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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th March 2006

No. 2472-li/1(B)-43/1999(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th February 2006 in Industrial Dispute Case No. 33 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Managing Director, M/s. Jajpur Carpentry, P. I. C.S. Limited, Jajpur, Dist. Jajpur and its Workman Shri Binod Chandra Sutar, S/o Magu Sutar, At/P.O. Kumbharia, P.S. Bhandaripokhari, Dist. Bhadrak was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 33 OF 1999
Dated the 27th February 2006

Present :

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

Between :

The Managing Director .. First Party—Management
M/s. Jajpur Carpentry P.I.C.S. Limited
Jajpur, Dist. Jajpur.

And

Shri Binod Chandra Sutar .. Second Party—Workman
S/o Magu Sutar,
At/P.O. Kumbharia, P.S. Bhandaripokhari,
Dist. Bhadrak, Orissa.

Appearances :

For the First Party—Management .. Shri K. Mallick

For the Second Party—Workman himself .. Shri B. Ch. Sutar

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. 4383(5)-L.E., dated the 31st March 1999 for adjudication and Award.

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

“Whether the termination of services of Shri Binod Chandra Sutar with effect from the 2nd December 1997 by the management of M/s. Jajpur Carpentry P.I.C.S. Limited, Jajpur is legal and/or justified ? If not, what relief Shri Sutar entitled ?”

3. By way of this reference the workman has challenged the legality and justifiability of the decision of the management of M/s Jajpur Carpentry P.I.C.S. Limited, Jajpur (hereinafter referred to as the management) in terminating his services with effect from the 2nd December 1997.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the workman was engaged as Carpenter under the management with effect from January 1973. He continued to work as such till the date of his termination on the 2nd December 1997. According to the workman, on the 8th December 1997 he received a registered letter, dated the 2nd December 1997 mentioning therein that he was terminated from service with effect from the 2nd December 1997. It is categorically averred in the statement of claim that he had rendered continuous uninterrupted service since the date of joining till the date of termination with much sincerity, devotion and to the utmost satisfaction of the superior authorities and had completed 240 days of service in each year in terms of the statutory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) but the management without any rhyme or reason terminated him from service without following the mandate of Section 25-F of the Act. After such termination he raised an Industrial dispute before the Conciliation Officer-*cum*-Assistant Labour Officer, Jajpur Road but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Jajpur Road 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 alongwith 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 workman had never completed 240 days of service in terms of the statutory provisions. It is categorically averred in the written statement that on account of reduction in the volume of work the management was constrained to terminate the services of the workman on the 2nd December 1997 and while terminating his services had followed the mandatory provisions of the Act. According to the management, all possible and effective steps had been taken to make payment of the retrenchment benefits to the workman but he refused to accept the retrenchment benefits to the tune of Rs. 7,900 sent by money order on the 5th October 1998. 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 termination of service of Shri Binod Chandra Sutar, with effect from the 2nd December 1997 by the management of M/s. Jajpur Carpentry P.I.C.S. Limited, Jajpur is legal and/or justified ?
- (ii) If not, to what relief Shri Sutar is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copy of the retrenchment order, dated the 2nd December 1997 marked as Ext. 1. On the other hand, the management has examined four witnesses namely Shri Partha Pratim Biswal, Shri Kulamani Mallick, Shri Upendra Kumar Rout and Shri Achyutananda Mohapatra as M. ws. 1 to 4 and has relied upon the xerox copies of the documents such as, notices dated the 2nd December 1997, gradation list and the letter dated the 29th June 1998 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.

During evidence the workman has clearly stated that he joined in the establishment of the management in the year 1975 as a Carpenter and worked continuously under the management till the 2nd December 1997 but the management without any rhyme or reason terminated him from service with effect from the 2nd December 1997 vide Ext. 1 and while terminating his services had not given any notice or notice pay and retrenchment compensation. He has categorically stated that the action of the management in terminating him from service with effect from the 2nd December 1997 was illegal, unjustified and against the mandate of Section 25-F of the Act. It is also in his evidence that the industry of the management is now running and the employees are working under the management. Since the action of the management in terminating his service was illegal and unjustified he has now claimed for his reinstatement in service with full back wages. Nothing material and substantial has been elicited by the management to discard his evidence rather the workman has categorically stated that on the 8th December 1997 he came to know about the termination of his service with effect from the 2nd December 1997 on receipt of the letter vide Ext. 1 from the management. He admits in his cross-examination that he has not filed any document to show that he joined in the establishment of the management in the year 1975 and that he had not come to the office from the 2nd December 1997 to 8th December 1997. It has been suggested to him that he is not entitled to be reinstated in service with full back wages to which he has categorically denied. On the other hand, the evidence led by the management through M.W. 1 clearly shows that the workman was working under the management with effect from the 1st October 1978 till the date of termination on the 2nd December 1997 continuously. He has stated that due to ban on the use of the wood the management terminated the services of the workman with effect from the 2nd December 1997. On the same day i.e. the 2nd December 1997 the management had issued one month's notice, notice pay and retrenchment benefits but the workman did not accept the same. As the workman did not receive the notice or notice pay and retrenchment compensation the same were sent to the workman by post vide Exts.A and B on the 2nd December 1997. During evidence he has proved the gradation list and the letter dated the 20th June 1998 vide Exts. C and D respectively asking the workman to accept the retrenchment compensation. It is also in his evidence that

