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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th July 2006

No. 6280—li/1(BH)-97/1993 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd June 2006 in Industrial Dispute Case No. 99 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of the Executive Engineer, Electrical, E. H. T. Construction Division, Jajpur Road, Jajpur and its workmen Shri Krushna Chandra Kar and 6 others represented through the O. S. E. B. Workers Union, Angul was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 99 OF 1995

Dated the 23rd June 2006

Present :

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

Between :

The management of
the Executive Engineer
Electrical, E. H. T. Construction Division
Jajpur Road, Jajpur. . . First Party—Management

And

Their workmen
Shri Krushna Chandra Kar and 6 others
represented through the O. S. E. B.
Workers Union, Angul. . . Second Party—Workmen

Appearances :

For the First Party–Management	..	Shri A. P. Mohanty
For the Second Party–Workman himself	..	Shri K. C. Kar

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. 6115(5)-L.E., dated the 24th May 1995 for adjudication and Award.

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

“Whether the retrenchment of Shri Krushna Chandra Kar, Shri Santanu Kumar Sahoo, Shri Laxman Mohanta, Shri Premananda Nayak, Shri Pabitra Mohan Mohakuda, Shri Chhabi Kishore Sandha and Shri Purusotam Dalai by the Executive Engineer, Electrical, E. H. T. Construction Division, Jajpur Road with effect from the 30th September 1989 is legal and/or justified ? If not, to what relief they are entitled ?”

3. By way of this reference all the workmen represented through the O. S. E. B. Workers Union, Angul have challenged the legality and justifiability of the action of the Executive Engineer, Electrical, E. H. T. Construction Division, Jajpur Road (in short the management) in retrenching them from service with effect from 30th September 1989.

On behalf of the workmen the President, O. S. E. B. Workers Union has filed the statement of claim challenging the illegal retrenchment of the workmen with effect from the 30th September 1989. It reveals from the statement of claim that the workmen had been working under the management since 1983 and had completed more than 240 days of service in each year in terms of the statutory provisions but the management without any rhyme or reason illegally terminated them from service with effect from the 30th September 1989 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). A dispute was raised before the District Labour Officer, Angul but the conciliation proceeding ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication, the President, O. S. E. B. Workers Union on behalf of the workmen has claimed for reinstatement of the workmen in service with full back wages. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the workmen *inter alia* contended that the workmen had been engaged during 1987 and 1988 intermittently on contingency basis and as and when need was felt, services were taken on daily wage basis. It is categorically averred in the written statement that the workmen were casual workers and they were engaged as and when the work was available for them. Since the workmen did not work for more than 240 days in a calendar year the provisions of Section 25-F of the Act were not attracted and there was no question of payment of compensation. The management was also not under obligation to comply with the provisions of Section 25-F of the Act since they were not working as regular employees and therefore, the workmen are not entitled for any relief. On the above backgrounds, the rejection of the claim of the workmen 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 retrenchment of Shri Krushna Chandra Kar, Shri Santanu Kumar Sahoo, Shri Laxman Mohanta, Shri Premananda Nayak, Shri Pabitra Mohan Mahakuda, Shri Chhabi Kishore Sandha and Shri Purusotam Dalai by the Executive Engineer, Electrical, E. H. T. Construction Division, Jajpur Road with effect from the 30th September 1989 is legal and/or justified ?
- (ii) If not, to what relief they are entitled ?

6. The workmen in support of their cases have examined one Shri Krushna Chandra Kar and Shri Chhabi Kishore Sandha as W.Ws. 1 and 2 respectively and have relied upon the copy of the letter, dated the 31st August 1991 marked as Ext. 1. On the other hand, the management has examined one Shri Adhara Prasad Mohanty as M. W. 1 but has not relied upon any document 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 both W. Ws. 1 and 2 emerges that they and other workmen had been working under the management since November 1983. They continued to work till they were refused employment on the 30th September 1989. It further reveals from their evidence that the management while refusing employment to them had not given any notice or notice pay and retrenchment compensation although they had rendered continuous service in terms of the statutory provisions of the Act. W. W. 1 during evidence has proved the letter of the Executive Engineer, Electrical addressed to the Zonal Secretary, O.S.E.B. Workers Union, Dhenkanal Zone, Angul regarding the chartered of demand and strike notice marked as Ext. 1. It has been suggested during cross-examination that they are not entitled for any relief to which they have categorically denied. The management on the other hand, through M. W. 1 has led evidence to the effect that the workmen under the reference were engaged by the management intermittently on daily wage basis for the construction work in E. H. T. Transmission Line during the year 1987 and 1988. They had never worked under the management as regular employees but were engaged for a particular job and disengaged after completion of the said job. It is categorically stated by M. W. 1 that the workmen had never worked for 240 days under the management in terms of the statutory provisions of the Act. The management had neither retrenched them from service nor refused employment with effect from the 30th September 1989. It further reveals from his evidence that the workmen were engaged during 1987 and 1988 intermittently as and when required by the management and when the work was available for them. Since they were working on daily wage basis and when they had not completed 240 days of continuous service they are not entitled for any relief. M. W. 1 has not been cross-examined by the workmen as a result the evidence on the above context remains unchallenged.

8. Both the management and the workmen in the present case have adduced evidence in support of their respective cases. From the above discussion the principal issue thus appears to be as to whether the workmen have completed 240 days of service in terms of the statutory provisions of the Act.

The Hon'ble Apex Court in a recent decision in the matter between Y. M. Yellatti and Assistant Executive Engineer reported in 2006 (108) FIR 213 (Supreme Court) has taken a view that :—

“The burden of proof as to the completion of 240 days of continuous work in a year is on the claimant to show that he had worked for 240 days in a given year.”

The requirement of the Statute of 240 days can not be disputed and it is for the employee concerned to prove that he has infact completed 240 days in the last preceding 12 months period. Therefore, the proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum. The above such fact has also been crystalised in other judgements in the case of Chief Engineer, Construction *Vrs.* Kashana Rao (d) L. Rs. reported in 2005-II LIJ. 479 (Supreme Court) and in the case of Manager, R. B. I., Bangalore *Vrs.* S. Mani and others reported in 2005-II LIJ. 258 (Supreme Court) wherein the Hon'ble Apex Court has consistently taken the view that :—

“The initial burden of establishing the factum of continuous work for 240 days within a year was on the workman.”

In the case at hand after carefully examining the evidence led by the parties it reveals that the workmen have not succeeded in proving their case with regard to their continuous engagement having been rendered by them in the establishment of the management. The evidence so far led does not reveals that they had infact completed 240 days of service in terms of the statutory provisions of the Act. Even no proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period has been produced by the workmen. Therefore, the mere oral statement given by the W. Ws. 1 and 2 without any supporting document cannot be regarded as sufficient evidence to come to an irresistible conclusion that the workmen had in fact worked for 240 days in a year and had completed 240 days of service in terms of the statutory provisions of the Act.

9. On a careful scrutiny and analysis of the evidence adduced from both the sides, the document relied upon by the workmen and keeping in view the settled position of law, I am led to hold that the burden of proving as to the completion of 240 days of continuous work in terms of the statutory provisions of the Act has not successfully been discharged by the workmen in the present case. In that view of the matter the workmen are not entitled for any relief.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
23-6-2006
Presiding Officer
Labour Court
Bhubaneswar

P. K. SAHOO
23-6-2006
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government