The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 843 CUTTACK, MONDAY, JUNE 19, 2006 / JAISTHA 29, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd May 2006

No. 3959–Ii/1(B)-16/1997-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2006 in Industrial Dispute Case No. 88/1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Utkal Galvanisers Ltd., At Kapursingh, P. O. Oronda, Dist. Cuttack and its Workman Shri Niranjan Nayak, S/o Shri Gouranga Nayak, At/P. O. Oronda, Via Athagarh, Dist. Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 88 OF 1997
Dated the 31st March 2006

Present :

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

Between :

M/s Utkal Galvanisers Ltd. . . First Party—Management
At Kapursingh, P. O. Oronda
Dist. Cuttack.

And

Shri Niranjan Nayak . . Second Party—Workman
S/o Shri Gouranga Nayak
At/P. O. Oronda, Via Athagarh
Dist. Cuttack.

Appearances :

For the First Party–Management	. .	Shri S. T. Ullaha
Second Party–Workman himself	. .	Shri N. Nayak

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. 10778(5)-L. E., dated the 26th August 1997 for adjudication and Award.

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

> "Whether the termination of the services of Shri Niranjan Nayak in the guise of transfer by the management of M/s Utkal Galvanisers Ltd., with effect from the 27th November 1995 is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?".

3. Workman Shri Niranjan Nayak by way of this reference has challenged the legality and justifiability of the action of the management of M/s Utkal Galvanisers Ltd. (in short the management) in terminating his services with effect from the 27th November 1995.

The brief facts giving rise to the present case are that the concerned workman was engagd as a Helper on daily wage basis with effect from the 25th January 1993. He continued in his employment till the date of his termination on the 27th November 1995. It is categorically averred in the statement of claim that he had rendered continuous service since the date of his joining till the date of his termination but the management without any rhyme or reason illegally terminated his services with effect from the 27th November 1995 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). According to the workman, the management with an intention to terminate him from service verbally directed to go to Bhubaneswar erection site but he wanted a written order from the management which resulted in terminating his service with effect from the 27th November 1995. After such termination he approached the labour machinery but to no effect. The conciliation proceeding initiated by the Assistant Labour Officer, Choudwar ended in failure and the matter was ultimately referred to this Court 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 was engaged as a casual worker and he was engaged as and when the work was available for him. It is categorically averred in the written statement that the workman had never worked for more than 240 days 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 stated by the management that the workman had not worked continuously for more than 240 days in a calendar year in terms of the statutory provisions of the Act. According to the management the workman joined in the establishment of the management in the month of January 1995 and he was deputed to Bhubaneswar site in the month of November 1995. But he had neither gone to Bhubaneswar site nor attended his duty in the establishment of the management at Kapursing. Instead of reporting for duty at Bhubaneswar site the workman raised a dispute alleging the refusal of employment. It is further categorically averred that the management had neither issued any appointment order to the workman nor terminated him from service with effect from the 27th November 1995. Rather by not joining at the place of deputation the workman abandoned the service voluntarily and refused the offer of employment given to him at Bhubaneswar site by the management. 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 service of Shri Niranjan Nayak in the guise of transfer by the management of M/s Utkal Galvanisers Ltd., with effect from the 27th November 1995 is legal and/or justified ?

(ii) If not, to what relief Shri Nayak is entitled ?".

6. The workman in support of his case has examined himself as W. W. 1 but has not relied upon any document. The management, on the other hand, has examined as many as two witnesses, namely Bikramjeet Swain and Uma Sankar Kuanar as M. Ws. 1 and 2 respectively and has relied upon the xerox copy of the letter dated the 11th May 1995 marked as Ext. 1 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 on the 25th August 1993 as a Helper on daily wage basis. On the 26th November 1995 he was directed by the Managing Director to work at Bhubaneswar site but due to his difficulties he could not come to Bhubaneswar. On the 27th November 1995 he was refused employment. During cross-examination he admits that neither any written order of appointment nor the termination order was given to him. He has categorically stated that since the management did not issue any written instruction to come to Bhubaneswar site he did not put forth his grievances in writing. It has been suggested to him that he has not completed 240 days in 12 calendar months before the date of refusal of employment and that he was working