on the 5th October 1995 the management sent the retrenchment compensation amounting to Rs.7,900/- by money order but the workman did not accept the retrenchment benefit as a result the money order returned back undelivered. The cross-examination of M.W. 1 goes to show that the notice and the retrenchment compensation were handed over to the workman through one Shri Kulamani Mallick but the workman refused to accept the same. As the workman refused to accept the notice, the retrenchment compensation was sent through post. He admits in his cross-examination that after the workman was terminated from service other employees were engaged by the management as per the gradation list vide Ext. C. It has been suggested to him that the workman is entitled to be reinstated in service with back wages to which he has replied in the negative. It is in the evidence of M. W. 2 Shri Kulamani Mallick that on the 2nd December 1997 as per the direction of the Managing Director he served the retrenchment order on the workman at about 8 A.M. in presence of other employees but the workman without accepting the same left the office premises keeping the same on the table. Similar statements are also noticed in the evidence of M.Ws. 3 and 4 respectively. M. Ws. 3 and 4 during cross-examination have categorically stated that they do not have any knowledge about the contents of the said notice. While suggesting M. W. 4 it has been elicited that the workman was not working under the management on the 2nd December 1997. M. W. 3 during cross-examination admits that he was not working under the management on the 2nd December 1997 but immediately retracted his own statement by saying that he was working on the 2nd December 1997. It has been suggested to M. W. 2 that the retrenchment order was not given to the workman in presence of Carpenter (M.W.4) and Peon (M.W. 3) to which he has replied in the negative.

8. The workman has relied upon a single document i.e. letter of termination which has already been marked as Ext. 1. A bare perusal of the said letter clearly emerges that the workman was terminated from service with effect from the 2nd December 1997 (F.N.). The fact of such termination was intimated to the workman vide letter No. 90, dated the 2nd December 1997 under Ext. 1. In the said letter he was directed to receive the wages for 30 days in lieu of notice and all other legal dues atonce or on the 4th December 1997 failing which the management would not be held responsible. The copy of the said letter was submitted to the District Labour Officer, J.K. Road and the Project Manager, D.I.C., Jagatsinghpur for information. From the above document it is clearly evident that the workman was absent on that day and he was not aware of the order of termination with effect from the 2nd December 1997. That apart the said document clearly indicates that the notice pay and retrenchment compensation had not been given to the workman while termination his services with effect from the 2nd December 1997. It is submitted by the workman that he was not present on the 2nd December 1997 and that he was not aware of the order of his termination and that he was not served with any termination letter Ext. 1. According to the workman, the stand taken by the management to the effect that the termination letter was handed over to him and that he refused to accept the same is totally false, baseless and concocted. He had never received the termination letter on the 2nd December 1997 issued to him by the Managing Director vide letter No. 90, dated the 2nd December 1997 under Ext. 1 rather on the 8th December 1997 he received the same through post. The further submission of the workman is that the documents already marked as Exts. A and B on behalf of the management are fabricated documents and manufactured for the purpose of this case. In this connection the documents relied upon by the management vide Exts. A and B are carefully perusal and examined by me

