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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th January 2006

No. 754—Ii/I (BH) 40/1995-L.E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2005 in Industrial Dispute Case No. 141 of 1996, the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Basudevpur N.A.C. and its Workman Shri Prafulla Kumar Mohanty was referred for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 141 OF 1996
Dated the 31st December 2005

Present :

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

Between :

The Management of Basudevpur N.A.C.	. .	First Party—Management
And		
Its Workman Shri Prafulla Kumar Mohanty	. .	Second Party—Workman

Appearances :

For First-Party Management	. .	Shri C. N. Mishra, Advoacate Shri A. Parida, Advocate
For the Second-Party Workman	. .	Shri B. C. Bastia, Advocate

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.11950(4)-LE., dated the 12th September 1996 for adjudication and Award.

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

> "Whether the action of the management of Basudevpur N.A.C., Basudevpur in refusing employment to Shri Prafulla Kumar Mohanty, Driver with effect from the 1st August 1994 is legal and/or justified ? If not, to what relief Sri Mohanty is entitled ?"

3. By way of this reference, workman Shri Prafulla Kumar Mohanty has challenged the legality and justifiability of the action of the management of Basudevpur N.A.C., Basudevpur (hereinafter referred to as the management) in refusing employment with effect from the 1st August 1994).

The brief facts giving rise to the present reference are that the concerned workman was engaged as Driver in the establishment of the management with effect from the 3rd February 1993 on daily wage basis. He continued in his employment in the said establishment till the 31st July 1994. The management thereafter without any rhyme or reason refused employment on the 1st August 1994 without following the *mandate* of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). According to the workman, he had rendered continuous un-interrupted service since the date of joining, i.e.the 3rd February 1993 till the date of refusal of employment on the 1st August 1994 with much sincerity, devotion and to the best satisfaction of the authorities but the management illegally refused employment on the 1st August 1994 and engaged another Driver in his place and had thereby violated the mandatory provisions of Section 25-H of the Act. After such refusal of employment, the workman approached the labour machinery but to no effect. The conciliation proceeding initiated by the District Labour Officer, Bhadrak ended in failure and the matter was ultimately referred to this Court for adjudication by the Government in the Labour & Employment Department. 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 Driver on daily wage basis with effect from February, 1993 till the 31st July 1994 and was paid his wages for the days he had actually worked at the rate of Rs. 100 per day, i.e. Rs. 70 per day towards his wages and Rs. 30 per day towards his fooding allowance. According to the management, the workman had never worked for more than 240 days as a regular employee and had not completed 240 days of service in terms of the statutory provisions of the Act. Therefore, with regard to the termination of the workman, the provisions of retrenchment were not attracted and the management was not under obligation to comply with the provisions of Section 25-F of the Act. It is further averred in the written statement that the workman was engaged as and when the work was available for him. He was never sincere in his duty and he used to report in the office as per his own sweet/ will. Since the workman had not completed 240 days of service in the year preceding his refusal of employment, he is not entitled for any relief. 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. Basing on the above pleadings of the parties, the following issues have been framed :—

ISSUES

(i) Whether the action of the management of Basudevpur N.A.C., Basudevpur is refusing employment to Shri Prafulla Kumar Mohanty, Driver with effect from the 1st August 1994 is legal and/or justified?

(ii) If not, what relief Shri Mohanty is entitled to ?

6. The workman in support of his case has examined himself as W.W.I and has relied upon the xerox copies of the documents such as, duty chart and failure report marked as Exts. 1 and 2 respectively. On the other hand, the management has examined two witnesses namely Shri Pravakar Palata and Shri Bimbadhar Behera as M. Ws. 1 and 2 and has relied upon the vouchers containing 16 sheets marked as Exts. A series and the xerox copies of the extract of the payment register containing six sheets vide Ext. B series repsectively 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.

