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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th January 2006

No. 764—li/1(B)-273/1993 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2005 in Industrial Disputes Case No. 146 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Nabajat Printers, Bhubaneswar and its Workman Shri Banamali Muduli was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 146 OF 1993

Dated the 30th December 2005

Present :

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

Between :

The Management of .. First Party—Management
M/s. Nabajat Printers, Bhubaneswar.

And

Its Workman .. Second Party—Workman
Shri Banamali Muduli.

Appearances :

For the First Party—Management .. Shri N. N. Satapathy, 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 (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. 11921(5)-L. E., dated the 10th September 1993 for adjudication and Award.

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

“Whether the action of the management of M/s. Nabajat Printers, Industrial Estate, Rasulgarh, Bhubaneswar in terminating the service of its workman Shri Banamali Muduli, Corrector Hand Composing Section with effect from the 7th February 1992 is legal and/or justified ? If not, what relief Shri Muduli is entitled to ?”

3. Workman Shri Banamali Muduli by way of this reference has challenged the legality and justifiability of the decision of the management of M/s Nabajat Printers, Industrial Estate, Rasulgarh, Bhubaneswar (hereinafter referred to as the management) in terminating his services with effect from the 7th February 1992.

Contextual facts depict that the workman was engaged as Corrector in the Composing Section of the management with effect from the 21st November 1974. He continued to work as such in the establishment of the management till he was terminated from service on the 7th February 1992. It is averred in the statement of claim that he had rendered continuous uninterrupted service for about 17 years with much sincerity, devotion and to the best satisfaction but the management without any rhyme or reason illegally terminated him from service with effect from the 7th February 1992 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). After such termination the workman 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. The workman while seeking industrial adjudication has prayed for his reinstatement in service with back wages along with other service benefits. Hence the reference.

4. Basing on the statement of claim, the management filed its written statement opposing the claim of the workman. While admitting the continuous engagement of the workman, the management has categorically submitted that the allegations averred by the workman are all false and baseless and as such, the workman is not entitled for any relief. On the above backgrounds, the management has prayed for rejection of the claim of the workman 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 action of the management of M/s Nabajat Printers, Industrial Estate, Rasulgarh, Bhubaneswar in terminating the service of its workman Shri Banamali Muduli, Corrector Hand Composing Section with effect from the 7th February 1992 is legal and/or justified ?

(ii) If not, what relief Shri Muduli is entitled to ?”

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 E. S. I. Card, Provident Fund Slip,

Memo in Misc. Case No. 186/1992 filed by the opposite party, order, dated the 21st April 1993 passed in Industrial Disputes Misc. Case No. 186/1992 and the letter of the Labour Commissioner and Certificate Holder. Orissa marked as Exts. 1 to 5, respectively. The management on the other hand, has examined one Indramani Sahoo 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.

It reveals from the evidence of the workman that he joined in the establishment of the management as Corrector on the 21st November 1974 and continued to work as such till the 6th February 1992. On the 7th February 1992 he was refused employment. It is further stated that the management while terminating his services had not given any notice or notice pay and retrenchment compensation to him. It is categorically stated by the workman that neither any charge sheet was issued against him nor any enquiry was conducted by the management for any misconduct. Even there was no allegation against him. During evidence he has duly proved all the above documents relied upon by him marked as Exts. 1 to 5, respectively. Since the action of the management in terminating his service with effect from the 7th February 1992 was illegal and unjustified, he has now prayed for his reinstatement in service with full back wages along with other service benefits till the date of his actual retirement on superannuation. During cross-examination he has stated that he is now running 66 years of age and he was around 56 years when he was terminated from service. He has denied his knowledge regarding the date of retirement from service on superannuation. He has admitted that he has already received the amount already claimed by him from the 1st January 1992 to the 6th February 1992 in Industrial Dispute Misc. Case No. 186/1992. It has been suggested to him that he had voluntarily abandoned the job and that he is not entitled for any relief to which he has given a negative reply. The perusal of the evidence of Indramani Sahoo already examined on behalf of the management as M. W. 1 reveals that the workman had been working in the establishment of the management in the Composing Section since 1974. He had worked till the 6th February 1992 and thereafter he voluntarily abandoned the job and did not turn up for joining his duty with effect from the 7th February 1992. It is categorically stated by M. W. 1 that the workman was paid all his dues till the 6th February 1992 and as he did not turn up for joining his duty with effect from the 7th February 1992 he is not entitled for any relief. During cross-examination he admit that the management had not made any correspondence with the workman with regard to his unauthorised absence from the 7th February 1992. He admits that the management waited for some days and thereafter engaged another person in his place. He has categorically stated that the management is ready and willing to take him back into service and to engage him in his respective duty provided the age permits. He further admits in his evidence that the workman was working continuously in the establishment of the management till the 6th February 1992 and the management had not terminated his service with effect from the 7th February 1992. As such, there was no necessity of giving any notice or notice pay and retrenchment compensation to him. It has been suggested to him that the management had terminated the services of the workman with effect from the 7th February 1992 without complying with the mandatory provisions of Section 25-F of the Act to which he has categorically denied.