in detail. The perusal of the letter of termination vide letter No. 90, dated the 2nd December 1997 under Ext. A clearly emerges that the letter of termination was issued to the workman by the Managing Director on the 2nd December 1997 through one Kulamani Mallick already examined as M.W. 2 in this case, in presence of M.W. 3 and 4 but the workman refused to accept the same. The endorsement given by M.Ws. 1 and 2 clearly proves the above fact. The perusal of the said letter Ext. A reveals that both M.Ws. 3 and 4 have given their signature on it. Thereafter another letter bearing No. 93, dated the 2nd December 1997 under Ext. B was given to the workman by the Managing Director in presence of M.Ws. 2 and 3. On perusal of the said letter Ext. B it is seen that one months notice pay and retrenchment compensation were offered to the workman on the 2nd December 1997 but he refused to accept the same and left the office atonce. It is clearly mentioned in the said letter that the workman was terminated from service with effect from the 2nd December 1997 vide letter No. 90, dated the 2nd December 1997 and he was also directed to receive all his dues at once or any working day of the establishment of the management. In case of non-receipt of the dues the management would not be held responsible. The letter Ext. B was sent to the workman under certificate of posting alongwith the termination letter No. 90, dated the 2nd December 1997. But after carefully examining the letter of termination relied upon by the workman marked as Ext. 1 and the letter of termination relied upon by the management marked as Ext. A and another letter No. 93, dated the 2nd December 1997 under Ext. B it is crystal clear that the letter of termination Ext. 1 has not been tallied with the letter of termination vide Ext. A. The endorsement given by M.Ws. 1 and 2 and the signatures of M.Ws. 3 and 4 in Ext. A regarding the non-acceptance of the termination letter by the workman on the 2nd December 1997 has not been reflected in Ext. 1. Similarly the fact of communication of termination letter Ext. 1 to the District Labour Officer, J.K. Road and the Project Manager, D.I.C., Jagatsinghpur vide Memo No. 91 (2), dated the 2nd December 1997 has not been reflected in Ext. A. On the whole the termination letter vide Ext. 1 and the termination letter vide Ext. A has not been tallied with each other which leaves room to entertain doubt in the oral and documentary evidence already relied upon by the management. Apart from the above fact, nowhere it has been elicited that the workman was present in the establishment of the management on the 2nd December 1997. Besides, there is no material on record to prove and establish that letter No. 93, dated the 2nd December 1997 vide Ext. B has been communicated to the workman under certificate of posting. The said letter indicates that it was sent under certificate of posting but no such supporting document has been filed by the management to that effect. Both the parties have adduced evidence in support of their respective cases. The workman in his evidence has categorically stated that he had not come to the office from the 2nd December 1997 to the 8th December 1997. The above evidence of the workman has not been challenged by the management anywhere in the evidence. On the other hand, the evidence led by the management to the effect that workman was very much present in the establishment of the management on the 2nd December 1997 has not been successfully proved and established by the management during evidence. In such view of the matter, the evidence led by the management to the fact that the termination letter Ext. A was served on the workman on the 2nd December 1997 in presence of other witnesses and that the workman refused to accept the same inspires no confidence. In my foregoing paragraphs I have already dicussed that the termination letter vide Ext. 1 already relied upon by the workman is not tallied with the letter of termination vide Ext. A relied upon by the management. Moreover the presence of the workman on the 2nd December 1997 in the establishment of the management has not been successfully proved. It is categorically stated by the workman that he had not come to the office on the 2nd December 1997. He has categorically stated that on the 8th December

1997, he came to know about the termination of his service on receipt of the letter Ext. 1 by post. From the above discussion, the documents Exts. A and B already relied upon by the management can not be safely trusted and relied upon. Rather the assertion of the workman to the effect that he came to know about the termination of his service on the 8th December 1997 after receipt of the letter Ext. 1 appears to be more reliable and convincing which clearly leads me to arrive at a conclusion that at the time of termination of the workman the management had not followed the mandatory provisions of Section 25-F of the Act. Apart from the above fact, the fact of continuous service with effect from the 1st October 1978 till the date of termination on the 2nd December 1997 having been rendered by the workman in the establishment of the management has not been disputed by the management. Rather the evidence led by the management clearly goes to show that the workman was working continuously from the 1st October 1978 to the 1st December 1997 and the management terminated the services of the workman with effect from the 2nd December 1997 due to ban on the use of the wood. That apart it has been elicited that the Additional Director of Industries had issued instruction to retrench the surplus employees due to shortage of work. But in this connection no supporting document has been furnished by the management to come to a conclusion that due to ban on the use of wood and in view of the instruction given by the Additional Director of Industries the workman was terminated from service with effect from the 2nd December 1997. It is admitted by the management that on the 5th October 1998 the retrenchment benefit amounting to Rs. 7,900 was sent to the workman by money order which he did not accept. It clearly shows that the management while terminating the services of the workman had not followed the mandate of Section 25-F of the Act.

9. The settled position of Law is 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 views that :—

“The provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*”.

In case of the 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”.

While considering a similar question regarding non-compliance of Section 25-F of the Act the Hon'ble Apex court in the case of Deep Chandra *Vrs.* State of Uttar Pradesh and another reported in 2001(00) FLR/508 (Supreme Court) has held that :

“The service of an employee who had put in more than 240 days in a year can not be put to an end without following the procedure prescribed under Section 25-F of the Industrial Disputes Act”.

In the instant case the termination having been made in violation of the mandatory provisions of Section 25-F of the Act is therefore, void *ab initio*. On the whole, after carefully examining the evidence tendered by the parties, the documents relied upon by them and

keeping in view the settled position of law, I am of the considered opinion that the termination of services of the workman with effect from the 2nd December 1997 by the management 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 perusal of the schedule of reference clearly emerges that the termination of services of the workman has been effected from the 2nd December 1997. In the meanwhile more than 8 years have been elapsed. Admittedly the management has not availed the services of the workman since the date of termination. No cogent material is also forthcoming to establish that the workman has not been gainfully employed elsewhere since the date of his termination. In that view of the matter, the workman is entitled for reinstatement in service, but on the facts and circumstances of the case as the workman has not worked with effect from the date of his termination he is not entitled for any back wages. Both the above issues are answered accordingly.

11. Hence it is ordererd :

ORDER

That the termination of services of Shri Binod Chandra Sutar with effect from the 2nd December 1997 by the management of M/s Jajpur Carpentry P.I.C.S. Limited, Jajpur is neither legal nor justified. The workman Shri Sutar is entitled to the relief of reinstatement in service but without any back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
27-2-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
27-2-2006
Presiding Officer
Labour Court, Bhubaneswar

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