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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th December 2007

No. 13236—li/1(J)-14/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th August 2007 in Industrial Dispute Case No. 7 of 2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of the Project Administrator, Upper Indravati Hydro Electric Project, At/P.O. Khatiguda, Dist. Nabarangpur and its workman Shri Manoj Bagh 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. 7 OF 2006

Dated the 17th August 2007

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

Project Administrator, .. First Party—Management
Upper Indravati Hydro Electric Project,
At/P.O. Khatiguda, Dist. Nabarangpur.

Versus

Its Workman .. Second Party—Workman
Shri Manoj Bagh,
Village Podapalla,
P.O. Monghagaon,
Dist. Nabarangpur.

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

Appearances :

For the Management	..	Shri Pratyush Ranjan Das, Administrative Officer.
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For the Workman	..	Self
Date of Argument	..	16-8-2007
Date of Award	..	17-8-2007

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. 6465, dated the 18th July 2006 for adjudication of the following disputes :

SCHEDULE

“Whether the termination of services of the workman Shri Manoj Bagh, ex-Contingent Khalasi with effect from the 14th November 1999 by the erstwhile Executive Engineer, Indravati Development Division, No. II and subsequently by the Project Administrator, Upper Indravati Hydro Electric Project, Khatiguda with effect from the 6th September 2000 is legal and/or justified ? If not, to what relief Shri Bagh is entitled ?”

AWARD

2. This is a case originated out of the reference submitted before the Court by the Government for determination of an issue regarding the validity of the retrenchment effected by the management in respect of the workman coupled with the relief to be granted in consequence of thereto. The management in supporting the validity of the termination contended that, the person under whose control the workman was working being abolished in consequence of his transfer to separate place, the service of the workman was no more required to be considered as a surplus resulting in his termination, with no further engagement, out of no requirement. It is further averred that, no junior engaged after the workman was ever given any engagement in the establishment. The management solely concentrates on the point that, the workman being engaged as casual labourer and non-removal of the employment being not amounting to retrenchment notice is not required to serve on him. Thereby termination effected on the workman is justified.

3. It is undisputed that, the workman was engaged as a contract labourer with renewal from time to time with artificial and negligible break serving under different officers at different time under the management. The workman was lastly attached to one K. N. Druba, Junior Engineer and after the transfer of such officer he was considered surplus for non-availability of the work thereby subjected to the retrenchment. The workman being aggrieved with the order of the termination filed a case in the State Administrative Tribunal on which basis the management was pleased to re-employ him with effect from the 11th August 2000 by attaching him to the Project Administrator, UIHIP, Khatiguda for a period of 89 days. Before expiry of the period of engagement he was ordered to be disengaged after the expiry of 27 days. The termination at two stages in the years 1999 and 2000 became the subject matter of the issue under reference.

4. The workman is admitted to have worked under the management in the year 1999 preceding to the order of termination for a period of 374 days and the like manner 325 days

