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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 19th May 2006

No.3869-li/1(B)-123/1997/L.E.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 10th April 2006 in I.D. Case No. 112/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Bhubaneswar Municipal Corporation, Bhubaneswar and its workman Shri Kailash Biswal was referred for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 112 of 1998

The 10th April 2006

Present :

Shri P.K. Sahoo, O.S.J.S.(Jr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of
M/s. Bhubaneswar Municipal Corporation, ..First Party —Management
Bhubaneswar.

AND

Their workman ..Second Party—Workman
Shri Kailash Biswal

Appearances :

NONE ..For First Party Management

Shri K. Biswal ..Second Party Workman himself

AWARD

The State Government in exercise of powers conferred under 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. 11009(5)/L.E., dated the 12th October 1998 for adjudication and Award.

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

“Whether the termination of services of Shri Kailash Biswal, D.L.R. workman with effect from 1st November 1992 by way of verbal refusal of employment by the Executive Officer, Bhubaneswar Municipal Corporation, Bhubaneswar is legal and/or justified ? If not, what relief the workman is entitled to ?”

3. Matrix of the necessary facts as bear on the controversy involved in the present dispute is that workman Kailash Biswal was engaged as Khalasi under the Management of Bhubaneswar Municipal Corporation, Bhubaneswar (in short the Management) since 22-11-1987. He continued to work till 1-11-1992 when his services were terminated by the Management. According to the workman, the Management without any rhyme or reason illegally terminated his service without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act) although he had rendered continuous service for about four years with much sincerity, devotion and to the utmost satisfaction of the authorities. After such termination he raised a dispute before the District Labour Officer, Bhubaneswar but the conciliation proceeding 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. Hence the reference.

4. The Management was set *ex parte* and the *ex parte* hearing commenced on 29-9-2001 and 2-6-2005.

5. During the *ex parte* hearing the workman has fully corroborated the averments averred in his statement of claim. He has further stated in his evidence that he joined in the establishment of the Management on 21-11-1987 and continued to work till 1-11-1992 when he was refused employment. The Management while refusing employment had not given any notice or notice pay and retrenchment compensation. During evidence he has proved certain documents with regard to his representation, acquittance roll showing the payment of wages and the affidavit showing his engagement, disengagement and monthly wages. The evidence given by the workman on the above aspect has not been challenged by the Management during evidence. In absence of any rebuttal evidence there is no reason to disbelieve the evidence of the workman. The settled position of law is that compliance of 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 and keeping 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 opinion, is void *ab initio*. In that view of the matter, the action of the Management in terminating the services of the workman with effect from 1-11-1992 by way of verbal refusal of employment was illegal, unjustified and against the mandate of section 25-F of the Act. In such premises, the workman is entitled to the relief of reinstatement.

6. Hence it is ordered —

ORDER

That the termination of service of Shri Kailash Biswal, D.L.R. workman with effect from 1-11-1992 by way of verbal refusal of employment by the Executive Officer, Bhubaneswar Municipal

Corporation, Bhubaneswar is neither legal nor justified. Admittedly the Management has not availed the services of the workman with effect from 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 this case, as the workman had not worked under the Management with effect from the date of his termination, he is not entitled to any back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me

P.K. SAHOO
10-04-2006,
Presiding Officer,
Labour Court,
Bhubaneswar.

P.K. SAHOO
10-04-2006,
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N.C. RAY
Under- Secretary to Government