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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 15th October 2008

No.10814-li/1(B)-247/1993/LE.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 11th September, 2008 in Industrial Dispute Case No. 73/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Bhubaneswar Development Authority, Bhubaneswar and their workmen represented through Bhubaneswar Development Authority Workers Association, Bhubaneswar was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 73 OF 2008

The 11th September 2008

Present: Shri P.C. Mishra, O.S.J.S. (Sr. Branch)

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between: Management of Bhubaneswar

Development Authority,
Bhubaneswar

.. First—Party Management

And

Their workmen represented
through Bhubaneswar Development
Authority Workers Association,
Bhubaneswar

(Plot No. 32, Ashok Nagar).

.. Second—Party workman

Appearances :

Shri L.K. Mohapatra, A.L.O.	.. For the First— Party Management
Shri N.K. Mohanty,	.. For the Second—Party workman
Authorized representative	

AWARD

Originally, the Government in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No.8658-li/1-(B)-247/1993/LE., dated the 18th July 1995, but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-li/21-32/2007/LE., dated the 4th April 2008.

“Whether the termination of services of Shri Ramesh Chandra Majhi and eight others (as per the list enclosed to the order of reference) by the Secretary, Bhubaneswar Development Authority, Bhubaneswar is legal and/or justified ? If not, to what relief they are entitled ?”

2. The case of the Second Party Workmen, represented through the Bhubaneswar Development Authority Workers’ Union in brief is that all the nine Second Party members were working under the First Party Management being employed in its Horticulture section since 1987 and all of them were working as Malis in the Gardens, Parks and Nurseries maintained by the First Party. It is the specific stand of the Second Party that after notification of the minimum wages by the State Government, they were all refused employment in the year 1991, which according to the Second Party amounts to termination of their services. It is asserted that while doing away with their services, the First Party has not followed the provisions of Section 25-F of the Industrial Disputes Act and so also the provisions of section 25-G of the said Act. It is also asserted that in place of the Second Party members the Management engaged fresh Workmen violating the provisions of section 25-H of the said Act. In the aforesaid premises, therefore, the Second Party Workmen have prayed for their reinstatement in service with full back wages.

3. The First Party Management in its written statement has stated *inter alia* that neither any engagement/appointment letter nor any disengagement letter were issued in favour of the Second Party Workmen. To fulfill its objective, the Management engaged daily labourers at different work sites on daily wage basis and therefore, it is pleaded that the Second Party Workmen are not entitled to any relief in the present proceeding.

4. On the basis of the pleadings of the parties, the following issues have been framed:—

ISSUES

- (i) Whether the termination of services of Shri Ramesh Chandra Majhi and either others (as per list enclosed to the order of reference) by the Secretary, Bhubaneswar Development Authority, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief they are entitled ?
5. In order to substantiate its stand, the Second Party union has examined one witness, but did not chose to adduce any documentary evidence. The Management, however, did not adduce either any oral or documentary evidence in the case.

Issue Nos. 1 & 2 :—

6. Before discussing the evidence on record, it is necessary to quote here the principles of law propounded by the Hon'ble Apex Court. In the decision reported in 2006 (108) F.L.R./213 (R.M. Yellatti Vrs. Assistant Executive Engineer), their Lordships of the Apex Court have held thus :—

“... the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the Workman stepping in the witness box. This burden is discharged upon the Workman adducing cogent evidence, both oral and documentary. In case of termination of a services of daily wages earner, there will be no letter or appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases the Workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self-serving statement made by the claimant/Workman will not suffice in the matter of discharge of the burden placed by law on the Workman to prove that he had worked for 240 days in a given year.”

In view of the aforesaid decision, it is to be examined now as to whether the claimants have led satisfactory evidence to the effect that they had all rendered continuous service of 240 days with the First Party Management prior to their disengagement from service so as to attract the provisions of Section 25-F of the Industrial Dispute Act. W.W. No.1 in his evidence has stated that he was working as N.M.R. Gardener (Mali) under the First Party with effect from 1987 on a daily wage of Rs.11/- and so also the other Workmen. He deposed that they were all working continuously till their services were terminated with effect from 20th February 1991. He further deposed that the Management

had not served any notice nor did it give any notice pay or compensation when they were retrenched. On behalf of all the Second Party members, W.W. No.1 has prayed for their reinstatement in service with full back wages. During cross examination he has admitted that they had not received any letter of appointment from the Management.

7. Excepting the evidence of W.W. No.1 no corroborative evidence is adduced to support the stand taken by the Second Party nor any documentary evidence is adduced in support thereof. The record also does not reveal that at any point of time the Workmen ever attempted to call for the relevant documents from the possession of the Management in order to substantiate their case. The continuity in their engagement having not been proved by the Second Party Workmen through any clear and cogent evidence, it is held that the provisions of section 25-F are not at all attracted. Similarly, although pleaded, the Second Party Workmen have not brought on record any evidence as to the violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act. The admitted fact being that all the nine workmen were engaged on daily wage basis and further in absence of any evidence that the work in which they were engaged is still available and is carried out by other persons, the claim of the Second Party members for reinstatement in service appears to be unjustified one.

8. In view of what has been discussed and stated above, it is held that the Workmen are not entitled to any benefit as claimed by them and consequently, the action of the Management is held to be legal and justified.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. Mishra, O.S.J.S. (Sr. Branch)

Dt. 11-09-2008

Presiding Officer,
Industrial Tribunal,
Bhubaneswar

P. C. Mishra, O.S.J.S. (Sr. Branch)

Dt. 11-09-2008

Presiding Officer,
Industrial Tribunal,
Bhubaneswar

By order of the Governor

K.C. BASKE

Under-Secretary to Government