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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th August 2005

No. 6759-Ii/1 (B)-42/1994/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 30th June 2005 in I.D. Case No. 96/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. WALMI, Pratap Nagari, Cuttack and its workman Shri Chitrasen Sundaray was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 96 OF 1995

Dated the 30th June 2005

Present:

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

Between:

The Management of
M/s. WALMI, Pratap Nagari,
Cuttack.

.. First party—Management

And

Its workman
Shri Chitrasen Sundaray

.. Second party—Workman

Appearances:

Shri J.B. Pattnayak, Advocate
Shri J. Mohanty, Advocate

.. For first party—Management

Shri P.K. Das, Advocate

.. For second party—Workman

ORDER

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.5954 (5)/LE., dated the 17th may 1995 for adjudication and Award.

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

“Whether the termination of services of Shri Chitrasen Sundaray by the Management of M/s. Water and Land Management Institute (WALMI), Pratap Nagari with effect from 16-6-1993 is legal and/or justified ? If not, to what relief Shri Sundaray is entitled ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present reference is that by an office order dt. 05-03-1991 of the Principal Investigator, RSFC (CBI & P) of the Management of M/s. Water and Land Management Institute (WALMI) (in short the Management), the workman Chitrasen Sundaray was engaged under RSFC on temporary basis at the rate of Rs. 25/- per day as N.M.R. with effect from 06-03-1991 with a provision of one day off after every 89 working days except Sundays subject to termination at any time without assigning any reason if need arises. In due obedience to the said order dt. 06-03-1991 the workman joined in the establishment of the Management as Data Collector with effect from 06-03-1991 (Forenoon). He was also engaged as Supervisor with effect from 01-03-1992 under the Demonstration Farm to manage the supervision work after obtaining necessary approval from the Chief Engineer and Director of the Management. According to the workman, he rendered continuous uninterrupted service with much sincerity, devotion and to the utmost satisfaction of the superior authorities of the Management but without any rhyme or reason the Management terminated him from service with effect from 16-05-1993 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). Being aggrieved by the action of the Management, he approached the labour machinery but the conciliation proceeding initiated by the Assistant Labour Officer, Cuttack ended in failure and the matter in dispute was ultimately referred to this Court for adjudication by the Government in the Labour & Employment Department. While seeking industrial adjudication, the workman has claimed for his reinstatement in service with back wages. Hence the reference.

4. The Management, on the other hand, entered appearance and filed its written statement opposing the claim of the workman *inter alia* contended that the dispute as raised by the workman is not maintainable in its present form. While admitting the engagement of the workman, the Management has categorically averred that the appointment was purely contractual in nature and for a specific period. The condition of the appointment was also purely temporary in nature and subjected to termination at any time without assigning any reason whatsoever. According to the Management, the workman was appointed on *ad hoc* basis for 89 days only the period of which was extended from time to time. Since the workman was appointed on *ad hoc* basis and when the appointment was purely contractual in nature and for a specific period the Management terminated the services of the workman with effect from 16-05-1993 after retaining the other employees who had by then completed five years of continuous service and the action of the Management in this respect was legal and justified. 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 the services of the second party workman by the first party Management with effect from 16-05-1993 is legal and/ or justified?

(ii) To what relief, if any, the workman is entitled ?

6. The workman in support of his case has examined himself as W.W.1 and has relied upon the xerox copy of the appointment order marked as Ext.1. On the other hand, the Management has neither examined any witness nor relied upon any document in support of its case.

FINDINGS

7. Issue Nos. (i) & (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 joined in the establishment of the management with effect from 06-03-1991 as Data Collector vide Ext. 1. He worked till 27-02-1992 when he was directed to work as Supervisor. Accordingly he worked as Supervisor from 27-02-1992 till 15-05-1993. Thereafter the Management disengaged him. He has categorically stated that the Management without conducting any enquiry and without giving any notice or notice pay and retrenchment compensation illegally terminated him from service with effect from 16-05-1993. It is also in his evidence that although other junior employees were retained by the Management but he was illegally terminated for which he has now claimed for his reinstatement in service with back wages. During cross examination he has categorically stated that he had worked under the Management continuously from 06-03-1991 to 15-05-1993. The Management, on the other hand, has neither examined any witness nor relied upon any document in support of its case.

8. After carefully examining the sole evidence of the workman it is crystal clear that he had rendered continuous uninterrupted service with effect from 06-03-1991 till he was terminated from service on 16-05-1993. The fact with regard to his continuous service having been rendered by him in the establishment of the Management with effect from 06-03-1991 till 15-05-1993 has nowhere been disputed and challenged by the Management during evidence. Rather it is clearly evident that the Management while terminating the services of the workman 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. The claim of the workman is that he had completed more than 240 days of continuous service in terms of the statutory provisions and therefore, he is entitled to be reinstated in service since the provisions of Section 25-F of the Act have not been complied with in the present case. The requirement of the statute of 240 days can not be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months period. In the case at hand, the workman has successfully proved that he had completed more than 240 days of continuous service in terms of the statutory provisions of the Act. But the Management without following the mandate of Section 25-F of the Act terminated the services of the workman which in my opinion, was illegal and unjustified. The Hon'ble Apex Court in *Karnatak State Road Transport Corporation Vrs. M.Boraih* reported in AIR 1983 Supreme Court 1320, *Gammon India Ltd. Vrs. Niranjan Das* reported in 1984 (48) FLR 310 and *Workmen Vrs. 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*.”

While considering a similiar question regarding non compliance of Section 25-F of the Act, the Hon’ble Apex Court in another decision reported in 2001(88) FLA 508 (Supreme Court) in the case of Deep Chandra Vrs. State of Uttar Pradesh and another has held that : —

“The service of an employee who had put in more than 240 days in a year can not be put to an end without following the procedure prescribed under Section 25-F of the Industrial Disputes Act.”

In the present case, the condition precedent as stipulated under Section 25-F of the Act has not at all been followed by the Management while terminating the services of the workman. Therefore, the termination having been made in violation of the mandatory provisions in Section 25-F of the Act is void *ab initio*. The Management, on the other hand, has averred so many things in its written statement but has not substantiated any of the averments during evidence which clearly leads me to accept the claim of the workman.

9. On careful consideration of the evidence available on record and the document relied upon by the workman and keeping in view the above legal position, I am of the opinion that the action of the Management in terminating the services of the workman with effect from 16-5-1993 is 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 schedule of reference clearly goes to show that the workman has been terminated from service with effect from 16-05-1993. No cogent material is placed before me to prove and establish that the workman has been gainfully employed elsewhere with effect from the date of his termination. In such circumstances, the workman is entitled to reinstatement 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 compensation towards back wages a lump sum amount of Rs. 3,000 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 the services of Shri Chitrasen Sundaray by the Management of M/s. Water and Land Management Institute (WALMI), Pratap Nagari with effect from 16-05-1993 is neither legal nor justified. The workman Shri Sundaray is entitled to be reinstated in service with a compensation towards back wages a lump sum amount of Rs. 3,000 (Rupees three thousand) only.

The reference is thus answered accordingly.

Dictated and Corrected by me.

P.K.SAHOO
30-06-2005,
Presiding Officer,
Labour Court,
Bhubaneswar.

P.K.SAHOO
30-06-2005,
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

D. MISHRA
Under-Secretary to Government