giri

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. 814(5)-L. E., dated the 13th January 2000 for adjudication and Award.

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

“ Whether the action of the management of M/s General Industrial Security and Investigators, Calcutta (P) Ltd. in terminating the services of Shri Dhurendra Giri, and Shri Bipin Giri, both Security Guards by way of refusal of employment with effect from the 1st June 1998 is legal and justified ? If not, what benefits the workmen are entitled to get ?”

3. The brief facts giving rise to the present reference are that workman Shri Dhurendra Giri and Shri Bipin Giri were engaged by the management of M/s. General Industrial Security and Investigators, Calcutta (P) Ltd. (in short the management) as Security Guards with effect from the year 1979 and 1984, respectively. Both the abovenamed workmen rendered continuous uninterrupted service under the management for years together till the 31st May 1998 with much sincerity, devotion and to the utmost satisfaction of the management at different places. But the management without any rhyme or reason terminated their services with effect from the 1st June 1998 by way of refusal of employment without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) which was according to them illegal and unjustified. Again the order of termination they had approached the labour machinery but to no effect. Ultimately the matter was referred to this Court for

adjudication. Both the workmen while challenging the action of the management in terminating their services with effect from the 1st June 1998 have now prayed for their reinstatement in service with back wages along with service benefits. Hence the reference.

4. Despite registered notice the management did not appear and contest the present case as a result it was set *ex parte*. The *ex parte* hearing commenced on the 29th December 2003 and the 17th December 2004. During *ex parte* hearing both the workmen have examined themselves as W. W. 1 and W. W. 2, respectively and have relied upon the identity cards and the letters marked as Exts. 1 to 4, respectively.

5. Both the workmen during *ex parte* evidence have clearly supported and corroborated the averments reflected in the statement of claim. They have categorically stated that they were engaged by the management as Security Guards and they had worked for years together under the management at different places till the 31st May 1998. But the management without any rhyme or reason had illegally terminated them from service with effect from the 1st June 1998 without giving any prior notice or notice pay and retrenchment compensation. They have clearly stated that neither any charge of misconduct was framed nor any departmental enquiry was conducted against them. According to them, the action of the management in terminating their services with effect from the 1st June 1998 by way of refusal of employment was illegal and unjustified for which they have now prayed for their reinstatement in service with back wages along with other service benefits.

6. The evidence of both the workmen has nowhere been challenged by the management during evidence. In absence of any rebuttal evidence absolutely I find no cogent reason to disbelieve their evidence. Rather the unchallenged testimony of the workmen clearly goes to show that they had rendered continuous service with effect from 1979 and 1984, respectively till the 1st June 1998 when they were illegally terminated from service by way of refusal of employment and the management while terminating their services had not followed the mandate of Section 25-F of the Act, which in my view, are in complete violation of the said Act. The Hon'ble Apex Court in catena of decisions 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 and the documents already relied upon by the workmen, I am of the considered view that the action of the management in terminating the workmen from service by way of refusal of employment with effect from the 1st June 1998 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workmen are entitled to the relief of reinstatement.

7. The perusal of the Schedule of Reference clearly reveals that the workmen have been terminated from service with effect from the 1st June 1998 and there is no cogent material on record to prove and establish that they have been gainfully employed elsewhere with effect

from the date of termination. In the above premises, the workmen are entitled to be reinstated in service, but on the facts and circumstances of the present case, as the workmen had not worked with effect from the date of their termination, they are entitled to get a lump sum compensation of Rs. 3,000 each towards back wages.

8. Hence it is ordered :

ORDER

That the action of the management of M/s General Industrial Security and Investigators, Calcutta (P) Ltd. in terminating the services of Shri Dharendra Giri and Shri Bipin Giri, both Security Guards by way of refusal of employment with effect from the 1st June 1998 is neither legal nor justified. Both the above workmen are entitled for reinstatement in service with a lump sum compensation of Rs. 3,000 (Rupees three thousand) only each towards back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me.

P. K. SAHOO
19-5-2005
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
19-5-2005
Presiding Officer
Labour Court, Bhubaneswar

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