on casual basis as and when required to which he has replied in the negative. The evidence led by the management through M. Ws. 1 and 2 clearly shows that the workman joined in the establishment in the year 1995 as casual worker on daily wage basis. On the 26th November 1995 he was deputed to work at Bhubaneswar site but he did not turn up for joining his duties at Bhubaneswar site. The evidence further reveals that the workman had not worked continuously since the date of his joining till November, 1995. He had also not completed 240 days of service under the management during the tenure of his service. M. W. 2 has clearly and categorically stated that during the tenure of service the workman remained absent from duty frequently for which he was issued with a notice by the management vide Ext. 1. Nothing material has been elicited by the workman during cross-examination so as to discard the evidence of M. W. 2. The evidence given by M. W. 2 has not been cross-examined by the workman as a result the evidence given by M. W. 2 remains unchallenged.

8. From the above discussion the Principal issue thus appears to be as to whether the workman has completed 240 days of service in terms of the statutory provisions of the Act.

The Hon'ble Apex Court in the matter between Forest Range Officer and S. T. Hadimoni reported in 2002 (94) FLR 622 Supreme Court, Uttar Pradesh Abha Sevam Vikas Parisad and Kanak and another reported in 2003 (96) FLR 492 Supreme Court and in the matter between Rajsthan State Ganganagars Mills Ltd. and State of Rajsthan and another reported in 2004 (103) FLR 192 Supreme Court has consistently taken the view that :

> "It is for the employee concerned to prove that he has in fact completed 240 days in the last preceding twelve months period. The burden was upon the workman to prove that he had worked 240 days as claimed."

Admittedly the requirement of the Statute cannot be disputed and it is for the workman concerned to prove that he has in fact completed 240 days in the last preceding twelve months period.

The Hon'ble Apex Court in the case of Chief Engineer, Constrction *Vrs.* Koshava Rao (d) by L. Rs. reported in 2005-II-LLJ 479(Supreme Court) and in the case of Manager, R. B. I., Bangalore *Vrs.* S. Mani and others reported in 2005-II-LLJ 258 (Supreme Court) has taken the view that :

> "The initial burden of establishing factum of continuous work for 240 days within the year was on the workman."

9. The management has taken a stand before this Court that the workman had never worked continuously for more than 240 days 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 provisions of Section 25-F of the Act. The further stand taken by the management is that it had neither appointed the workman at any point of time nor terminated him from service with effect from the 27th November 1995. On the above backgrounds the workman is not entitled for any relief. The claim of the workman before this Court on the other hand, is that he had rendered continuous service with effect from the 25th August 1993 till the date of his termination on the 27th November 1995. According

to the workman, he has completed 240 days of continuous service in terms of the statutory provisions of the Act and therefore, he is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act have not been complied within the case of his termination. But on careful consideration of the evidence of the workman it is clearly evident that he has nowhere proved and established that he had worked more than 240 days of continuous service in the establishment of the management in terms of the statutory provisions of the Act. The workman during his evidence admits that he was not issued with any appointment order nor any termination order was also given to him. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for the above period as claimed has been produced by the workman in the instant case. It is the positive and definite case of the workman that he had so worked out but this claim has been denied by the management. The workman has also led no evidence to show that he had in fact worked for 240 days in the year preceding his termination. In absence of any clear and cogent evidence, the more oral statement given by the workman cannot be regarded as sufficient evidence to come to the conclusion that the workman had in fact worked for 240 days in a year in terms of the statutory provisions of the Act. Therefore, the claims of the workman to the effect that he had completed 240 days of service in terms of the statutory provisions of the Act cannot at all be accepted.

The Hon'ble Apex Court in the matter between R. M. Yellatti and Assistant Executive Engineer reported in 2006 (108) FLR 213 (Supreme Court) has taken a view that :

> "The burden of proof as to the completion of 240 days of continuous work in a year is on the claimant to show that he had worked for 240 days in a given year."

On the whole, after carefully examining the evidence tendered by the parties and keeping in view the settled position of law, I am of the considered view that the burden has not suceessfully been discharged by the workman in the present case. In that view of the matter, the workman is not entitled for any relief.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
31-3-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
31-3-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government

Printed and published by the Director, Printing, Stationery and Publication, Orissa, Cuttack-10
Ex. Gaz.393–193+11