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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd December 2007

No. 13000—li/1(J)-19/2004-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th July 2007 in Industrial Dispute Case No. 1/2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of District Transport Manager (Admn.), M/s Orissa State Road Transport Corporation, Berhampur, Dist. Ganjam and its workman Smt. Bhagyabati Satapathy, was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 01 OF 2005

Dated the 26th July 2007

Present :

Shri G. K. Mishra, o.s.J.s. (Jr. Br.),
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

District, Transport Manager (Admn.), . . . First Party—Management
M/s. O.S.R.T.C., Berhampur,
Dist. Ganjam.

Vrs.

Smt. Bhagyabati Satapathy, .. Second Party—Workman
 C/o Shri Kailash Ch. Mishra,
 At Nehru Nagar,
 Berhampur,
 Dist. Ganjam.

Under Sections 10 and 12 of the Industrial Disputes Act, 1947.

Appearances :

For the Management	..	Shri G. P. Jena, Law Officer, O.S.R.T.C., Bhubaneswar.
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For the Workman	..	Self
Date of Argument	..	12-7-2007
Date of Award	..	26-7-2007

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following disputes vide their Order No. 1122(5), dated the 1st February 2005 for adjudication of the following disputes :—

SCHEDULE

“Whether the termination of services of Smt. Bhagyabati Satapathy, Water Woman w.e.f. the 17th February 2004 by the management of M/s O.S.R.T.C., Berhampur is legal and/or justified ? If not, what relief is Smt. Satapathy, entitled to ?”

AWARD

2. This is a case seems to have been originate doubt of the reference submitted by the Government in order to determine the issue with regard to the justifiability of the termination effected by the management in respect of the workman. The management seems to have basically challenged the plea of the workman on the maintainability of the issue on the score of the fact that the service of the workman being not warranted resulting in the termination of the workman which is justified under the circumstances. There is no dispute as regards the employment of the workman on the basis of the rehabilitation scheme undertaken by the management w.e.f. the 23rd June 1994 on the basis of daily wages and the employment continued till July, 2003 when her service was terminated. There is no indication in the appointment letter that the workman was engaged for a specific period as a casual worker.

The service of the workman seems to be in continuity till she was terminated by the Management. Presumption can be drawn on that score that she has worked or rendered her service for a period of more than 240 days. The Management before taking any action should have considered the background of the workman and sustainability of her livelihood which is part and parcel of life guaranteed in Article 21 of the Indian Constitution for the purpose of mitigating the circumstances emanating out of the sad demise of her husband. She was employed on sympathetic ground by the management. Unless there is a chance of livelihood the workman would definitely be under starvation and her family members would be at stake. The directive principles of State Policy has also provided constitutional protection to the working person in respect of job security and other service condition. The condition under which the workman was employed was not for a specific period but continuous effect in order to give her chance to maintain her life as well as livelihood. The mere stipulation prescribed in the appointment letter cannot give rise to a presumption automatically that she would be subjected to terminated. The condition must be implemented in fair and justified manner. The authority concerned cannot take any action arbitrarily without giving an opportunity to the workman being heard. The rehabilitation scheme is worked out for the purpose of saving the life of the children of the deceased workman. On that score her service should be continued till alternative arrangement is substituted.

3. Apart from that the continuous service as initially contemplated in the order seems to have been baffled by the arbitrary act of the Management is not complying the true provisions of the law as enumerated u/s 25-F of the I. D. Act. The management seems to have not issued any notice or paid notice pay in lieu of the notice to be effected in respect of the workman. In absence of the compliance of the mandatory provision as prescribed u/s 25-F of the I. D. Act, the termination is held to be illegal and unjustified. Therefore the workman is entitled to reinstatement and full back wages.

4. It is contended by the Management that the Scheme evolved by the management has since been closed due to the scarcity of the buses for that score the service of the workman could not be procured. It is also contended that due to non-vacancy of post and non-availability of work opportunity, there was no livelihood of giving further employment to the workman. There is no indication at the very inception of appointment that she was engaged on short term. Since engagement was given on sympathetic ground for sustaining her livelihood on the aftermath of her husband's death, the employment of the workman is highly necessary. The contention of the management cannot be easily taken into consideration for the protection of the interest of the workman. Unless she is reinstated, it will be very difficult on her part to maintain her livelihood. Therefore in consequence upon the illegal termination, the workman is entitled to reinstatement with 20% of back wages.

ORDER

5. The Award is passed in favour of the workman. The management is directed to reinstate the workman on the basis of the daily wage basis with payment of 20% of back wages.

Dictated and corrected by me.

G. K. MISHRA
26-7-2007
Presiding Officer
Labour Court, Jeypore
Koraput

G. K. MISHRA
26-7-2007
Presiding Officer
Labour Court, Jeypore
Koraput

By order of the Governor
P. MALLICK
Under-Secretary to Government