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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th November 2006

No. 10600—li/1(S)-2/2002-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th October 2006 in Industrial Dispute Case No. 24/2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the management of M/s Lath Automobiles, Ainthapalli, Sambalpur and its workman Nisar Ahamed C/o A. M. General Store, 1/F Zilla School Pensionpada, Sambalpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 24 OF 2002

Dated the 26th October 2006

Present :

Shri P. K. Mahapatra, LL. B.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of .. First Party—Management
M/s Lath Automobiles, Ainthapalli,
Sambalpur, Dist. Sambalpur.

And

Its Workman .. Second Party—Workman
Nisar Ahamed
C/o A. M. General Store,
1/F Zilla School, Pensionpada,
Sambalpur, Dist. Sambalpur.

Appearances :

For the First Party—Management	..	Shri P. K. Mohapatra, Advocate, Sambalpur.
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For the Second Party—Workman	..	Shri N. Kar, Advocate, Sambalpur.

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 & 12 of the Industrial Disputes Act, 1947 vide memo No. 3619(5)-L.E., dated the 14th March 2002 for adjudication of disputes scheduled below :—

“Whether the termination of the services of N. Ahamed, Assistant Manager by the management of M/s Lath Automobiles with effect from the 26th June 2001 is legal and/or justified ? If not, what relief is he entitled to ?”.

2. The workman named above has moved this Court to reinstate him in service with full back wages with effect from the 26th June 2001 with the facts that, he joined the management Company in the year 1989 with the consolidated salary of Rs. 1,900 per month along with free quarters for keeping his family and while inducting him in service no specific work was entrusted to him, as a result, he was attending multifarious works as directed by the Boss. It is also the case of the workman that those are clerical in nature and he was discharging his duties to the entire satisfaction of his superiors. In his statement of claim the workman has further mentioned that in the month of May, 1998 being satisfied by his performances an additional amount of Rs. 500 per month was given to him and while he was discharging his duty satisfactorily in the month of November 2000 the management stopped giving the enhanced salary of Rs. 500 per month and on protest, he (workman) even did not receive his pay and appealed to the management for reconsideration and this process continued till the 26th June 2001 and on that day, the Managing Partner of the management firm orally directed him not to join his duty any further and then on the 6th July 2001, the workman issued a registered letter, but there was no improvement in the situation and then the matter was moved to the District Labour Officer for conciliation. According to him, the conciliation also failed and then with the failure report it was moved to the Government who in turn referred this Industrial Disputes Case to this Court for adjudication. To sum up, the workman has prayed for reinstatement in service with full back wages.

3. The management side has filed a written statement wherein the above stand of the workman was contested with the plea that the workman was working as an ‘Assistant Manager’ under the management and as his function is of managerial nature, so he is not entitled to get the benefits as claimed by him in his statement of claim. It is also the case of

the management that the workman had abandoned his service and the pleading of termination is an imaginary one. It is also pleaded by the management that the workman has misappropriated the money of the firm and on enquiry he was found guilty and being afraid of criminal action, he had left the service. The management has also stated that the firm M/s Lath Automobiles is closed since the 1st April 2002. To sum up, the management has prayed for answering the reference against the management as he is not a 'workman' and he has misappropriated the firm money.

4. By taking note of the pleadings of the parties, the following issues are settled in this case for adjudication :—

- (i) "Whether the termination of the services of N. Ahamed, Assistant Manager by the management of M/s Lath Automobiles with effect from the 26th June 2001 is legal and/or justified ?
- (ii) What relief if any, he is entitled to ?
- (iii) whether the second party is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1947 ?"

5. During the course of trial the workman is examined as witness No. 1 from his side and he has examined Pratap Ranjan Panigrahi, an Ex. Employee of the firm as witness No. 2. On behalf of the workman no exhibit is marked.

The management side has examined the present Office Assistant as the only witness to substantiate the stand taken by it in the written statement. The acquittance roll and other documents wherein the workman is designated as the 'Assistant Manager' are also exhibited on behalf of the management.

FINDINGS

6. *Issue No. i, ii and iii* :—The above issues are taken up together as those are interlinked. In his evidence M. W. 1 has stated that the workman was working as Assistant Manager and Workshop-in-charge of the firm and as his functions are managerial in nature, so he is not entitled to get the benefits claimed by him. In his evidence there is no allegation of misappropriation or voluntary abandonment of service and according to him the workman is not a 'workman' as visualised under the Industrial Disputes Act. The workman in his evidence has claimed that he was discharging clerical function and the claim of the management that he was an 'Assistant Manager' of the firm is not true. In his evidence, he has given explanations to buttress his claim. So from the pleading and from the evidence adduced by the parties what emerges is that the workman has claimed the benefits as because he was removed from service without any rhyme and reason and without payment of the statutory requirements, but the management has only claimed that he is not a 'workman' within the sweep of the Industrial Disputes Act.

