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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st August 2006

No. 7051-li/1(BH)-39/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th June 2006 in Industrial Dispute Case No. 78/1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the M/s Kalinga Weaver's Co-operative Spinning Mills Ltd., At/P.O. Govindapur, Dist. Dhenkanal and its workman Shri Harihar Naik, At Sioria, P.O. Talabarkote, Dist. Dhenkanal was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 78 OF 1999

Dated the 28th June 2006

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 Kalinga Weaver's Co-op.
Spinning Mills Ltd.,
At/P.O. Govindapur, Dist. Dhenkanal.

And

Its workman .. Second Party—Workman
Shri Harihar Naik,
At Sioria, P.O. Talabarkote,
Dist. Dhenkanal.

Appearances :

For the First Party–Management	..	None
For the Second Party–Workman himself	..	Shri H. Naik

AWARD

The State Government in exercise of the powers conferred by sub-section (5) of Section 12, read with clause (c)/(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. 11242(5)-L. E., dated the 19th August 1999 for adjudication and Award.

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

“Whether the refusal of employment of Shri Harihar Naik, Sweeper with effect from the 21st February 1998 of the management of Kalinga Weaver’s Co-operative Spinning Mills Ltd., Govindapur, Dhenkanal is legal and/or justified ? If not, to what relief Shri Naik is entitled ?”

3. By way of this reference, workman Shri Harihar Naik has challenged the legality and justifiability of the action of the management of Kalinga Weaver’s Co-operative Spinning Mills Ltd., Govindapur, Dhenkanal (in short the management) in refusing employment with effect from the 21st February 1998.

Matrix of the necessary facts as bear on the controversy involved in the present case is that the workman was engaged as Sweeper in the establishment of the management since 1979. He had also worked as Doffer since 1987. During the tenure of his service he became handicapped while he was setting fire a cracker during a function of the management inside the Mill. After amputation of his hand he was engaged as Cotton Shutting work. While working as such he was refused employment with effect from the 21st February 1998 and while refusing employment the management had not given any notice or notice pay and retrenchment compensation to him. According to the workman, he had rendered continuous uninterrupted service since the date of his joining till the date of refusal of employment on the 21st February 1998 with much sincerity, devotion and to the utmost satisfaction of the authority, but the management without any rhyme or reason illegally refused employment without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). 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, he has claimed for his reinstatement in service with back wages. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement but subsequently did not contest the present proceeding. Due to default, the management was set *ex parte* and the *ex parte* hearing commenced on the 27th May 2006.

5. During *ex parte* hearing he has clearly supported and corroborated the facts averred in his statement of claim. He has categorically stated in his evidence that he was working as Sweeper under the management since 1979. Subsequently he was working as Doffer since 1987 till 1988. He became handicapped while he was setting fire a cracker during the function in the Mill and after amputation of his hand he was engaged as Cotton Shutting work in the Mill. He was refused employment on the 21st February 1998 when he demanded more wages

which the co-workers were getting at that time. He has categorically stated that the management while refusing employment had not given any notice or notice pay and retrenchment compensation to him. Since the action of the management in refusing employment with effect from the 21st February 1998 was illegal and unjustified he has now prayed for his reinstatement in service with back wages. He clearly admits that he has already reached the age of superannuation and therefore, he has now claimed compensation in lieu of reinstatement till the date of his superannuation. During evidence he has proved the documents such as, payment slip, representation addressed to the District Labour Officer and to the management, letter of the District Labour Officer, dated the 30th May 1992 and representation marked as Exts. 1 to 5 respectively. The evidence given by the workman in this respect has not been challenged by the management during evidence. In absence of any rebuttal evidence I find no cogent reason to disbelieve the evidence of the workman. The settled position of law is that the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. After carefully examining the evidence given by the workman the documents relied upon by him and keeping in view the above legal position, the refusal of employment having been made in violation of the mandatory provisions of Section 25-F of the Act, in my opinion is void *ab initio*. In that view of the matter, the action of the management in refusing employment to the workman with effect from the 21st February 1998 was illegal, unjustified and against the mandate of Section 25-F of the Act. It is an admitted fact that the workman concerned has already reached the age of superannuation. In that view of the matter, the workman is entitled to the relief of compensation in lieu of reinstatement and back wages.

6. Hence it is ordered :

ORDER

That the refusal of employment to Shri Harihar Naik, Sweeper with effect from the 21st February 1998 by the management of Kalinga Weaver's Co-operative Spinning Mills Ltd., Govindapur, Dhenkanal is neither legal nor justified. Since the workman concerned has reached the age of superannuation, he is only entitled to a lump sum compensation to the tune of Rs. 25,000 (Rupees twenty-five thousand) only in lieu of reinstatement and back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me.

P. K. SAHOO
28-6-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
28-6-2006
Presiding Officer
Labour Court, Bhubaneswar

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