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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2006

No. 1759—Ii/1(B)-77/1993 (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 Dispute Case No. 3 of 1994 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of O. U. A. T., Bhubaneswar and its Workman Shri Rohit Pradhan, S/o. Shri Purna Chandra Pradhan, C/o. Shri A. K. Ray, President, O.U.A.T. Employees Association, G.A.E.T., O.U.A.T., Bhubaneswar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 3 OF 1994

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 O. U. A. T., Bhubaneswar.	. .	First Party–Management
And		
Its Workman Shri Rohit Pradhan S/o. Shri Purna Chandra Pradhan C/o. Shri A. K. Ray President O.U.A.T. Employees Association G.A.E.T., O.U.A.T., Bhubaneswar.	. .	Second Party–Workman

Appearances :

For the First Party–Management	. .	Shri J. K. Mohapatra, Advocate
For the Second Party–Workman	. .	Shri H. P. Samantaray, Advocate

AWARD

The State Government in exercise of 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. 657(6)-L. E., dated the 13th January 1994 for adjudication and Award.

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

> "Whether the termination of services of Shri Rohit Pradhan, Workman by the Management of Orissa University of Agriculture and Technology, Bhubaneswar with effect from the 15th October 1992 is legal and/or justified ? If not, what relief he is entitled to ?"

3. By way of this reference workman Shri Rohit Pradhan has challenged the legality and justifiability of the decision of the management of Orissa University of Agriculture and Technology, Bhubaneswar (hereinafter referred to as the management) in terminating his services with effect from the 15th October 1992.

Matrix of the necessary facts as hear on the controversy involved in the present case is that the workman was engaged in the establishment of the management as casual labourer on daily wage basis with effect from the 1st July 1990 under the Medicinial and Aromatic Plant Scheme of the management. He continued in his employment till the date of his termination on the 15th October 1992. It is stated by the workman that he had rendered continuous uninterrupted service since the 1st July 1990 till the date of his termination on the 15th October 1992 in the establishment of the management with much sincerity, devotion and to the utmost satisfaction of the authorities but the management without any rhyme or reason terminated him from service with effect from the 15th October 1992 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). Despite his approach for his reinstatement in service, the management turned a deaf ear. As no fruitful result was forthcoming the workman finding no other alternative way approached the labour machinery but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Bhubaneswar 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 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, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that the workman had been engaged on contingency basis and as and when need was felt, his service was taken on daily wage basis. According to the management, the workman was a causal worker and he was engaged as and when the work was available for him. It is submitted that the workman had not worked

for more than 240 days in a calendar year as a regular employee, therefore, with regard to the termination of the workman, 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. It is further submitted by the management that the Research Project in which the workman was engaged was withdrawn after expiry of five years and therefore, the workman was disengaged for want of work after clouser of the said Research Project. According to the management the Research Project was purely an *ad hoc* and non profitable Project and therefore, the establishment is not covered by the definition of 'Industry' and therefore, the workman is not entitled for any relief. On the above backgrounds, 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 termination of services of the second party workman by the first party management with effect from the 15th October 1992 is legal and/or justified ?.

(ii) If not, what relief the workman is entitled to ?

6. The workman in support of his case has examined himself as M. W. 1 and has relied upon the xerox copies of the documents such as certificate, representation and the paper cutting of daily newspaper Rastradeep relating to illegal termination marked as Exts. 1 to 3 respectively. On the other hand, the management has examined one Shri Arun Kumar Das as M. W. 1 and has relied upon the xerox copies of the documents such as, muster rolls for the period from the 1st July 1990 to the 20th October 1992 and final report of I.C.A.R., *ad hoc* Project from 1988—1993 marked as Exts. A to D respectively 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 Mali since 1988 and was working in the Nursery of the management. Subsequently he was engaged in the Medicinal and Aromatic Plant Scheme as Mali. While in employment the management without any rhyme or reason terminated him from service with effect from the 15th October 1992 and while terminating his services had not given any notice or notice pay and retrenchment compensation to him. After such termination the management engaged a new person namely Shri Pramod Kumar Naik in his place. He has categorically stated that the scheme in which he was working is still in existence and some employees are working under the said scheme. During evidence he has duly proved the certificate issued in his favour by Shri P. N. Jagdev, Medicinal and Aromatic Plants, Department of Horticulture, O.U.A.T., Bhubaneswar, his representation and the paper cutting of Rastradip, dated the 15th April 1992 regarding illegal termination marked as Exts. 1 to 3 respectively. In his evidence he has clearly and categorically stated that he had worked continuously in the establishment of the management from the 1st July 1990 to the 15th October 1992 without any break and had completed 240 days of service in terms of the statutory provisions of