in the year 1996 excepting some less working days consumed during the period of the years 1995, 1997 and 1998. The bone of contention raised by the management basing upon the point that, the person under whom the workman was attached having transferred to other places and no substitute was provided, the service of the workman was no more required being treated as surplus. There is nothing indicated in the written statement or suggested in the argument that, the entire project was abolished for the non-availability of the work. The transfer of one of the officer working under the Project cannot automatically be construed to be equivalent to closure of the establishment. The closure of establishment would have led and inference otherwise to treat the workman as surplus. The situation in the instant case is different which is not coming under the purview of the closure. The workman could have engaged under any other officers or under the Head of Department like the posting conferred on the workman in the month of September, 2002. Furthermore, the workman being senior to some of the workman engaged later should not have subjected to termination on the principles of "First Come Last Go". Some workmen like Shri S. K. Pujhari and Smt. Kumudini Patnaik are shown to be engaged on the 1st March 1996 and the 7th June 1996 and Shri Krushna Gouda on the 1st October 1995 as revealed from the document marked Ext. F submitted by the management. It is the duty encumbered on the management to prepare a list of workman engaged according to the date of their engagements. This preparation of list is mandatory on the part of the management to arrange employment as well as disengagement taking into consideration of the list in light of the principle "First Come Last go". At the time of termination being effected the management could have verified the check list and could arrange the engagement of the workman disengaging any of the three persons engaged later to his appointment as reveal under Ext. F. The engagement of the above three persons have been remained unchanged. The workman had many a time represented before the authority being recommended by the Executive Engineer as shown in Ext. E which seems to have been turned down by the management. On the plea that, preparation of list his service was found no more. This reasoning given by the management is purely ludicrous. He could have earlier prepared such list, so that the right of the employment of the workman would have been avoided. Without incurring to unnecessary litigation, the management's contention regarding the non-necessity of the notice is not in harmony with the provisions of the law as per Section 2(bb) though termination cannot be treated as a retrenchment in case of casual labourer, daily rated labourer but the right of employment or engagement is fully and completely protected under Section 25-F of the Industrial Disputes Act. The applicability of the aforesaid provision has purely eclipsed the definition under Section 2(dd) of the Industrial Disputes Act. If a workman is shown to be in continuous service for a period of more than 240 working days in a calendar year preceding the termination notice should be served on such workman or notice pay or compensation lieu of the notice. Since the management has admitted the continuous service of the workman for a period of 374 days compliance under Section 25-F is necessary or highly required in order to protect the interest of the workman. The termination without following the principle of natural justice prescribed under aforesaid Section is considered to be illegal and inoperative in law.

5. As regards the termination effected on the 6th September 2000 the workman was compelled to withdraw his work by the subsequent order passed by the management before the enquiry of the period indicated under Ext. H which has given order of appointment for 89 days effective from the 11th August 2000. No reason was assign for reduction of the working days from 89 days to 27 days as reveals from Ext. J. Once a term of contract is effected with the knowledge of workman the same cannot be rescind subsequently without any reasonable cause. If any reduction of work is intended to be effected the workman should have given opportunity on that matter for which is obligated on the part of the management to issue

notice for his retrenchment from the service. The workman was given employment taking into the availability of the work as he was attached to the Head Office under the control of Project Officer, UIHEP, Khatiguda. Nothing adverse is shown against the workman for loosing faith of the employer. In absence of any compliance as required under law the action of the management can be said to be actuated with *mala fide* intention in order to deprive the right of the workman from the employment. The workman has accrued right by virtue of Fundamental Rights to livelihood which is a part and partial of Right to Live as guaranteed under 21 of the Indian Constitution. Furthermore the Directive Principles of State Policy has also provided special protection for the security of the service of the workman as well as the condition of such service. The workman having rendered on interrupted service to the management for a definite period, he should not be deprived of such opportunity which will lead to him and his family to the stage of starvation. The management should be consus about the condition of the workman before taking any action and should not ignore the beneficial provision enacted by the legislature. The management in arbitrarily terminated his service has acted unfair labour practices in order to weed out the workman from the employment field. This act is totally unfair and unjust. The ulterior intention of the management is very much writ larged from the conduct shown from the above circumstances. Therefore, the second part of the termination is also considered to be illegal and unjust. The consequence of illegal termination will lead for reinstatement and full back wages. The workman should be engaged as daily labourer by the management as was engaged vide Ext. J in the Head Office without prejudicing his interest and the workman is found to have delayed in presenting the reference for adjudication. Once a stipulation is prescribed for making reference the delay cannot be condoned as 137 Limitation Act is not applicable to the Labour Court, but despite the non-application of the above Limitation Act, the Court's power is not fettered and the Court can dispense with the back wages till the period of reference and can grant back wages from the date of reference till the reinstatement is effected. Accordingly, the workman is entitled to reinstatement and full back wages from the period of reference.

ORDER

The reference is answered accordingly. The management is directed to reinstated the workman on daily wage basis and to pay full back wages from the date of reference till reinstatement of the workman.

Dictated and corrected by me.

G. K. MISHRA
17-8-2007
Presiding Officer
Labour Court, Jeypore, Koraput

G. K. MISHRA
17-8-2007
Presiding Officer
Labour Court, Jeypore, Koraput

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