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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th December 2006

No. 10848-li/1(S)-4/2002-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th October 2006 in Industrial Dispute Case No. 25/2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s Lath Automobiles, Ainthapali, Dist. Sambalpur and its workman Md. Latif, C/o Habib Karim, At/P.O. Motijharan, V.S.S. Stadium, Dist. Sambalpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT,
SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 25 OF 2002

Dated the 26th October 2006

Present :

Shri P. K. Mahapatro, LL. B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of
M/s Lath Automobiles
Ainthapali, Sambalpur
Dist. Sambalpur. . . First Party—Management

And

Its Workman
Md. Latif, C/o Habib Karim
At/P. O. Motijharan
V.S.S. Stadium, Sambalpur
Dist. Sambalpur. . . Second Party—Workman

Appearances :

For the First Party—Management . . Shri P.K. Mohapatro,
Advocate, Sambalpur.

For the Second Party—Workman . . Shri N. Kar,
Advocate, Sambalpur

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 and 12 of the Industrial Disputes Act, 1947 vide Memo No. 3574 (5)-L.E., dated the 14th March 2002 for adjudication of the dispute scheduled below :

“Whether the termination of services of Md. Latif, Chief Mechanic by the management of M/s Lath Automobiles with effect from the 26th June 2001 is legal and/or justified ? If not, what relief is he entitled to ?”

2. According to the workman, he had joined the management concerned in the year 1988 and at the relevant time no appointment order was issued to him as it was a verbal order and then he continued under the management up till 2001 and during his incumbency there, he was doing manual and mechanical works and was also covered under E.P.F. and E.S.I. scheme but as ill luck would have it, on the 26th June 2001, he was orally directed not to attend his duty and even by then, there was no written order and in spite of his best efforts there was no change of mind of the management, as a result, he had approached the officers of the Labour Department who then took up a conciliation proceeding, but the same achieved no good result and then the matter was referred to the Government with a failure report and the Government after being satisfied that it is an Industrial Dispute between the parties, referred the matter to this Court for adjudication. Thereafter, the workman filed his statement of claim wherein he has prayed for reinstatement in service with full back wages.

3. The management has contested the above claim by stating that he was a Technical Supervisor and was getting salary of Rs. 1,700 per month along with housing accommodation, free electricity and free water charges and as he was working in his Supervisory capacity, he is not entitled to get the benefits claimed by him. It is also the case of the management that the workman along with the other workers played hand in glove with Nishar Ahemed, the Assistant Manager and created problems for the management and even he was found to have misappropriated the money of the management to the tune of Rs. 27,693.60 paise, as a result, there was an enquiry and being afraid of criminal action, he (workman) remained away from attending his duty from the 1st July 2001 and now, he has come up with a false plea which are not legally tenable and consequently, he is not entitled to get the benefits claimed by him. To sum up, the management has prayed for answering the reference against the workman.

4. By taking note of the pleadings of the parties the following issues have been settled in this case:—

- (i) “Whether the termination of services of Md. Latif, Chief Mechanic by the management of M/s Lath Automobiles with effect from the 26th June 2001 is legal and justified ?
- (ii) What relief, if any, the workman is entitled to ?
- (iii) Whether the second party is a workman as defined under Section 2 (s) of Industrial Disputes Act, 1947 ?”

5. During the course of hearing, the workman has examined two witnesses and marked Exts. 1 and 1(a) from his side. The management side in order to buttress his claim has examined Shri Chitrasen Sahu, the present Office Assistant as the only witness. During the course of his evidence, M.W. 1 has filed the Acquittance Roll (Ext. 1) of the management wherein the salary amount of the workman along with his signatures are available. This witness has also stated that the workman was working as a ‘Supervisor’ and as he was supervising the works of the other Mechanics, so he is not a ‘workman’. As it appears M.W. 1 has remained silent with regard to the

misappropriation of money of the management firm and the other allegations levelled against him (workman) in the written statement. He has simply concentrated on one legal point that the workman was working in his supervisory capacity, as a result, he is not entitled to get the benefits claimed by him. By keeping the above background in view I will now deal with the issues settled in this case.