8. From the above discussion of the evidence tendered by the parties it is clearly evident that the workman had rendered continuous uninterrupted service with effect from the 20th

November 1974 till the 6th February 1992 with much sincerity, devotion and to the utmost satisfaction of the management. The fact with regard to his continuous service having been rendered by him in the establishment of the management has not been disputed. According to the workman although he had rendered continuous service but the management without any rhyme or reason terminated him from service with effect from the 7th February 1992 without following the mandate of Section 25-F of the Act. Therefore he is entitled to be reinstated in service as the provisions of Section 25-F of the Act had not been complied in the case of his termination. It is undisputed fact between the parties that the workman had rendered continuous service in the establishment of the management in terms of the statutory provisions of the Act, but the management while terminating the services of the workman had not complied with the provisions of Section 25-F of the Act which, in my opinion, are in complete violation of the mandatory provisions of the Act. Besides there was no allegation against the workman and he was not issued with any charge sheet for any misconduct. Admittedly no enquiry was initiated by the management against the workman for any misconduct. In the case at hand, the workman has taken a plea before this Court that he had rendered continuous service in terms of the statutory provisions of the Act but the management terminated him from service without complying with the mandatory provisions of Section 25-F of the Act. Therefore, he is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act had not been complied with in the case of termination. After going through the evidence of the workman and the documents relied upon by him in the present case, there is no reason to disbelieve his evidence. Rather it is crystal clear that the workman has successfully proved his case with regard to his continuous service having been rendered by him in the establishment of the management and the non-compliance of the mandatory provisions of Section 25-F of the Act. The management, on the other hand, has taken a stand before this Court that it had not terminated the services of the workman rather he voluntarily abandoned the job. But the stand taken by the management at such belated stage has neither been pleaded nor substantiated by the management during evidence. Therefore, in my consider view, the stand taken by the management on the above aspect is without substance and I find no considerable force in it.

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

“The services of an employee who had put in more than 240 days in a calendar year cannot be put to an end without following the procedure prescribed under Section 25-F of the Act.”

It has also been further settled in catena of decisions that even if the case set up by the management is taken to be true and correct that the workman has abandoned, then also his services cannot be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act. In view of the above legal position, the termination having been made in violation of the mandatory provisions of Section 25-F of the Act, in my view is void *ab initio*. After carefully examining the evidence led by the parties, the documents

relied upon by the workman and keeping in view the settled position of law, I am of the considered opinion that the action of the management in terminating the services of the workman with effect from the 7th February 1992 was 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 shows that the termination of the workman has been effected from the 7th February 1992. Nothing has been brought to my notice that the workman has been gainfully employed elsewhere from the date of his termination. Taking all the facts of the present case into consideration, I am of the view that the ends of justice would be best served if the workman be reinstated in service. Admittedly the workman is now aged about 66 years of old. The workman in his evidence has clearly and categorically stated that he has prayed for his reinstatement in service with back wages till the actual date of his retirement on superannuation. In that view of the matter, the workman is deemed to be in continuous service till the date of his retirement on superannuation. He is therefore, entitled to get all service and financial benefits till the date of his retirement on superannuation.

Both the above issues are answered accordingly

11. Hence it is ordered :

That the action of the management of M/s Nabajat Printers, Industrial Estate, Rasulgarh, Bhubaneswar in terminating the service of its workman Shri Banamali Muduli, Corrector, Hand Composing Section with effect from the 7th February 1992 is neither legal nor justified. Taking all the facts of the present case into consideration the workman is deemed to be in continuous service and is entitled to get all service and financial benefits till the date of his retirement on superannuation.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
30-12-2005
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
30-12-2005
Presiding Officer
Labour Court, Bhubaneswar

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