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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2007

No. 7467—li/ 1 - 361/1990(Pt.) - L. E. — In pursuance of Section 17 of the Industrial Disputes Act,1947 (14 of 1947), the Award, dated the 30th March 2007 in I.D. Case No. 118 of1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Divisional Manager,Angul Timber Division, Angul, O.F.C. Ltd., Dhenkanal and its workman Shri Digambar Pradhan was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
BHUBANESWAR
INDUSTRIAL DISPUTE CASE No.118 OF 1991
Dated the 30th March 2007

Present :

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

Between :

The Management of
Divisional Manager,
Angul Timber Division, Angul,
O.F.C. Ltd., Dhenkanal. .. First Party—Management

And

Their Workman
Shri Digambar Pradhan. .. Second Party— Workman

Appearances :

For the First Party — Management .. Shri Somanath Mishra, Advocate.

For the Second Party— Workman .. Shri Satyabadi Das, Advocate.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of Divisional Manager, Angul Timber Division, Angul, O.F.C. Ltd., Dhenkanal and their workman Shri Digambar Pradhan under Notification No. 12241-L.E., dated the 5th November 1988 vide memo No. 7485 (5)-L.E., dated the 25th May 1991 for adjudication by this Court .

2. The terms of reference by the State Government is as follows:—

"Whether the refusal of employment to Shri Digambar Pradhan , ex-Mate by the Divisional Manager, Orissa Forest Corporation Ltd., Angul Timber Division, Dist. Dhenkanal with effect from the 1st May 1986 is legal and/or justified? If not, to what relief is Shri Digambar Pradhan entitled ?"

3. Shorn of all unnecessary details, the case of the workman in brief is as follows:—

The workman had been appointed as a Mate by the order of the Divisional Manager, Angul Timber Division with effect from the 1st October 1981. The workman used to get work continuously during the period of his employment till he was terminated from his service with effect from the 1st May 1986 by the Subdivisional Manager, Athamallick. The workman had not been given any written communication regarding the reasons for termination of his service. The management did not follow the provisions under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act) even though the workman had rendered continuous service from the year 1981 to 1986. The workman has claimed his reinstatement in service along with back wages and other consequential service benefits alleging that his retrechment by the management was arbitrary and illegal.

By filing an additional statement of claim the workman has further contended that he had been working as against a permanent vacancy in the regular cadre continuously and that there was an agreement between the employees of the Corporation and the management to regularise the service of the employees like the workman and his co-workers and thereafter the employees demanded regularisation of their services with effect from their respective dates of appointment. After getting demands from the workman and others, the management had decided to regularise the service of the employee, but all of a sudden retrenched the workman from service with effect from the 1st May 1986. After termination of service of the workman, the management recruited many other employees who were much junior to the workman. It is further contended that after his retrenchment, the workman has not been employed gainfully elsewhere. On these averments, the workman has claimed reliefs are already indicated.

4. In its written statement, the Divisional Manager, O.F.D.C., Angul (hereinafter referred to as the management) has contended that the workman was a Seasonal Worker during the period of operation of forest coupe and he has never worked continuously during the period of his employment under the management. Since the workman was only a Seasonal Worker, no order of appointment had been given to him and similarly no order of termination had been passed when the workman was disengaged from his service. Since the workman had never worked continuously, there was never any question of the application of the provisions under Section 25-F of the I. D. Act. The management used to employ the workers in the coupes of the Forest Corporation during operational season only and such workers were being disengaged from their service after the operational season was over and there was never any requirement of giving any written order to them for scuh disengagement. During the commencement of the next season of the work for coupe, if any employee used to appear on his own, the management used to employ him for the forest coupe work only during the operational season of the forest coupe. In the instant case the workman did not turn up in the year 1986 when the forest coupe season was started. The workman in the instant case has raised an industrial dispute without any basis and therefore, the workman is not entitled to any

benefits whatsoever under the I. D. Act.

By filing an additional written statement the management has further contended that there was never any agreement with the workman or any others for regularisation of the service of the workman and his colleagues. The workman had never been employed as against any permanent vacancy and he had never worked continuously under the management. The workman had falsely claimed that there was an ageeement between himself and the management regarding regularisation of service. The management has denied all such claims by the workman. On all these averments, the management has contended that the workman is neither entitled to reinstatement in service nor is he entitled to any back wages.

5. On the aforesaid pleading of the parties, originally the following issues have been framed for determination :—

ISSUES

(i) "Whether the workman had worked for 240 days within a period of one year preceding his date of termination ?

(ii) In his refusal of employment with effect from the 1st May 1986 amounts to retrenchment and the requirement has been duly complied with ?

(iii) If not, to what relief ?"