The workman has led evidence to establish the fact with regard to his continuous service as Driver in the establishment of the management with effect from the 3rd February 1993 till the date of his refusal of employment on the 1st August 1994. It is in his evidence that after refusal of such employment, the management engaged a new person namely Dillip in his place. Although he had rendered continuous service for 240 days in a calendar year preceding the date of termination but the management refused employment without giving any notice or notice pay and retrenchment compensation. He made representation but to no effect. He has further stated that the management during conciliation proceeding initiated by the District Labour Officer, Bhadrak had submitted the above fact. During evidence he has proved the duty chart and the failure report of the Conciliation Officer marked as Exts. 1 and 2 respectively. During cross-examination, he admits that he was not issued with any appointment order but the then Executive Officer allowed him to work as Driver in the establishment of the management. He has further stated during his cross-examination that he was refused employment on the 1st August 1994 and the management sold the Bus in the month of June 1995. On the other hand, the management has tried its level best to prove and establish through M. Ws. 1 and 2 that the workman had not completed 240 days of service in terms of the statutory provisions of the Act. Both the above witnesses in their evidence have clearly admitted the fact of engagement of the workman in the establishment of the management with effect from the February 1993 till refusal of employment on the 1st August 1994. It is categorically stated by M.W. 1 that the workman was refused employment with effect from the 1st August 1994 due to shortage of fund and withdrawal of the Bus by the Company. It is also in his evidence that no appointment order was issued to the workman by the management but he was temporarily engaged on daily wage basis. As the concerned Company withdraw the Bus, there was no work for the workman and therefore, he was refused employment by the management. During cross-examination, he has categorically stated that the Bus was withdrawn by the Company in the year, 1995 and another Driver was engaged by the management after the workman was refused

employment with effect from the 1st August 1994. He has further stated in his cross-examination that he was not dealing with the matters regarding the bus and the personal matters of the employees working under the management. M. W. 2 in his evidence has categorically stated that the workman was disengaged from service with effect from August, 1994 as the Company withdrew the concerned vehicle and the workman was paid his wages for the days he had worked. He admits in his evidence that due to withdrawal of the concerned vehicle by the Company, the workman was disengaged from service with effect from the 1st August 1994. The management has now no bus and there is also no work with it to provide the workman the job of Driver. He admits during cross-examination that at the relevant period i.e. from February, 1993 to July, 1994 he was working at Octroi Check Gate as Tax Collector and he has got no direct knowledge about the details of the engagement of the workman during the above paid period. He further admits that he has not prepared the Exts. A and B series i.e. vouchers and payment register respectively. During evidence he has proved the above documents marked as Exts. A and B series.

8. The learned counsel appearing for the management has strenuously urged that the workman had never completed 240 days of service in terms of the statutory provisions. Accordingly to him the workman was engaged on daily wage basis and as and when need was felt his service was taken on daily wage basis. As the workman was a casual labourer and was engaged as and when the work was available for him and above all when he has not completed more than 240 days of service in terms of the statutory provisions, the provisions of Section 25-F of the Act are not attracted and there is no question of payment of compensation to the workman. With the above submission the learned counsel for the management has submitted that the workman in view of the above circumstances is not entitled for any relief and the reference be answered in the aforesaid terms. On the other hand, the learned counsel for the workman has drawn my attention to the fact that although the workman had rendered continuous service with effect from the 3rd February 1993 till the date of refusal of employment on the 1st August 1994 and had completed more than 240 days of service in terms of the statutory provisions but the management without any rhyme or reason illegally refused employment without following the mandate of Section 25-F of the Act. The further contention of the learned counsel is that after such refusal of employment the management engaged another person in his place by violating the mandatory provisions of Section 25-H of the Act. According to the learned counsel, since the management has violated the mandatory provisions of Section 25-F and H of the Act, the workman may be reinstated in service with back wages.

9. In support of their respective cases both the parties have adduced evidence. In my foregoing paragraphs I have also clearly discussed the evidence led by the parties. After carefully examining the evidece on record and the documents relied upon by the parties, it is clearly evident that the workman has not completed 240 days of service in terms of the statutory provisions of the Act. But on the other hand, I am led to hold that the management without complying with the mandatory provisions of Section 25-H of the Act, read with Rules 83 and 84 of the Orissa Industrial Disputes Rules, 1959 engaged a new person in place of the workman.

