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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th June 2005

No. 5355—li/l(S)-8/2003-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th April 2005 in Industrial Disputes Case No. 49 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s State Livestock Breeding Farm, Chipilima, District Sambalpur and its workmen Shri Prasanna Thappa 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. 49 OF 2003
Dated the 28th April 2005

Present :

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

Between :

The Management of
the Joint Director
M/s State Livestock Breeding Farm
Chipilima, At Gosala, P. O. Kalamati
District Sambalpur.

.. First Party—Management

And

Its workman .. Second Party—Workmen
Shri Prasanna Thappa
At Kudapara, P. O. Kalamati
Dist. Sambalpur.

Appearances :

For the First Party—Management	..	Dr. Bhisma Ch. Naik, Authorised Representative State Livestock Breeding Farm, Chipilima.
For the Second Party—Workman	..	Shri D. P. Nayak, President Shri R. K. Mohanty, Office bearer, State Livestock Breeding Farm, Chipilima.

AWARD

This is a reference made by the Government of Orissa in Labour & Employment Department, under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide memo No. 9125 (5), dated the 12th September 2003 for adjudication as to “whether the termination of services of Shri Prasanna Thappa by way of his disengagement from services with effect from the 31st May 2001 by the Management of State Livestock Breeding Farm, Chipilima is legal and/or justified? If not, what relief Shri Thappa entitled to?”

2. The case of the second party workman in brief is that the State Livestock Breeding Farm, Chipilima, (hereinafter called the first party management) is an industry and he is a workman as per the provisions of the Industrial Disputes Act, 1947. That he was working as a daily rated workman under the first party management with effect from the 1st January 1992, and was continuing as such till the 30th May 2001. His services were terminated by the first party management on the 31st May 2001, in violation of provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947. He remained unemployed and leading a miserable life due to want of alternative job. That although the first party management is engaging a number of daily wages workmen till today. He has not been given a chance for his reinstatement in violation of provisions of Section 25-H of the Industrial Disputes Act, 1947. Under the above circumstances, the second party workman prays for his reinstatement in service with full back wages and cost.

3. The first party management contested the case and filed its written statement *inter alia* denying the allegations of the second party workman. According to the first party management, its establishment is a Research Institution under the Department of Animal Husbandary and Veterinary Services, Orissa but not an Industry, nor the second party is its workman. As such this Court has no jurisdiction over the matter. Further it is stated by the first party management that the second party workman was engaged as casual labourer with effect from the 1st December 1993 to the 31st May 2001. Sience the second party workman

was engaged after the 12th April 1993, he was disengaged as per the instruction of the Government of Orissa, Finance Department and that taking into account the nature of work on daily wage basis/job, the refusal of employment to the second party workman cannot be treated as retrenchment. Further according to the first party management due to reduction of strength of Livestock maintained, there was reduction in engagement and that no juniors to the second party workman are retained in service nor there is any question of fresh appointment. In the circumstances, the first party management prays to dismiss the case of the second party workman.

4. On the pleadings of both the parties, the following issues have been framed for adjudication :—

ISSUES

- (i) “Whether the termination of services of Shri Prasanna Thappa by way of his disengagement from services with effect from the 31st May 2001 by the Management of State Livestock Breeding Farm, Chipilima is legal and/or justified ?
- (ii) To what relief, the workman Shri Thappa is entitled ?”

In course of hearing of the case, the second party workman examined himself as W. W. 1 whereas the first party management declined to adduce any evidence.

FINDINGS

5. *Issue Nos. (i) & (ii)*—Both the issues being interlinked are taken up together for the sake of convenience. The second party workman has taken the plea that he was engaged by the first party management as a daily rated workman with effect from the 1st July 1992 and continue till the 30th May 2001 whereas the first party management has taken the stand that the second party workman was engaged with effect from the 1st December 1993 and continue till the 31st May 2001. The second party workman examined himself as W. W. 1, and in his evidence he categorically stated that he was engaged as a daily rated labourer with effect from the 1st July 1992. He further deposed that the first party management is selling Cattle, Buffalo, Sheep, Goat, different variety of Grass and Milk. That he was retrenched illegally from service without payment of compensation and after termination, he could not arrange any alternative job in spite of his best effort. The second party workman further deposed that more than 200 workmen were working in the Farm of the management and that he was illegally retrenched from service whereas his juniors are retained. The first party management declined to cross-examine the workman (W. W. 1) nor adduced any rebuttal evidence and therefore, the above assertion of the workman remain unchallenged. In the circumstances, therefore, I am constrained to hold that the first party management is an Industry as defined under Section 2(j) of the Industrial Disputes Act, 1947 and the second party is working under the first party with effect from the 1st July 1992.

It is the settled principles of law that termination of services of a workman for any reason whatsoever constitute retrenchment as defined under Section 2(oo) of the Industrial Disputes Act and non-compliance of mandatory provisions of Section 25-F of the Industrial Disputes

Act at the time of retrenchment makes it void *ab initio*. Admittedly the second party workman was retrenched from service with effect from the 31st May 2001 and he was not paid any prior notice or notice pay in lieu thereof and retrenchment compensation as per Section 25-F(a) and (b) of the Industrial Disputes Act, 1947 at the time of retrenchment of services of the second party workman. Therefore, the retrenchment is held to be illegal and inoperative in eye of law. Consequently, the second party workman is entitled for his reinstatement in service with continuity and other service benefits. But so far as payment of back wages as prayed by the second party workman, it is an admitted fact that he was daily wage earner and therefore, his plea that he was unemployed after his termination of service is hard to believe. It is a fit case where the principles of "no work no pay" is to be applied and awarding of back wages will unnecessarily burden the State Exchequer. Consequently, no back wages is to be awarded. Hence the Award.

AWARD

The reference is answered on contest with costs. The termination of services of Shri Prasanna Thappa by way of his disengagement from services with effect from the 31st May 2001 by the management of State Livestock Breeding Farm, Chipilima is held to be illegal. The second party workman is to be reinstated in service with continuity but without any back wages. Management is to pay Rs. 500 (Rupees five hundred) only to workman towards costs of litigation.

Dictated and corrected by me

G. N. PATRA
28-4-2005
Presiding Officer
Labour Court, Sambalpur

G. N. PATRA
28-4-2005
Presiding Officer
Labour Court, Sambalpur

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