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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th October, 2008

No. 10957-li/1(B)-243/1994/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 26th September, 2008 in Industrial Dispute Case No. 85/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Rastradip, Buxi bazar, Cuttack and its Workman Shri Krishna Mohan Panda was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 85 OF 2008

The 26th September 2008

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

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between: The Management of

M/s. Rastradip,
Buxibazar,
Cuttack

.. First—Party Management

And

Their Workman
Shri Krishna Mohan Panda,
At- Mission Road (Near Sailabala
Mahila College Gate),
Dist- Cuttack

.. Second—Party Workman

Appearances :

Shri D.C. Behera,
General Manager

.. For the First—Party Management

Shri K.M. Panda

.. The Second—Party Workman himself

AWARD

Originally the Government in the Labour & Employment Department had referred the following dispute for adjudication by the Labour Court, Bhubaneswar vide its Order No.12928-li/1-(B)-243/1994/LE., dated the 19th September 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 action of the employer M/s. Rastradip, Buxi Bazar, Cuttak in terminating the services of Shri Krishna Mohan Panda, Workman with effect from 10th December 1993 is legal and/or justified ? If not, what relief he is entitled to?”

2. To state briefly, the case of the Second Party Workman (hereinafter referred to as “Workman”) is that he was working as a Machine-man under the First Party Management (hereinafter referred to as “Management”) since 1985. He asserts that although he was working as highly skilled machine operator, but the Management was paying him a low salary @ Rs. 1500/- per month and Rs. 200/- to Rs. 300/- towards his over time wages. According to the Workman, when he requested for enhancement of his salary, the Management without any rhyme or reason terminated his service with effect from 10th December 1993 without complying the provisions of section 25-F of the Industrial Disputes Act (for short “Act”). The Workman in the premises, therefore, has prayed for his reinstatement in service with full back wages.

3. While denying the assertions of the Workman, the Management filed its written statement pleading *inter alia* that the Workman was never an employee of the Management and it is falsely pleaded that he had worked with the Management from 1986 to 1994. According to the Management, it is a non-profit making organization and whatever work it is undertaking is being done by the members of the society and not by any salaried employees. The claim of the Workman that he was receiving a monthly salary of Rs. 1500/- is pleaded to be a false plea by the Management. The Management, in the premises, has prayed to answer the reference in the negative.

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

ISSUES

(i) Whether the action of the employer M/s. Rastradip, Buxi Bazar, Cuttak in terminating the services of Shri Krishna Mohan Panda, Workman with effect from 10th December 1993 is legal and/or justified ?

(ii) If not, what relief he is entitled to ?

5. The Workman in order to substantiate his claim has examined three witnesses including himself and brought on record a document marked Ext.1. The Management, on the other hand, has examined one witness from its side and did not adduce any documentary evidence.

6. Issue Nos. 1 & 2 :—

It is a well established notice of law that it is the claimant who has to lead evidence to show that he has worked for more than 240 days under the concerned Management in order to attract the provisions of section 25-F of the Act. In the decision reported in 2005 (105) FLR (S.C.) page-383 (Bank of Baroda Vrs. Ghemarbai Harjibhai Rabari), their Lordships held that “while there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the Workman who claims to be a Workman, the degree of such proof so required would vary from case to case.” In another decision reported in 2006 (108) FLR (S.C.) page 213 (R.M. Yellati Vrs. Assistant Executive Engineer), their Lordships held that “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 cases of termination of services of daily wages earner, there will be no matter of appointment or termination. There will also be no receipt or proof of payment.”

7. W.W.No.1 the Workman deposed that he was working under the Management as a Senior Machineman from the year 1985 till 10th December 1993 on a monthly salary of Rs. 1500/- and when he claimed salary and over-time dues, the Management illegally terminated his service with effect from 10th December 1993. According to him, before termination of his service, he was neither given any notice nor paid any notice pay and compensation. Further he deposed that there was no charge sheet against him nor did he face any domestic enquiry. In cross examination, he admitted that he had not received any appointment letter from the Management, but denied the fact that he was being paid for the job as per the contract.

W.W. No.3, Shir Dakadhar Biswal, deposed that he was working as a Helper under the Management from May 1985 to 1994. He deposed to have worked under the Workman as a Helper. He further deposed that the Workman had worked continuously from 1st June 1985 to 10th December 1993 as a regular employee. It is in his evidence that as the Workman claimed appropriate wages, the Management refused him employment. In cross examination he admitted that he had not received any letter of appointment from the Management nor he possessed any document to prove that he had worked under the Management. In cross examination he stated that he only heard from the Workman that he had made a complaint to the Management regarding non-receipt of wages. It was elicited from him that presently he is a vegetable vendor and prior to that he was working in Prakash Electronics at Delhi.

W.W. No.2 is the Organising Secretary of Cuttack Press Worker's Union. He only deposed to the effect that the Workman was a member of the Union and filed a counterfoil of money receipt granted in favour of the Workman, which has been marked as Ext.1. Ext.1 is of no help to the Workman as it only reveals regarding his membership in the Union. W.W. No.2 has no direct knowledge about the working of the Second Party Workman in the organization of the Management. W.W. No.2 admitted in cross examination that their Union had not made any correspondence with the Management regarding the grievance of the Workman and further that no written petition was submitted by the Workman to their Union stating his grievance. On the face of the aforesaid evidence, therefore, it is unsafe to place any reliance on the testimony of W.W. No.2 regarding his engagement under the Management.

8. On the basis of the aforesaid evidence of the Workman, which are nothing but self-serving statements, it cannot be held that he served under the Management as a regular Workman and continued with his employment for more than 240 days. Rather, the plea of the Management and the evidence of M.W. No.1 that the Workman was not at all a regular employee but on some occasions he was paid for the work on contract basis appear to be probable in view of the fact that if at all the Workman was engaged as a Senior Machineman there must be documented to that effect. Not a single scrap of paper is filed to corroborate the aforesaid testimony of the Workman nor any such documents were called for from the Management to show that actually he was working with the Management during the period claimed as a regular Workman. In absence of documentary proof with regard to the claim advanced, it cannot be held that the Workman was a regular employee of the Management and he had rendered 240 days of continuous service as

defined u/s 25-B of the Act. In this connection the decision of the Apex Court, reported in 2002 (93) FLR-179 (The Range Forest Officer Vrs. S.T. Hadimani) may be seen.

9. In view of the conclusion arrived at in the preceding paragraph, it is held that the provisions of section 25-F of the Act are not violated by the Management as alleged and consequently the act of the Management is held to be legal and justified. The Workman is therefore, held not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. Mishra, O.S.J.S. (Sr. Branch)
Dt. 26-09-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar

P. C. Mishra, O.S.J.S. (Sr. Branch)
Dt. 26-09-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar

By order of the Governor
K.C. BASKE
Under-Secretary to Government