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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd December 2007

No. 13008—li/1(J)-32/2006-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. 4/2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of District Transport Manager (Admn.), Orissa State Road Transport Corporation, Berhampur and its workman Shri Bakhari Charan Pattnaik was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING LABOUR COURT,

JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE NO. 4 OF 2007

Dated the 26th July 2007

Present :

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

Between :

The District Transport Manager (Admn.) . . . First Party—Management
Orissa State Road Transport Corporation,
Berhampur
Dist. Ganjam.

Versus

Its workman .. Second Party—Workman
 Shri Bakhari Charan Pattnaik
 S/o Santha Charan Routray
 At. Saralapada
 P.O./P.S. Balugan
 Dist. Khurda

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

Appearances :

For the First Party—Management	..	Shri Gopal Jena, Law Officer, O.S.R.T.C.
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For the Second Party—Workman	..	Shri K. Ch. Mishra Advocate, Berhampur
Date of Argument	..	12-7-2007
Date of Award	..	26-7-2007

1. The Government of Orissa in the Labour and 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. 11452(4), dated the 29th December 2006 for adjudication of the following disputes :—

SCHEDULE

“Whether the termination of service of Shri Bakhari Charan Pattnaik, Ex-Driver by the District Transport Manager (Admn.), Orissa State Road Transport Corporation, Berhampur, w.e.f. dated the 12th June 2002 is legal and/or justified ? If not, to what relief the workman is entitled ?”

AWARD

2. This is a case originated out of the reference submitted by the Government for determination of the justifiability of the termination entertained by the management (O.S.R.T.C.) coupled with any relief to be entitled, which has been totally disputed on the plea of liguity of the termination emerged out of valid notice effected by the Management observing the long absence committed by the workman.

3. They are appears ample evidence adduced by the workman which cluster documents furnished thereto for substaciating the claim against the termination acted by the management. The workman though appointed in the year of 1972, he worked sincerely without interruption till the termination is effected. Unfortunately, on health ground he was constrained to take leave which was communicated to the authority vide Ext. 1 and the application submitted by him seems to have been endorsed by the office on the 1st December 2001 suggesting to allow the workman to be on leave on health ground. The contention of the management that he remain unauthorised absent is considered to be quite unjustified and unexpected. The workman with an intention to continue the leave he sent another application alongwith medical

certificate as shown in Ext. 2 vide Regd. A/D as shown in Ext. 2/1 for extension of leave up to dated the 13th March 2002. It becomes clear that, on good faith such application was submitted in continuation of his earlier leave to have been sanctioned by the authority. The official staff is appear to have surpress the letter without pressing before the authority for approval for which the authority was kept at dark about the condition of the workman. His joining report submitted vide Ext. 3 is allege to have not been accepted nor was allowed him to join notwithstanding the fitness certificates furnish that to. And the representation submitted by him for drawing the higher authority for consideration of his matter as shown in Ext. 4. That apart, he had launched a strike against the adamant behaviour of the authority is not allowing him to join, the matter of which has been published in a Newspaper vide Ext. 5. Still the management appears to have slept over the matter without initiating any steps for conciliation. The authority though alive of the matter did not take any appropriate action either to allow or disallow the workman to do the work. The process adopted by the workman is in harmony with the rule of conduct establish under the Service Code. The contention of the management that, prior permission to leave the headquarter is required under rule is considered to be not tenable as the workman has properly discharge his duty to intimate the authority in advance for sanction of leave, which has been deffered otherwise the intention is based right larged from the conduct of the authority. The workman has also extended the leave by Regd. post which is denied to have been received by the authority. Presumption can be laid that, once a letter is dropped under a specified scheme through the post office as shown in Ext. 2/1 proper receipt of the letter by the authority can be attributed with. Nothing can be take differently that, correspondence made by the workman has been properly received by the authority. The unauthorised absence as alleged can not be easily imputed against the workman and the cause of absent shown by the workman is a matter of course is genuine and also reasonable. Nothing adverse has been compelled by the management to dislodged the truth expressed by the workman. The workman seems to have served in his capacity in continuity since 1972 which may be construed to have covered within the statutory period of 240 days so as to attrack the definition u/s 2 (oo) and (bb) of the I. D. Act. Irrespective of the nature of work done by the workman if not otherwise punished, termination can not be effected without compliance of Section 25-F of the I. D. Act which is clearly mandatory. The management appears to have taken steps to call for an explanation in light of a notice for his unauthorised absent which will ultimately, in default, entail, ipso facto termination. The explanation relates to different period of absent in which alleged absent forms a part thereof. The management has not given any cogent evidence to substatiante the allegation of absence otherwise than the absence for which termination was effected. Not a single record has been produced to show his unauthorised absent. Nor any step has been taken to call for explanation. The authority remain insensitive to the matter thereby giving way to the workman for taking advantage of that. The claim of the workman to be a habitual absentee does not cold any water unless proved sufficiently to it's justifiability. The matter of absent is not a sole ground for termination, unless, conduct of the workman shown to be adverse and prejudicial to the

interest of the business. I have already discuss the genuiness of the action utilise by the workman and the representation of the workman has not been validly taken in to cosnsideration. The superficial rejection of the representation without going to the genuineness of the cause and without scurtinise the materials as adduced by the workman is contrary to the law violative to the natural justice. The redress ventilated by the workman was not adjudge with closet, circumspetion and abundant care. The act entertain by the management is humigical and arbitrary. He has employed unfair labour practice with a view to depriving him from the right of livelihood granted by the Indian Constitution as a Fundamental Rights. Without right to livelihood, there will be no effective right to live, which is a sentinel to the right to survival. Where right to livelihood is dependant on the survival, the management should must be acutitous and became prudent before taking any action of termination. This aspects having not been taken into consideration by the management, the action taken by him is quite perverse as well as illegal.

4. The illegality of termination will certainly to the reinstatement of the workman as well as back wages. The workman has already taken supperannuation in the mean time and no fruitful purpose would be served if the relief of reinstatement is granted. In the matter of back wages the workman has voluntarily forgo the claim of the back wages except a lump sum of compensation, as proposed by the management. The management is agreed to provide compensation at a lump sum of Rs. 9,000 to the workman for the loss of his service. The workman having accepted the proposal to received the amount. He is only entitled to Rs. 9,000 towards compensation.

ORDER

5. The reference is answered and the Award is passed accordingly. The management be directed to pay the compensation amount within three months, otherwise the workman be at liberty to take the appropriate authority for realisation of the same.

Dictated and corrected by me.

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

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

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