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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st July 2006

No. 6605-li/1(B)-46/1991(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2006 in Industrial Dispute Case No. 47/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Secretary, Cuttack Development Authority, Arundoya Market, Cuttack and its workman Shri Dhaneswar Baral, C/o Shri Mayadhar Champaty, House owner Shri Babajee Nandy, Gopal Jew Lane, Choudhury Bazar, Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 47 OF 1992

Dated the 30th June 2006

Present :

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

Between :

The Secretary
Cuttack Development Authority
Arundoya Market, Cuttack. First Party—Management

And
Shri Dhaneswar Baral
C/o Mayadhar Champaty
House Owner Shri Babajee Nandy
Gopal Jew Lane, Choudhury Bazar
Cuttack. Second Party—Workman

Appearances :

For the First Party–Management	..	Shri D. Mohapatra, Advocate
For the Second Party–Workman	..	Shri S. B. Mishra, Advocate

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (d) 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. 4971(5)-L. E., dated the 8th April 1992 for adjudication and Award.

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

“Whether the termination of the services of Shri Dhaneswar Baral, ex-Tractor Driver with effect from the 20th November 1989 by the management of Cuttack Development Authority, Cuttack is legal and /or justified, even if he has not completed 240 days during any one of 12 calendar months before termination of his service by the said management ? If so, what should be the details ?”.

3. By way of this reference workman Shri Dhaneswar Baral has challenged the legality and justifiability of the action of the management of Cuttack Development Authority, Cuttack (in short the management) in terminating his services with effect from the 20th November 1989.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman joined in the establishment of the management as Tractor Driver on daily wage basis at the rate of Rs. 20 per day with effect from the 24th April 1989. In pursuant to the office order No. 5899-CDA., dated the 1st May 1989 he was directed to report to the Assistant Engineer III at Bidanasi site office. Accordingly he performed his duties there at Bidanasi. He was also further directed in the said order to report to Shri N. P. Panigrahi, Planning Member Officer on Special Duty on being relieved by Shri Bansidhar Das, Driver. Subsequently he was engaged as Helper-*cum*-Mechanical Assistant attached to the Driver of the Tractor No. OIU 7394 on daily wage basis at the rate of Rs. 15 per day until further orders. While working as such the management without any rhyme or reason had illegally terminated his services with effect from the 20th November 1989 without following the mandate of Section 25-F of the Industrial Dispute Act, 1947 (in short the Act). According to the workman, he had rendered continuous service since the date of his joining till the date of his termination with much sincerity, devotion and to the utmost satisfaction of the authorities, but the management without any rhyme or reason illegally terminated him from service with effect from the 20th November 1989 without giving him any prior notice or notice pay and retrenchment compensation which was illegal and unjustified. After such termination he approached the labour machinery but to no effect. The matter was ultimately referred to this Court by the Government in the Labour &

Employment Department for adjudication. While seeking industrial adjudication the workman has claimed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the workman *inter alia* contended that the engagement of the workman was purely temporary basis and he had never worked for more than 240 days as a regular employee therefore, with regard to the termination of the workman concerned the provisions of retrenchment are not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act. Since the concerned workman has not completed 240 days of service in terms of the statutory provisions of the Act, he is not entitled for any relief. On the above back grounds 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 workman completed 240 days of continuous service during any period of 12 calendar months before termination of his service ?
- (ii) Is his termination of service with effect from the 20th November 1989 by the management legal and/or justified ? If not, to what relief ?”.

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, driving licence, office order dated the 2nd May 1989, office order dated the 21st May 1989, office order dated the 6th June 1989, office order dated the 23rd September 1989, office order dated the 16th August 1989, letter dated the 27th November 1989, office order dated the 27th November 1989, application dated the 28th November 1989 and the experience certificate dated the 29th November 1989 marked as Exts. 1 to 10 respectively. The management, on the other hand, has neither examined any witness nor 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 the workman clearly emerges that he joined in the establishment of the management as Tractor Driver with effect from the 24th April 1989 as per the verbal order of the management. He was directed to work at Bidanasi site. Accordingly he worked there till the 27th November 1989. It further reveals from the evidence that by order dated the 27th November 1989 his services were terminated with effect from the 20th

November 1989. He has categorically stated that termination of his service was illegal and unjustified and therefore, he is entitled to be reinstated in service with full back wages. During evidence he has proved the driving license, office order dated the 2nd May 1989, letter dated the 29th May 1989, office orders dated the 6th June 1989, the 23rd September 1989 and the 16th August 1989, letter dated the 27th November 1989, office order dated the 27th November 1989, application dated the 28th November 1989 and the experience certificate dated the 29th November 1989 issued by the Secretary, Cuttack Development Authority, Cuttack marked as Exts. 1 to 10 respectively. During cross examination he has clearly stated that the was disengaged from the 27th November 1989 and after termination he made oral representation for his reinstatement in service but it was refused and thereafter he filed an application for issuance of the experience certificate. He clearly admits that the experience certificate vide Ext. 10 clearly indicates the period of his engagement with effect from the 28th April 1989 till the 20th November 1989. Although there was an interview for appointment of Driver but he did not appear in the said interview. In the said interview one Bansidar Das was appointed. He admits in his cross-examination that he was appointed on *ad hoc* basis to do the driving work even though there was an interview and selection for the post of Driver belonging to S. T. candidates. It has been suggested to him that he is not entitled to be reinstated in service with back wages to which he has negatively replied. The management on the other hand, despite opportunity has neither examined any witness nor relied upon any document in support of its case.

8. On careful scrutiny and analysis of the evidence of the workman it is clearly evident that he has not completed 240 days of service in terms of the statutory provisions of the Act. The evidence so far led also does not reveal the above fact. 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 workman. The documents already relied upon by the workman do not reveal that he has completed 240 days of service in a year. The experience certificate vide Ext. 10 issued by the Secretary, Cuttack Development Authority, Cuttack does not indicate that the workman has in fact worked for 240 days in the given year. The Hon'ble Apex Court in a recent decision in the matter between Y. M. Yellati and Assistant Executive Engineer reported in 2006 (108) I.L.R. 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 initial burden of establishing the factum of continuous work for 240 days within a year was on the workman. But in the case at hand, the concerned workman has not succeeded in proving his case with regard to his engagement for 240 days within a year having been rendered by him in the establishment of the management. The perusal of the shedule of reference also clearly reveals that the concerned workman has not completed 240 days of

service in terms of the statutory provisions of the Act. Therefore, the mere oral statement given by the workman without any supporting document to that effect can not be regarded as sufficient evidence to come to an irresistible conclusion that the workman had in fact worked for 240 days in a year. On the whole, the burden of proving as to the completion of 240 days of continuous work in a given year in terms of the statutory provisions of the Act has not successfully been discharged by the workman in the present case. In that view of the matter, the workman is not entitled for any relief.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
30-6-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
30-6-2006
Presiding Officer
Labour Court, Bhubaneswar

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