

The Orissa Gazette

EXTRAORDINARY
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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 16th May, 2007

No. 4826—1i/1-(BH)-20/93/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 26th March, 2007 in I.D. Case No. 126/94 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial dispute between the management of M/s. Sir Daniel Hamilton Trust Estate, Baripada, District Mayurbhanj and its workman Shri Bichitra Kumar Nayak was referred for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 126 of 1994

Dated the 26th March, 2001

Present :

Shri S. K. Mohapatra, (OSJS), (Jr. Br.)
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of M/s. Sir Daniel Hamilton Trust, Baripada, .. First-party—Management

And

Its workman ,
Shri Bichitra Kumar Nayak, .. Second-party—Workman

Appearances :

Dr. S.C.Das .. For the first-party Management

Dr. B.K.Nayak .. For the second-party workman himself

AWARD

The Government of Orissa in the Labour and Employment Department referred the present dispute between the management of M/s. Sir Daniel Hamilton Trust Estate, Baripada and its workman Sri Bichitra Kumar Nayak under Notification No.14679/L.E. dated. the 21st October, 1991 vide Memo No. 7595 (5)/L.E. dated. 16th June 1994 for adjudication by this Court.

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

"Whether the termination of services of Sri Bichitra Kumar Nayak, with effect from 31st May, 1990 by the Management of M/s. Sir Daniel Hamilton Trust Estate, Baripada is legal and/or justified ? If not, what relief Sri Nayak is entitled to ?"

3. Shorn of all unnecessary details the case of the workman in brief is as follows :

The workman was initially appointed as Controller of Sir Daniel Hamilton Trust Estate, Baripada (hereinafter referred to as the management) on a consolidated salary of Rs.350/- per month with effect from 1st June, 1975. Subsequently the post of the workman was designated as Manager on monthly salary of Rs.1,150/- inclusive of pay, house rent, fixed T.A. etc. on 1st June 1990 the management terminated the services of the workman on payment of three months salary in lieu of notice. The workman in his statement of claim has contended that the termination of his service is based on malafide, arbitrariness and capriciousness. On all these averments, the workman has claimed the benefit of reinstatement in service alongwith back wages.

4. The written statement of the management is very short and brief. In its written statement the only point raised by the management is that Sir Daniel Hamilton Trust Estate, Baripada being a Charitable Institution is not an 'industry' and therefore, the present case is not at all maintainable. In the written statement filed by the management the details as regards employment of the workman and the termination of his service etc. has not been denied.

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

ISSUES

(i) Whether the termination of services of the second-party workman with effect from 31st May, 1990 by the first-party management is legal and/or justified ?

(ii) What relief, if any the second-party workman is entitled to ?

6. The facts as pleaded by both the parties give rise to very important question which need answer before a decision can be made as to whether the termination of service of Sri Bichitra Kumar Nayak in question was legal and justified or not.

To deal with first important question i.e. as to whether the management organisation had engaged itself wholly or substantially in any charitable, social or philanthropic service so as to get an exemption under Section 2 (j) (b) (4) of the Industrial Disputes Act, 1947. In this context there is virtually no evidence on record. The only thing that is available in regard is the name of the organisation i.e. Sir Daniel Hamilton Trust Estate (Charitable). In the evidence of M.W.1 there is no whisper about any substantially charitable or philanthropic work of the organisation in question. Mere pleadings of a party by itself can not take the place of legal proof. Just because the organisation has the word 'Charitable' appended to its name it can not claim exemption under section 2 (j) (b) (4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D.Act.).

On the other hand, document Exts.5 to 5/g proved by the workman W.W.1 clearly shows that the management organisation had engaged itself in sale of agricultural products and close scrutiny of the documents shows that the income of the management was from sale of Sabai grass, fishes etc. The letter Ext. 4 proved by the workman shows that besides these the management organisation also had mango farms which was being given in lease to others to earn more profits. Thus the activities of the management organisation as available from the materials on record was mainly from plantations of sabai grass and mango besides pisciculture and therefore, the exemption available under section 2 (j) (b) (1) of the I.D.Act is also not available to the management to exempt it from the term 'industry' as defined under section 2 (j) of the I.D. Act. It is immaterial as to whether the management organisation is a profit making organisation or not. Thus the evidence on record gives clear indication that the activities of plantations being carried on by the management organisation was with a motive to make profit as evident from Ext. 4 and it had engaged itself to sale of its produces from plautatious etc. as defined under section 2 (j) (b) of the I.D.Act. Moreover it is admitted fact that the workman was an employee of the management organisation and therefore, there was employee and employer relationship between the workman and the management organisation. In this context the decision of the Hon'ble Apex Court in the case of Bangalore Water Supply and Swerage Board V. A. Rajapa and others reported in AIR SUPREME COURT 548 may be relied on. Therefore, there can be no escape from the conclusion that the management organisation is an industry as defined under section 2 (j) of the I.D.Act.