the Act. During cross-examination he admits that he has not produced any document relating to his appointment in the establishment of the management, receipt of his wages or salary and the period of engagement under the management. He has also further stated that he was terminated from service as he lodged a complaint before the management with regard to the less payment. It has been suggested to him that he had not worked under the management for more than 240 days continuously and that the scheme was closed since the 19th April 1993 and that the representation and the paper cutting are forged documents and that he is not entitled to be reinstated in service with back wages to which he has negatively replied. Except the above evidence in cross-examination the management has not been able to elicite anything material and substantial so as to discredit the evidence of the workman. Rather the evidence led by the workman clearly emerges that he had rendered continuous uninterrupted service in the establishment of the management with effect from the 1st July 1990 till the date of termination on the 15th October 1992 without any break and had completed 240 days of service in terms of the statutory provisions. On the other hand, the evidence led by the management through M. W. 1 shows that the scheme in which the workman was working was a time bound *ad hoc* scheme and it was for a specific and limited period for five years. The said scheme was started with effect from the 20th April 1988 and it was closed on the 19th April 1993. After the closure of the said scheme the then Principal Investigator, Dr. Trinath Moharana submitted a final report in the year 1994. The said scheme is not now in existence since the 19th April 1993. The workman was working under the said scheme as a casual worker and he was engaged as and when the work was available for him. During evidence he has proved the muster rolls vide Exts. A series to C series indicating the period of engagement of the workman from the 1st July 1990 to the 20th October 1992 and the receipt of wages for the period he had actually worked. M. W. 1 has categorically stated that the workman had not worked 240 days of continuous service in any calendar year and he had also not completed 240 days of service in a calendar year preceding the date of termination. It further reveals from his evidence that the workman was a causal worker and he was engaged as and when the work was available for him. He was also engaged on contingency basis and when need was felt, his services were taken. It is further stated by him that the workman had not completed 240 days of service in terms of the statutory provisions of the Act and therefore, he is not entitled to be reinstated in service with back wages as the scheme was a time bound scheme for a specific and limited period which was closed on the 19th April 1993. It further reveals from his evidence that neither any appointment order nor any termination letter was issued to the workman. Therefore, the claim already made by the workman is totally false and baseless and he is not entitled for any relief. He has duly proved during evidence the documents already relied upon by the management i.e. the muster rolls and the reports of the I. C. A. R. *ad hoc* project for the period from 1988 to 1993 marked as Exts. A to D respectively. During cross-examination he clearly admits that his evidence is exclusively based on official records and he has no direct knowledge about the said scheme. He further admits that he was not working from 1988 to 1993 under the management when the workman was working. The further admitted evidence is that the Medicinal and Aromatic Plant Scheme of Government of India under the Department of Horticulture of the management is now in existence. He has denied the suggestion put to him by the workman relating to his engagement from the 1st July 1990 to the 15th October 1992. It has been further suggested that the workman had worked continuously and that he had completed 240 days of service in a calendar year preceding the date of termination to which he has replied in the negative.

8. The perusal of the evidence of M. W. 1 clearly emerges that his evidence is exclusively based on official record and he has no direct knowledge about the details of the said scheme.

It is also admitted by M. W. 1 that he was not working from 1988 to 1993 under the management when the workman was working. The further admitted fact is that the said Medicinal and Aromatic Plant Scheme of Government of India under the Department of Horticulture of the management is still in existence.

9. The learned counsel appearing for the management has strenuously urged that the workman was a casual worker and he was engaged as and when the work was available for him. It is further submitted that the workman has never worked for more than 240 days as a regular employee and therefore, with regard to the termination of the workman the provisions of retrenchment are not attracted and the management is not under obligation to comply with the provision of Section 25-F of the Act. It is also further submitted that the establishment of the management is not covered by the definition of 'industry'. With the above submission the learned counsel has submitted that the workman is not entitled for any relief. On the other hand, it is urged by the learned counsel on behalf of the workman that the workman was working in the establishment of the management with effect from the 1st July 1990 till the 15th October 1992. His services were illegally terminated on the 15th October 1992 and while terminating the services of the workman the management had not complied with the provisions of Section 25-F of the Act.The further contention of the learned counsel is that the workman is covered by the definition of workman and the management is covered by the definition of 'industry', therefore, it was incumbent of the part of the management to comply with the provisions of Section 25-F on the Act while terminating the services of the workman. On the above submission the learned counsel appearing for the workman has submitted that the action of the management in terminating the services of the workman be declared null and void and the workman may be reinstated in service with full back wages.