7. On perusal of the exhibit filed from the side of the management it is forthcoming that he (workman) has signed different letters and documents of the company as an 'Assistant Manager'. The definition specially excluded four categories of persons from the ambit of 'workman'. It is a well settled law that exclusion has to be proved by the party who claim that the case falls in any of the excluded categories. It is also a well settled law that the mere designation of a person as 'Manager' of an Industry is not sufficient to conclude that he is not a 'workman'. Rather the position of law is very clear that an adjudicator has to see whether he is or was an employee in that industry to do any managerial or administrative work. In the case at hand, the workman has specifically stated that he was a workman under the management and was not an employee in any managerial capacity. On a bare perusal of the definition section it is forthcoming that the employee must be employed in a managerial or administrative capacity and it does not say that the employee should be in the management. In this connection the evidence of M. W. 1 is relevant. In his evidence, he has stated that the present workman as sending letters to different agencies in his capacity as an 'Assistant Manager' and in his such capacity, he was receiving vehicles and then was entrusting it to the Supervisor and he was taking his own decision for replacement of different items of the vehicles within the warranty period. To suffice his above say, the management witness has filed different letters, warranty settlement cover notes and the acquittance roll wherein the workman has signed as an Assistant Manager. If the entire evidence adduced by the management witness is accepted into and the evidence available in the cross-examination is discarded for the sake of argument then what forthcoming is that he was sending letters to different agencies in his capacity as Assistant Manager and also he was receiving vehicles on behalf of the company and then entrusting the same to the Supervisor to do the needful and was also replacing different parts of the vehicles of his own accord the warranty period. In my opinion the above evidence of M. W. 1 is not sufficient to treat the workman as a Manager of the Company and not as a 'workman'. I will now assign reasons for my such conclusion.

8. As per law 'managerial' or 'administrative' functions require a person to control the work of others. It is also to be proved that the employee to whom the management has designated as a Manager has the capacity and authority to take independent decisions and is authorised to act independently on certain matters within the limits fixed by the authority without the sanction of the management. In the case at hand according to the M. W. 1, he (workman) was replacing different parts of the vehicle of his own accord during the warranty period. This much evidence is not sufficient to say that he was taking independent decision as because during the warranty period, the management is duty bound to replace the parts and in such a situation there is no reason to conclude that he was taking decision independently. The memory of M. W. 1 has failed him to produce the copy of the appointment order of the workman to show that he was an employee appointed mainly in managerial or administrative capacity. It is not known to this Court as to when he was promoted to the managerial rank and with what terms and conditions he was functioning at the relevant time. As per the definition it must be shown that the present workman was employed in fact and in substance in the managerial or administrative capacity. In absence of the same, even if it is proved that his wages is more than the statutory limit, it cannot exclude him from the definition of 'workman'. So in absence of the appointment order and authority given to the workman that in fact and in substance he was appointed as a manager or in administrative function, the bald evidence of the M. W 1 that he was signing letters and documents as Assistant Manager cannot take away his right to claim as a 'workman' under the management company.

9. Now coming to the evidence given by M. W. 1 in his cross-examination, it is forthcoming that he has no idea as to what nature of work was entrusted to the workman, as because, in cross-examination Para. 4 he has stated that the Managing Partner can tell about the nature of work entrusted to the workman and other employees and he has no idea if any written employment order was given to the workman or any agreement was signed between the parties as to what functions the workman has to perform during his incumbancy under the management. As such, there are dearth of materials to conclude that he was a Manager under the management. In absence of the same, the only conclusion is that he was a 'workman' under the management.

10. In view of my above conclusion it is now to be decided as to what benefit he is entitled to get from the management. There are sufficient evidence that the workman was denied employment from the 26th June 2001. The plea of the management as discussed above is rather lending strength to conclude that employment was refused to the workman from the above date. If an employee is removed from service without getting the benefits as visualised under the Act, then he (workman) is entitled to get full benefits extended in the Act. So the removal of the workman from the management is illegal and for the ends of justice, the workman is to be reinstated in service. The conditions precedent to remove him are not complied in this case. So he is to be reinstated in service with full back wages. Hence the following Award :

AWARD

The reference is answered on contest in favour of the workman and against the management. The termination of services of N. Ahamed, Assistant Manager by the management of M/s Lath Automobile with effect from the 26th June 2001 is held to be illegal and unjustified. The management is directed to reinstate the workman in service with full back wages within two months hence.

Dictated and corrected by me.

P. K. MAHAPATRA
26-10-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRA
26-10-2006
Presiding Officer
Labour Court, Sambalpur

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