6. On the aforesaid issues this Court took evidence from both the sides and passed an Award on the 8th February 1995 directing the management to reinstate the workman with 50% of the back wages. As against this Award the management preferred O.J.C. No. 4529/1995 before the Hon'ble High Court of Orissa challenging the Award. The Hon'ble High Court of Orissa in a common judgement, dated the 20th June 2005 in O. J. C. Nos. 4528,4529,4530 and 4531 of 1995 arising out of I. D. Case Nos. 116, 119, 121 and 122 of 1991 passed the following order : —

"8. I have heard learned counsel for the parties at length, I have also perused the notes of submission and documents maticulously. The main contention as would be evident on the pleadings of both the sides as well as the submissions made is as to whether the workman were Seasonal Workers and/or were engaged as daily labourers. If the workers were Seasonal Workers then the question as to whether after cessation of work the Corporation should allot any other work to the workman has to be considered on different prospectives. If it is held that the workmen were engaged as Seasonal Workers and consequent upon closure of seasons they ceased to work, such cessation will not amount to retrenchment. If the workmen were Seasonal Workers, they cannot allege to have been retrenched in view of specific provisions of Clause (bb) of Section 2 (oo) of the Industrial Disputes Act. This view was also accepted by the Supreme Court in the case of Morinda Co-operative Sugar Mills Ltd. *Vrs.* Ramkrishna and others reported in AIR 1996, SC 332.

In the present case, as would be evident from the impunged awards, the Labour Court proceeded with the cases being of the view that continuous work by the workman under the first party exceeding 240 days was the sole question to be decided to determine as to whether provisions of Section 25-F of the Industrial Disputes Act were complied with or not . But then as would be evident from the pleadings and materials produced that was not the real question to be decided but the real controversy was as to whether the workman were Seasonal Workers or not. Though management in its written statements took a specific plea that the workman being the Seasonal Workers not entitled to any relief under Section 25-F of the Industrial Disputes Act, it appears that the Labour Court did not frame any issue to that effect and proceed to decide the question as to whether the workman had discharged 240 days continuous service in the calendar year preceding the date of their retrenchment or not. The Supreme Court in the case of Dhampur Sugar Mills Ltd. *Vrs.* Bhola Singh reported in A.I.R. 2005, S.C. 1790 has observed that when a workman is appointed in terms of scheme on daily wages, he does not derive any legal right to be regularised in his service.

Completion of 240 days continuous service in a year may not by itself be a ground for directing regularisation particularly in a case where the workman had not been appointed in accordance with the existing rules. In the case at hand if the workmen were in fact engaged as Seasonal Workers then the entire reasoning given by the Labour Court would fail.

In view of the aforesaid facts and circumstances, after hearing learned counsel for the parties. I feel this is a fit case where the impunged Awards vide, Annexure 4 to the respective Writ Petition are to be quashed and the matter should be remitted back to the Labour Court for fresh disposal after framing an issue as to whether the workmen were Seasonal Workers or not.

The Writ Petitions are accordingly allowed. The matters are remitted back to the Presiding Officer, Labour Court, Bhubaneswar with a direction to dispose of I. D. Case Nos. 116, 118, 121, 122 of 1991 as expeditiously as possible, preferably within a period of one year."

In view of the aforesaid order of the Hon'ble Court, fresh issues were framed by the then Presiding Officer, Labour Court,Bhubaneswar on the 25th October 2005 as follows:—

ISSUES

(i) "Whether the refusal of employment to Shri Digambar Pradhan, ex-Mate by the Divisional Manager, Orissa Forest Corporation, Angul Timber Division, Angul, Dist. Dhenkanal with effect from the 1st May 1986 is legal and/or justified ?

(ii) Whether the workman was Seasonal Worker or not ?

(iii) If not, to what relief is Shri Pradhan entitled ?"

After framing of the fresh issues parties were gives chance to adduce further evidence and thereafter fresh argument was heard.

7. In view of the judgement of the Hon'ble High Court of Orissa in O.J.C. Nos. 4528, 4529, 4530, 4531 of 1995, the Issue No (ii) assumes paramount importance. On this score the workman W.W. 1 during his re-examination has stated that the main work of O.F. D.C. was to collect timber, firewood and other forest products from the reserve forest with necessary permission from the Forest Department and to stack such logs, bamboos, firewoods, etc. in the depot of the O.F.D.C. According to W.W. 1 besides these works O. F.D.C. was also doing the afforestation work, operation of Saw Mills and such works of the Forest Corporation goes on throughout the year. According to W.W.1 the works like logging of trees, cutting of trees and transportation of trees inside the forest was remaining closed from the beginning of July till the end of September. During such period he was being assigned the work of checking Watchman engaged to guard the timbers lying in the forest, stacking of logs inside the depots, visit the forest and to identify, mark and assess the trees those are to be felled and to assess valuation of such logs. Further evidence of W.W.1 is that during the period July to September field staffs like him were being attached to the offices of the Subdivisional Manager of the O.F.D.C. and were working according to the direction of the Subdivisional Officer. In his evidence W.W.1 has further stated that during July to September he was working in the firewood depot for sale of firewood. The workman W.W. 1 has not proved any document to show that he was being so engaged during the off-season. In his cross-examination the workman W.W.1 has admitted that during the period 1981 to 1986 he was working in the forest Coupe under the management. According to W.W.1 during the rainly season, i.e. from July to September end the forest coupes were remaining closed. In his cross-examination W.W.1 has categorically admitted that he has not produced any appointment letter and that he was not received any disengagement letter from the management after June 30 of each year. In his cross-examination W.W.1 has categorically admitted that he had never worked in any plantation work under the management at any time. The workman has further admitted during cross-examination that he has not produced any documentary evidence to show that he was being employed by the management throughout the year. Further admission during cross-examination is that the workman was not getting salary from the management for each month of the year. Thus from the evidence of W.W.1