10. In the instant case both the management and the workman have adduced evidence both oral and documentary in support of their respective cases. From the above discussion the principal issue thus appears to be as to whether the workman had completed 240 days of service in terms of the statutory provisions. The case set up by the workman before this Court is that he was engaged as a casual labourer with effect from the 1st July 1990 under the Medicinal and Aromatic Plant Scheme of O.U.A.T., Bhubaneswar and continued to work till the date of his termination on the 15th October 1992. According to the workman his services were illegally terminated on the 15th October 1992 and while terminating his services the management had not given any notice or notice pay and retrenchment compensation to him. Therefore, he is entitled to be reinstated in service with back wages as the provisions of Section 25-F of the Act have not been complied with in the case of his termination. On the other hand, the management has totally denied the claim of the workman. The settled position of law is that the proof of working for 240 days is stated to be on the employee in the event of any denial of such a factum. Therefore, the onus lies on the workman to prove that he has in fact worked for more than 240 days in the year preceding his termination. Admittedly the workman has not been able to adduce any documentary evidence to that effect. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period has been produced by the workman. Admittedly except the certificate Ext. 1 no other document has been filed by the workman showing his engagement in the establishment of the management for the above said period but the documents relied upon by the management vide Exts. A series to C series itself clearly indicate that the workman had completed more than 240 days in the year preceding the termination. Apart from the

above fact, the document vide Ext. 1 already relied upon by the workman has not been disputed by the management anywhere in the evidence. Therefore, I find no cogent reason to disbelieve the aforesaid document which clearly indicates that the workman had been working under the Medicinal and Aromatic Plant Scheme of the management since the 1st July 1990 as a casual labourer. Even assuming that the workman was a daily rated worker, once he has rendered continuous uninterrupted service for a period of 240 calendar days in a year and his service is terminated for any reason whatsoever and the case does not fall in any of the excepted categories, it would have to be read subject to the provisions of the Act. By any reckoning, the workman has completed more than 240 days of service in terms of the statutory provisions and his case does not fall within the excepted category. The evidence in support of the workman himself answers the issue in the affirmative. It is categorically stated by the workman that while terminating his services the management had not complied with the provisions of Section 25-F of the Act. The above aspect has also not been challenged by the management anywhere during evidence. Therefore, once the workman had rendered continuous service for more than 240 days in one calendar year within the meaning of Section 25-F of the Act. I am of the considered view that the termination of service in this case would constitute retrenchment and for not complying with preconditions to valid retrenchment. Therefore the order of termination in my opinion, would be illegal and invalid. In that view of the matter, I find considerable force in the submission already led by the learned counsel for the workman. Apart from the above fact, it has been specifically contended by the management that the aforesaid scheme in which the workman was working was a time bound scheme and it was for a specific and limited period for five years which started from the 20th April 1998 and closed on the 19th April 1993. After closure of the scheme the workman was disengaged from service. But surprisingly enough, the workman was terminated from service with effect from the 15th October 1992 which clearly indicates that during the existence of the said scheme, the management terminated the services of the workman which was also in my opinion, illegal and unjustified. On the other hand, the submission led by the learned counsel appearing for the management is without substance. Besides it has been pleaded that the establishment of the management is not covered by the definition of 'industry' but the above such fact has not been substantiated by the management during evidence. In this respect also I find no considerable force in the submission of the learned counsel appearing for the management. After carefully examining the evidence tendered by the parties 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 in terms of the statutory provisions of the Act. It is also clearly evident that the management while terminating the services of the workman had not complied with the mandatory provisions of Section 25-F of the Act. It is well settled that non-compliance with the provisions of Section 25-F of the Act renders the termination of service of a workman ineffective. The Hon'ble Apex Court in catena of 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*."

In the case of Executive Engineer, Bhubaneswar Electrical Division, GRIDCO. *Vrs.* Presiding Officer, Labour Court, Bhubaneswar and others reported in 2004 (103) FLR 560 of our own Hon'ble High Court. His Lordship has held that :

> "The retrenchment of the workman was without following the mandatory provisions of Section 25-F of the Act. Once the retrenchment was held to be illegal and unsustainable the only order that could be passed was to set aside the order of retrenchment and direct that the workman should be reinstated in service."

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 is void *ab initio*. After carefully examining the evidence led by the parties, the documents relied upon by them and keeping in view the settled position of law, I am of the considered view that the action of the management in terminating the services of the workman with effect from the 15th October 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.

11. The perusal of the schedule of reference clearly emerges that the termination of the workman has been effected from the 15th October 1992. Nothing has been brought to my notice that the workman has been gainfully employed elsewhere with effect from the date of his termination. Admittedly, the management has also not availed the services of the workman with effect from the 15th October 1992. In such view of the matter, the workman is entitled to be reinstated in service, but on the facts and circumstances of this case as the workman has not worked with effect from the date of termination, he is not entitled for any back wages. Both the above issues are answered accordingly.

12. Hence it is ordered.

ORDER

That the termination of services of Shri Rohit Pradhan, workman by the management of Orissa University of Agriculture and Technology, Bhubaneswar with effect from the 15th October 1992 is neither legal nor justified. In such view of the matter, the workman Shri Pradhan is entitled to be reinstated in service but without any back wages.

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
L4abour Court, Bhubaneswar

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

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