7. The second most important question that arises as to whether Sri Bichitra Kumar Nayak was a workman on the date of termination of his service i.e. on 31st May, 1990 within the meaning of section 2 (s) of the I.D. Act. In this context the workman W.W.1 himself has stated that he had been engaged as Controller with effect from 1st June, 1975 on a consolidated salary of Rs.350/- per month and subsequently he had been engaged as Manager on a monthly salary of Rs.800/- with effect from 4th August, 1980 till 1st June, 1990 when he was retrenched. In the cross-examination. W.W.1 has deposed that under Ext.2 dated 15th November, 1989 his managerial powers has been withdrawn W.W.1 has also proved Ext.3 under which the post of Manager was abolished with effect from 4th February 1990. In his cross-examination W.W.1 has stoutly defied the suggestion that he had not accepted the order dated the 4th February, 1990 vide Ext. 3 and did not join as an Assistant. The witness M.W.1 in his evidence has simply stated that prior to termination of his service, the workman was offered the post of Assistant to which the workman did not accept. Save and except this matter bald statement of M.W. 1 there is no evidence to show that the workman had continued as Manager of the management organisation even after the orders under Exts.2 and 3 when under Ext.3 the post of Manager was expressly abolished the question of workman continuing as Manager after the 4th February, 1990 does not arise at all. Further more vide order dated the 15th November, 1989 as noted in Ext.2 the managerial powers of the workman had been expressly withdrawn with effect from dated the 15th November, 1989. Thus it can be safely concluded that on the date of termination i.e. on 1st June, 1990 the workman namely Sri Bichitra Kumar Nayak was never a Manager under the management organisation but he was a workman as defined under section 2 (s) of the I.D. Act. Documentary evidence Exts.2 and 3 would over ride all other oral evidence on record.

8. After answering two important questions as noted above, it is to be seen as to whether the termination of service of the workman W.W.1 was legal or illegal. In this context both parties have admitted that till the date of his termination i.e. till 1st June, 1990 the workman W.W.1 was working on a monthly salary basis under the management. There is neither any pleading nor any evidence about discontinuance of service of W.W.1 prior to 1st June, 1990 and therefore, it

admits of no doubt that the workman was in continuous service under the management within the meaning of section 25-B of the I.D.Act and therefore the management was legally bound to follow the procedure as laid down under section 25-F of the I.D. Act as conditions precedent to retrenchment of the workman. In the instant case the only material available on record is that the workman had been given three months salary in lieu of notice. By payment of such three months salary the condition as laid down under section 25-F (a) of the I.D.Act. may have been fulfilled, but the management did not follow the provisions under section 25-F (b) of the I.D. Act and therefore, the retrenchment of the workman on that score was illegal. In the instant case the termination of service of the workman had not been inflicted by way of any punishment due to any disciplinary action and it was obviously prior to reaching the age of superannuation of the workman concerned and therefore, the retrenchment of the workman was not in terms with section 2 (oo) of the I.D.Act. and therefore, the retrenchment in question was not only illegal but was also unjustified.

9. Now the question is as to what relief the workman is entitled to ? When the workman W.W.1 deposed in the Court in January, 2000 he was already 66 years old as stated by him in the Court. Thus the workman has already reached the age of superannuation since long and therefore, there can not be an order of reinstatement in service. The workman is only to get back wages and compensation for his retrenchment. In the facts and circumstances of the case, instead of going into minute details it would meet the ends of justice to order a lump sum amount of Rs.50,000/- (Rupees Fifty thousand) to be paid by the management to the workman towards compensation and back wages.

10. Hence Ordered :

The termination of services of the workman Sri Bichitra Kumar Nayak with effect from 31st May, 1990 by the management of M/s. Sir Daniel Hamilton Trust Estate, Baripada was illegal and unjustified and therefore, the management is to pay a sum of Rs.50,000/- (Rupees fifty thousand) only to the workman towards his compensation and back wages.

The reference is answered accordingly.

Dictated and corrected by me.

S.K.MOHAPATRA
26-3-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K.MOHAPATRA
26-3-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

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

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LAW DEPARTMENT

NOTIFICATION

The 14th December 2007

No. 13978-I-Legis-1/07/L—The following Rules of Government of India made by the Ministry of Law & Justice, (Department of Legal Affairs) on the 31st October, 2007 and published by the aforesaid Department in the Gazette of India Extra Ordinary, Part-II, Section-3 Sub-section (i) dated the 31st October, 2007 is hereby republished for general information.

By order of the Governor

B.K.PATEL

Principal Secretary to Government

[Here insert Notaries (Fourth Amendment) Rules, 2007.]

MINISTRY OF LAW AND JUSTICE

(Department of Legal Affairs)

NOTIFICATION

New Delhi, the 31st October, 2007

G.S.R.686 (E).—In exercise of the powers conferred by Section 15 of the Notaries Act, 1952 (53 of 1952), the Central Government hereby makes the following rules further to amend the Notaries Rules, 1956, namely:—

1. (1) These Rules may be called the Notaries (Fourth Amendment) Rules, 2007.
(2) They shall come into force on the date of their publication in the Official Gazette.
2. In the Notaries Rules, 1956 (hereinafter referred to as the said rules), after rule 8A, the following rules shall be inserted, namely:—

“8B. Renewal of Certificate of Practice.—The certificate of practice issued under sub-rule (4) of rule 8 may be renewed for a further period of five years on payment of prescribed fee. An application for renewal of Certificate of Practice shall be submitted to the appropriate Government before three months from the date of expiry of its period of validity :