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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2006

No. 4307–li/1(B)-82/1994 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th March 2006 in Industrial Dispute Case No. 60/1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Director, Centre of Adult Education Continuing Education and Extension Programme, Utkal University, Vani Vihar, Bhubaneswar and its workman Shri Abhimanyu Jena, C/o Ram Chandra Jena, Assistant, Bhubaneswar General Post Office, Bhubaneswar-751001 was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 60 OF 1996
Dated the 16th March 2006

Present :

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

Between :

The Director .. First Party—Management
Centre of Adult Education
Continuing Education and
Extension Programme, Utkal
University, Vani Vihar, Bhubaneswar.

And

Shri Abhimanyu Jena .. Second Party—Workman
C/o Ram Chandra Jena
Assistant, Bhubaneswar General
Post Office, Bhubaneswar-751001.

Appearances :

For the First Party–Management	..	None
For Second Party–Workman himself	..	Shri Abhimanyu Jena

AWARD

The State Government in exercise of the 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. 4099(5)-L. E., dated the 19th April 1996 for adjudication and Award.

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

“Whether the termination of service by way of refusal of employment to Shri Abhimanyu Jena with effect from the 17th June 1992 by the management of Centre of Adult Education Continuing Education and Extension Programme is legal and/or justified ? If not, what relief the workman is entitled to ?”

3. By way of this reference workman, Abhimanyu Jena has challenged the legality and justifiability of the decision of the management of Centre of Adult Education Continuing Education and Extension Programme (in short the management) in refusing employment with effect from the 17th June 1992.

Matrix of the necessary facts as bear on the controversy involved in the present case is that the workman was engaged as Peon on daily wage basis under the management with effect from the 7th June 1989. He continued to work as such till he was refused employment on the 17th June 1992. According to the workman on the 17th June 1992, the management had sent him to N.C. College, Jajpur Town to deliver some letters. After delivering the letter he returned back to Bhubaneswar but on the way approaching Panikoili he met with an accident at Jagannathpur and did not turn up for joining his duties. He informed the management about the accident. Due to such accident he sustained grievous injury and fracture on his right hand and was admitted in the S.C.B. Medical College, Cuttack for treatment. He was discharged from Medical on the 3rd August 1992. Thereafter he reported for duty and submitted his joining report but the joining report was not accepted by the management. Thereafter he came to know that his services were terminated with effect from the 17th June 1992. After knowing such termination he 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 he 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 the 27th October 2005.

During *ex parte* hearing the workman has clearly stated that he joined in the establishment of the management with effect from the 7th June 1989 as Peon on daily wage basis. On the 17th June 1989 he was directed by the management to deliver certain letters to the authority of the N.C. College, Jajpur Town. Accordingly he delivered the letters and on his return journey he met with an accident on the way approaching Panikoili near village Jagannathpur. He was hospitalised in the S.C.B. Medical College, Cuttack and was discharged from medical on the 3rd August 1992. He reported for duty but his joining report was not accepted by the management. There he came to know that he was terminated from service with effect from the 17th June 1992. He has categorically stated that the management while terminating his services had not given any notice or notice pay and retrenchment compensation although he had rendered continuous uninterrupted service since the date of his joining, i.e. the 7th June 1989 till he was refused employment on the 17th June 1992. Since the action of the management in terminating his services with effect from the 17th June 1992 was illegal and unjustified, he has now prayed for his reinstatement in service with back wages. During evidence he has proved the xerox copy of the Savings Pass Book of State Bank of India of Utkal University Campus indicating his engagement under the management. The evidence of the workman has nowhere been challenged by the management during evidence. No rebuttal evidence is also adduced by the management in support of its case to prove and establish that the workman was not working during the above period under the management and that he was not refused employment with effect from the 17th June 1992. In absence of any rebuttal evidence to that effect, I find no cogent reason to disbelieve the unchallenged testimony of the workman.

5. After carefully examining the sole evidence of the workman it is clearly evident that the workman had rendered continuous service with effect from the 7th June 1989 till he was refused employment on the 17th June 1992 and the management while refusing employment had not given any notice or notice pay and retrenchment compensation which in my view are in complete violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). The settled position of law is that the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. In view of the above legal position and in absence of any rebuttal evidence the termination having been made in violation of the mandatory provisions of the Act, in my opinion, is void *ab initio*. I am of the considered view that the termination of service of the workman by way of refusal of employment with effect from the 17th June 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.

6. Hence it is ordered :

ORDER

That the termination of service by way of refusal of employment to Shri Abhimanyu Jena with effect from the 17th June 1992 by the management of Centre of Adult Education Continuing Education and Extension Programme is neither legal nor justified. Admittedly the management

has not availed the services of the workman with effect from the 17th June 1992. In that view of the matter, the workman is entitled for reinstatement in service, but on the facts and circumstances of this case without any back wages.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me.

P. K. SAHOO
16-3-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
16-3-2006
Presiding Officer
Labour Court, Bhubaneswar

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