it is very clear that he had been engaged by management to work in the coupe during the period 1981 to 1986 and that during the rainy season, i.e. from July to September end the forest coupes were remaining closed. Although the workman has claimed that during such off-season he had been engaged in other works by the management, there is no documentary proof whatsoever on record to sustain such a claim of the workman. In the absence of any documentary proof in the matter, the bold oral assertion of the workman that he was getting work from the management throughout the year being engaged in various works cannot be believed, much less acted upon. From the side of the workman no other witness has been examined.

8. M.W. 3 who is a Mate like W.W.1 in his evidence has stated that he works in the forest coupe under the management and that the coupe work begins in the month of October and ends on 30th June each year. According to M. W. 1 all Mates working in the coupe remain unemployed from 1st July to 30th September each year. Further evidence of M.W. 3 is that only when the management needs worker for certain works, such Mates are termporarily engaged in other works during the off-season. In the cross-examination M. W. 3 has stated that they were getting salary under vouchers. Since the present discussion is now confined as to whether the workman in question was a Seasonal Worker or not, the other evidence on record at this stage need not be gone into in detail.

9. From the above discussion, i.e. from the evidence of W.W.1 and the evidence of M.W. 3 it is very clear that the workman W.W.1 was working in the forest coupe and that forest coupe was remaining closed from beginning of July to end of September each year. This being so, it can very well be said that the workman was a Seasonal Worker. This is notwithstanding the admitted fact that the management, i.e. O.F.D.C. has not been declared as a seasonal industry in terms under Section 25-K of the I. D. Act.

10. Now it is to be seen as to what would be the legal consequence where an industry has not been declared as establishment of a seasonal character in terms under Section 25-K of the I. D. Act, but the workman from the very nature of his work in a Section of such industry can be termed as a Seasonal Worker. In the instant case although the management, i.e. O.F.D.C. is engaged in various work throughout the year, the workman of the present case was essentially being employed in the coupe and the very work of the forest coupe was remaining suspended during rainy season, i.e. from July to September end of each year. In the instant case it is an admitted fact that the O.F.D.C. has not been declared by the appropriate Government to be an industrial establishment of a seasonal character in terms with Section 25-K (2) of the I. D. Act. This fact has fairly been admitted by the management. In the decision of Batala Co-operative Sugar Mills Ltd. *Vrs.* Sowaran Singh reported in 2006 (I) L.L.J., S.C. 12 it has been held by the Hon'ble Apex Court that the burden of proving continuous service for more than 240 days lies squarely on the workman. Now similar in the view of the Hon'ble Supreme Court in the case of Range Forest Officer *Vrs.* S.T. Hadimani reported in 2002(I) L.L.J., S.C. 1053. Thus it is to be seen as to whether the workman in the instant case has proved that he had worked for more than 240 days in the twelve months preceding the date of his termination. In the instant case the workman has not proved any documentary evidence as regards the number of days he had worked for the management during such period. M.W.1 in his evidence has only admitted that they had paid wages to the workman for 264 days but such evidence is without any reference to the period from which the said 264 days had been calculated. On his part workman W.W. 1 had given a generalised evidence and has not stated about the specific days he had worked under the management so as to prove his service as continuous service within the meaning of Section 25-B of the I. D. Act. Thus in the instant case on one hand the workman had failed to prove that he was in continuous service and on these other hand, it had been held by this Court from the evidence on record that he is a Seasonal Worker. Thus the workman of this case is not entitled to the benefit of Section 25-F of the I. D. Act and therefore, the termination of service of the workman cannot be illegal or unjustified even if it is held to be a case of retrenchment, but strictly speaking the workman being a Seasonal Worker the present case at hand does not come within the purview of the definition of the term retrenchment as defined under

Section 2(oo) of the I. D. Act. In the decision of Morinda Co-operative Sugar Mills Ltd. *Vrs.* Ramkrishna and others reported in A.I.R. 1996, S.C. 332 it had been held by the Hon'ble Apex Court that if the workmen were Seasonal Workers, they cannot allege to have been retrenched in view of specific provisions of Clause (bb) of Section 2(oo) of the I. D. Act. This judgement has been relied on by our Hon'ble High Court in O.J.C. Nos. 4528,4529, 4530,4531 of 1995.

11. Hence, ordered :

The refusal of employment to the workman by the management is legal and justified and the workman is not entitled to any relief.

Dictated and corrected by me.

S. K. MOHAPATRA
30-3-2007
Presiding Officer
Labour Court, Bhubaneswar

S. K. MOHAPATRA
30-3-2007
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

N. C. RAY

Under-Secretary to Government

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