6. *Issue Nos. (i), (ii) and (iii)* :—The above issues are taken up together as those are interlinked. At the cost of repetition, I would like to mention that there is no rebuttal evidence to substantiate the allegation of misappropriation and other illegal activities as alleged by the management in the written statement. M.W. 1 has only stated that the workman in his capacity as ‘Supervisor’ was receiving vehicles from the workshop-in-charge and then he was entrusting necessary repair works to his Assistants. This witness has also proved the salary amount of the workman and the official functions he was discharging during his incumbency under the management. Admittedly, in the Acquittance Roll the workman is shown as a Supervisor. I took judicial note of the contents of the Ext. 1 and found that under the name of the present workman and another employee namely, Nishar Ahemed, their designations have been mentioned. But in respect of other employees there is absolutely no mention of the same. The exhibits marked from the side of the management are sufficient to conclude that in the acquittance, the designation is only attached to the present workman and another employee namely, Nishar Ahemed. In some entries though there is mention of designation of some other employees, but importance is given to the above referred two employees. Even if for the sake of argument it is accepted that the workman was working as a ‘Supervisor’ at the relevant time, the same is not sufficient to treat him as such unless other circumstances necessary for it are put forth. Law is fairly settled that the exclusion from the definition Section has to be proved by the party which claims that the case falls in any of the excluded categories. It is also a well settled law that the mere designation of a person as a ‘Manager’ or as a ‘Supervisor’ in any industry is not sufficient to conclude that he is not a ‘workman’. In order to treat him as such it must be proved by way of positive evidence that by virtue of his position as a ‘Supervisor’ he was controlling the other employees and that he was also having a say in their official duty. Ordinarily, a Supervisor occupies a position of command or is authorised to take independent decisions and he is authorised to act independently in certain matters within the limits of his authority without the sanction of the management. So the question whether a person is employed in a ‘Supervisor’ capacity or for doing any other mechanical or clerical work depends upon whether the main and principal duties carried out by him are of Supervisory character or of a character of any Clerk or Mechanic. In the case at hand it is the specific evidence of M.W. 1 that he (workman) was receiving vehicles from the workshop-in-charge and then he was entrusting it to his Assistants to do the necessary repair works. He has not whispered a word that he has any say in the performance of the other Mechanics and he was taking decisions independently without taking the clearance from the management. It is the admitted case of the management that the workman was deputed for training as a Mechanic. In the body of Ext. 1 the names of other mechanics who were working under him are not available. In his evidence M.W. 1 has admitted this aspect. From the side of the management the appointment letter of the workman is not produced. So it is very difficult to say as to what work was entrusted to him at the time of his initial appointment. The plea of the workman that he was orally directed to join in his duty and then he was also orally directed not to attend duty rather sounds probable. In cross-examination of Para. 3, M.W. 1 has stated that he does not know if any appointment order was issued in favour of the workman as a ‘Supervisor’. He (M.W. 1) has also fairly conceded that he has no idea if there is any agreement or Circular to that effect. Further according to him (M.W. 1), the Proprietor of the firm can only tell as to what work was entrusted to the workman during his tenure of service. This being the evidence of the M.W. 1 it is very difficult to say that the workman comes within the excluded categories enumerated in the definition Section.

7. In his evidence, the workman and his witness have stated that he was working as a Mechanic with the salary of Rs. 1,700 per month and to assist him, there were two Helpers and he was discharging his duties as per the direction of the management. He has categorically denied that he was supervising the work of others. He has also filed documents to show that he had undergone training as a Mechanic and according to him, his work under the management is purely non-supervisory in nature. As such there are dearth of materials to conclude that the workman was working in his supervisory capacity under the management.

8. At the time of argument the learned counsel for the management has fairly conceded that he does not press his pleading that the workman has misappropriated the management's money and that he along with other employees were creating disturbances in the smooth functioning of the official business. Admittedly those things are pleaded in the written statement, but M.W. 1 has not whispered a word regarding the above aspects. It can be fairly said that pleading is not evidence. In such a situation the workman has a good case in his favour and the reference is to be answered in his favour. The learned counsel of the management in his written argument has pointed out certain evidence adduced by the workman, but in my opinion those are not sufficient to treat him as a Supervisor.

9. In view of my above conclusion it is now to be decided as to what benefit he is entitled to get from the management. There is sufficient evidence that the workman is denied employment from the 26th June 2001. The plea of the management as discussed above is rather lending strength to conclude that employment was refused to the workman from the above date. If an employee is removed from service without extending the benefits as visualised under the Act, then the workman is entitled to get full benefits provided in it. So the removal of the workman from the management is illegal and for ends of justice, the workman is to be reinstated in service. The conditions precedent to remove him are not complied in this case. So he is to be reinstated in service with full back wages. Hence the following Awards :—

AWARD

The reference is answered on contest in favour of the workman and against the management. The termination of services of Md. Latif, Chief Mechanic by the management of M/s Lath Automobiles with effect from the 26th June 2001 is held to be illegal and unjustified. The management is directed to reinstate the workman in service with full back wages within two months hence.

Dictated and corrected by me.

P. K. MAHAPATRO
26-10-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MAHAPATRO
26-10-2006
Presiding Officer
Labour Court, Sambalpur

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