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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd April 2007

No.3046/1i/1(B)-37/1996/L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 27th January, 2007 in I.D. Case No. 29/1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Jajpur Road Electrical Division, Jajpur and its workman Sri Purastam Palai was referred for adjudication is here by published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT: BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 29 OF 1997

Dated The 27th January 2007

Present:

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

Between:

The Management of Jajpur Road
Electrical Division, Jajpur

First—Party Management

And

Its Workman
Shri Purastam Palai

Second—Party Workman

Appearances:

Shri B.C. Bastia, Advocate

For First —Party Management

Shri S. Mohapatra, Advocate

For Second—Party Workman

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of Jajpur Road Electrical Division, Jajpur and its workman Shri Purastam Palai under Notification No. 3007/LE., dated the 18th July 1985 vide Memo. No. 7072(6)/LE., dated the 12th June 1997 for adjudication by this Court.

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

“Whether the termination of service of Shri Purastam Palai, N.M.R. Mangalpur Electrical Section, Mangalpur with effect from 17th June 1992 by the Management of Jajpur Road Electrical Division, Jajpur Road is legal and/or justified ? If not, to what relief Shri palai is entitled ?”

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

The workman was working as N.M.R. under the Management from the year 1980 till 17th June 1992. During the said period the workman was engaged as D.L.R./C.L.R./N.M.R. by the Management for construction works of N.T. Lines and L.T. Lines. The workman was under employment of the Management continuously till 10th November 1984 and thereafter he was engaged by the Management since 15th November 1984 till 30th June 1985. Although there was sufficient work available under the Management and many workers junior to the present workman were provided with work, the Management refused employment to the workman and did not pay any heed to the request made by the workman. The workman raised an industrial dispute before the authorities of the Labour Department but as the dispute was not referred by the State Government to the Labour Court, the workman took shelter of the Hon'ble High Court of Orissa in a writ petition vide O.J.C. No. 1509 of 1991. The Hon'ble High Court of Orissa vide order dated the 31st January 1995 directed the Assistant Labour Officer to complete the conciliation proceeding within three months. After such direction of the Hon'ble High Court of Orissa, the State Government referred the Industrial Dispute to the Labour Court and hence this case.

4. The Management in its written statement has denied the averments made by the workman and has contended that although initially the workman took a stand that his service has been terminated with effect from 30th June 1985, subsequently he changed his stand after the present reference was made. The workman took advantage of the reference of the case by the State Government wherein the Assistant Labour Officer-*cum*-Conciliation Officer had wrongly mentioned that the service of the workman had been terminated with effect from 17th June 1992 and made a false claim that he (workman) was also working under the Management during the period from 1st January 1986 to 31st August 1997. The workman had never been engaged by the Management at any time continuously and he had never worked under the Management for a period of 240 days prior to the one year preceding the alleged date of termination. The workman was only a daily wage labourer and he had been engaged by the Management only intermittantly as and when work arose. Since the workman was only a daily wage labourer and was never in continuous service as defined under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act), he was not a workman entitled to get any benefit

under Section 25-F of the I.D. Act. The service certificates furnished by the workman had not been issued by any competent authority authorised by the Management and therefore, those certificates are of no avail to the workman. As and when there was work under the Management, the workman was being engaged for a temporary period as a casual labourer and he was being dis-engaged when the specific work was over and therefore, the Management was not obliged to provide work to a casual worker on demand and therefore, the dis-engagement of the workman from work does not constitute retrenchment under Section 2(oo) of the I.D. Act. On these averments the Management has sought for rejection of the prayer of the workman.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the date of termination is 30th June 1985 or 17th June 1992.
- (ii) Whether the termination of service of Shri Purastam Palai, N.M.R. Mangalpur Electrical Section, Mangalpur with effect from 17th June 1992 by the Management of Jajpur Road Electrical Division, Jajpur Road is legal and/or justified ?
- (iii) If not to what relief Shri Palai is entitled ?

6. The question as to whether the workman was in continuous service as defined under Section 25-B of the I.D. Act is of paramount importance. Unless and until such continuous engagement under the Management is proved by the workman any dis-engagement of the workman from his work can not constitute retrenchment as per Section 2(oo)(bb) of the I.D. Act. Onus lies heavily on the workman to prove these facts convincingly before this Court. In the context the decisions of the Hon'ble Supreme Court in the cases of Range Forest Officer *Vrs.* S.T. Hadimani reported in 2002 L.L.J. (I) S.C. 1053 and Batla Co-operative Sugar Mills Limited *Vrs.* Sowaran Singh reported in 2006 (I) L.L.J. S.C. 12 can be relied on. Thus it is crystal clear that burden of proving that he had worked for 240 days in the proceeding year from the date of his alleged termination lies squarely on the workman. It is now to be seen from the evidence on record and the materials proved by the workman as to whether he has discharged his onus in the matter. The workman has examined himself as W.W.1. In his evidence W.W.1 has deposed that he worked continuously from the year 1978 as N.M.R. till July, 1979 and thereafter from August, 1979 till November, 1981 and in this way from November, 1982 to July, 1984 and thereafter from 15th September 1984 to 30th June 1985 and again from the Year 1990 to 1992. In this context the workman has proved Exts.1 to 4 which are work certificates. Ext.1 is a work certificate for the period from 1st January 1981 to 30th June 1981 i.e. for a period for 181 days. The work certificate Ext.1 has been issued by M.W.2 who was the Junior Engineer during the relevant period and under whom the workman was working as N.M.R. So far as Exts.2 to 4 are concerned, those have not been duly proved and all these documents Exts.2 to 4 do not contain any office seal and to top it all. Ext.4 does not specify the exact period for which the workman had worked. These Exts. 2 to 4 do not have any evidentiary value to substantiate the claim of the workman W.W.1. So far as the documents Exts.A to A/2 are concerned, those documents do not specify any period of work done by the workman and only contain the signature of the workman which

appear to have been appended subsequently by the workman to facilitate using of the same as evidence in his favour. Even if the documents Exts.A to A/2 are accepted in its entirety, the same do not disclose that the workman had worked for the requisite period of 240 days as required under Section 25-B of the I.D. Act to constitute continuous work. Thus the workman W.W.1 has signally failed to prove that he had worked for a period of 240 days preceding the alleged date of termination on 27th June 1995. In the absence of any such proof the termination of the workman by way of refusal of work can not be said to be retrenchment under Section 2(oo)(bb) of the I.D. Act and therefore, the workman is not entitled to any of the benefits enumerated under Section 25-F of the I.D. Act. On his own admission W.W.1 was working as N.M.R. and he has signally failed to have worked continuously for the requisite period required under the provisions of the I.D.Act and therefore, it was not necessary on the part of the Management to follow the procedure laid down under Section 25-F of the I.D.Act when the workman was dis-engaged from work. Therefore, the termination of service of the workman does not constitute retrenchment within the meaning of Section 2(oo)(bb) of the I.D. Act and consequently the workman is not entitled to any benefit of reinstatement in service or back wages or of any other kind of benefits.

The reference is thus answered accordingly.

Dictated and corrected by me

S.K. Mohapatra
dt. 27-01-2007,
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
dt. 27-01-2007,
Presiding Officer,
Labour Court.
Bhubaneswar.

By order of the Governor

N.C. RAY

Under-Secretary to Government