10. The settled position of law is that—

> “For the purpose of Section 25-H of the Act it is not necessary that the person claiming re-employment must have rendered 240 days service in a period of one year but must have been in service earlier and he has to be given notice before employing new hand. It is the duty of employer to consider cases of such retrenched i.e. employees who have been terminated”.

The Hon'ble Apex Court in the case of Central Bank of India *Vrs*. S. Satyam and others reported in 1996(74) FLR. 1963 (Supreme Court) has clearly held that :

> "Section 25-H which is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not required curtailment of the ordinary meaning of the word 'retrenchment' used therein. The provision for re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other persons. It is enacted for the benefit of the retrenched workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman".

Section 25-H then provides re-employment of retrenched workmen. It says that when the employer proposes to take into his employ any person he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

11. In the case at hand, the management has clearly admitted that the concerned vehicle was withdrawn by the company in the year 1995 and after refusal of employment the management engaged another Driver in place of the workman with effect from the 1st August 1994. M. W. 1 in his evidence has categorically stated that due to withdrawal of the bus there was no work for the workman and therefore, he was refused employment by the management. He has also further stated that another Driver was engaged after the workman was refused employment with effect from the 1st August 1994. Similarly the evidence of M. W. 2 clearly reveals that the workman was disengaged from service with effect from August, 1994 as the company withdrew the concerned vehicle and for that reason the workman was disengaged from service with effect from the 1st August 1994. It is further stated by M. W. 2 that the management has now no work with it to provide the workman the job of Driver as there is no bus in the establishment of the management. The above evidence given by both M.Ws. 1 and 2 relating to the withdrawal of the bus gets support from the evidence of the workman who in his evidence has clearly stated the management sold the bus in the month of June 1995. From the above discussion, it is crystal clear that the workman was refused employment prior to the withdrawal of the bus by the concerned company and such fact has clearly been admitted by the management during evidence. The further admitted fact is that after such refusal of employment the management engaged another person in his place by violating the provisions of Section 25-H of the Act with effect from the 1st August 1994 Section 25-H. Re-employment of retrenched workman reads as follows :

> "Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give in opportunity (to the retrenched workman who are citizens of India to offer themselves for re-employment and such retrenched workmen) who offer themselves for re-employment shall have preference over other persons".

In the present case there is no evidence on record to prove and establish that the management had ever given any opportunity to the workman for his re-employment. Even no notice was issued to the workman by the management for his re-employment. It is therefore, made clear that the

management has not followed the procedure as laid down under Section 25-H of the Act, read with Rule 84 of the Orissa Industrial Disputes Rules, 1959. In view of the above settled position of law the refusal of employment to the workman with effect from the 1st August 1994 having been made in violation of Section 25-H of the Act, in my opinion was illegal and unjustified. In that view of the matter, the workman is entitled to the relief of re-employment.

12. In the present case on perusal of the evidence tendered by the parties, it is clearly evident that the management has now no bus as the concerned company withdrew the same. The categorical evidence led by the management clearly shows that the management has now no work with it to provide the workman the job of Driver as there is no bus in the establishment of the management. The workman has also admitted the above fact. In such view of the matter, a lump sum compensation of Rs. 10,000 in lieu of re-employment in my considered view, would serve the ends of justice in the instant case. Both the above issues are answered accordingly.

13. Hence it is ordered.

ORDER

That the action of the management of Basudevpur N.A.C., Basudevpur in refusing employment to Shri Prafulla Kumar Mohanty, Driver with effect from the 1st August 1994 is neither legal nor justified. The workman Shri Mohanty is entitled to get a lump sum compensation of Rs. 10,000 (Rupees Ten Thousand) only in lieu of re-employment.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
31-12-2005
Presiding Officer
Labour Court, Bhubaneswar

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31-12-2005
Presiding Officer
Labour Court, Bhubaneswar

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

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