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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th January 2006

No. 244—li/1(B)-69/1994(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th December 2005 in Industrial Dispute Case No. 229 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Horticulturist, At/P.O. Puri and its workman Shri Kanhu Charan Dalai of Maheswari Coconut Farm, Brahmagiri was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 229 OF 1995

Dated the 12th December 2005

Present :

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

Between :

The Management of Horticulturist, Puri.	..	First Party—Management
And		
Its Workman Shri Kanhu Charan Dalai Workman of Maheswari Coconut Farm Brahmagiri.	..	Second Party—Workman

Appearances :

For the First Party—Management	..	None
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For the Second Party—Workman himself	..	Shri K. C. Dalai
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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. 10360(5)-L.E., dated the 14th August 1995 for adjudication and Award.

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

“Whether the termination of services of Shri Kanhu Charan Dalai (Casual Labourer/ Workman) by the management of the Horticulturist, Puri with effect from the 16th January 1988 is legal and/or justified ? If not, to what relief Shri Dalai is entitled ?”

3. By way of this reference workman Shri Kanhu Charan Dalai has challenged the legality and justifiability of the action of the management of Horticulturist, Puri (hereinafter referred to as the ‘management’) in terminating his services with effect from the 16th January 1988.

The brief facts giving rise to the present reference are that the workman was engaged as Casual Labourer in the year 1983. He continued to work till the date of his termination on the 16th January 1988. According to the workman although he had rendered continuous uninterrupted service for about five years but the management without any rhyme or reason refused employment with effect from the 16th January 1988 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). 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 the 22nd June 2002.

5. During *ex parte* evidence the workman has clearly stated that he was working under the management in Maheswari Farm in the year 1983 as a Casual Worker. He was refused employment on the 16th January 1988. Before refusal of employment he was not given any notice or notice pay and retrenchment compensation. In his evidence he has further stated that since the refusal of employment was illegal and unjustified he has now prayed for his reinstatement in service with back wages.

6. The evidence of the workman has not been challenged by the management in any manner. No rebuttal evidence is also adduced by the management in support of its case to establish that the workman was not working during the above said period under the management and that he was not refused employment with effect from the 16th January 1988. In absence of any rebuttal evidence to that effect, I find no cogent reason to disbelieve the unchallenged testimony of the workman.

7. After carefully examining the sole evidence of the workman it is clearly evident that the workman had rendered continuous service since 1983 till the date of his termination on the 16th January 1988 and the management while terminating his service 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 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, 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 such premises, the action of the management in terminating the services of the workman with effect from the 16th January 1988 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.

8. Hence it is ordered :

That the termination of services of Shri Kanhu Charan Dalai (Casual Labourer/Workman) by the management of Horticulturist, Puri with effect from the 16th January 1988 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 to be reinstated 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
12-12-2005
Presiding Officer
Labour Court, Bhubaneswar.

P. K. SAHOO
12-12-2005
Presiding Officer
Labour Court, Bhubaneswar.

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