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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2008

No. 11291—li-1(B)-13/1993-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st October 2008 in I. D. Case No.57/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s Polar International Ltd. and its Workmen Shri Suresh Ch. Barik & 2 others represented by the Mercantile Workers Union, Sikharpur, Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 57 OF 2008

Dated Bhubaneswar, the 21st October 2008

Present:

Shri Purna Chandra Mishra, o.s.J.s. (Sr. Branch)
Presiding Officer
Industrial Tribunal
Bhubaneswar.

Between:

The Management of
M/s Polar International Ltd.
Poddar Point
113 Park Street
Calcutta-700 016.

.. First Party —Management

And

Its Workmen .. Second Party —Workmen
 Shri Suresh Ch. Barik and two others
 represented by the Mercantile Workers Union
 Sikharpur,Cuttack.

Appearances:

S.H.Alli, Advocate	..	For the First Party —Management
Shri S. B. Mishra, Advocate	...	For the Second Party —Workmen

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. 1453—li-1(B)-13/1993-LE., dated the 28th January 1995 but subsequently it transferred the dispute to be adjudicated by the Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li-21-32/2007-LE , dated the 4th April 2008.

“Whether the action of the management of Polar International Ltd., Poddar Point,113 Park Street, Calcutta-700 016 in discharging Shri Suresh Barik, Godown Assistant, Shri L. Naskar, Mechanic, Abdul Ranga Khan, Peon of Cuttack Branch from services with effect from the 28th November 1992 is legal and/or justified ? If not, what relief they are entitled to ?”.

2. To put precisely, the case of the second party (hereinafter referred to as the ‘workmen’) is that Suresh Chandra Barik and Laxmikanta Naskar being appointed as Godown Assistant and Mechanic, respectively were working under the first party (hereinafter referred to as the ‘management’) since 1981 and the other workman,namely, Abdul Ranga Khan was appointed as a peon and was working under the management since 1988 and during their continuance, they discharged their duties sincerely and satisfactorily. It is averred that the management was not paying minimum wages to its employees for which they joined the Mercantile Workers Union in the year 1992.On getting intimation about their membership in the Union, the management became annoyed and tried to harass the workmen. It terminated the services of Shri Suresh Chandra Barik vide letter, Dtd.19-11-1992 and sent him a Bank Draft for Rs. 910 towards one month’s notice pay. Soon thereafter the other two workmen were not allowed to enter into the premises of the management and were told that their services have also been terminated like the workman Shri Barik. It is pleaded that Shri Naskar and Khan had not received any such letters regarding termination of their services nor did they receive any notice pay/notice. No charge sheet was never issued to any of the workmen asking them to show cause for any misconduct. When all their approaches to take back them into employment failed,they raised an industrial dispute and on failure of conciliation, the present reference has been made.

3.The management entered appearance and filed its written statement stating *inter alia* that the reference is not maintainable and further this Court has no jurisdiction to adjudicate the dispute. Regarding the factual aspect of the case, it is specifically pleaded by the management that due to shortage of goods (fan’s accessories) in its godown where the three workmen were employed, an informal enquiry was conducted and it was found that the workmen in connivance with others misappropriated the stock for their personal gain. It is averred that soon after the incident, a criminal case was instituted and services of the workmen were terminated as per Clause 5 of the letter of appointment. With the aforesaid averments , the management has prayed to answer the reference in negative.

4. On the aforesaid pleadings of the parties, the following two issues have been framed:-

ISSUES

(i) Whether the action of the first party management in discharging the three second party workmen from services with effect from 28-11-1992 is legal and /or justified?

(ii) If not, what relief they are entitled to?

5. In course of hearing, two of the workmen have examined themselves and have proved eight documents which have been marked as Exts. 1 to 8. The management, however, did not adduce either any oral or documentary evidence and remained content by cross-examining the W. Ws. 1 and 2.

6. It is the undisputed fact that all the three workmen were employed under the management and they suffered termination of their services in the year, 1992. It is also the admitted position and reveals from Exts. 1, 3 and 6 that all of them had worked with the management for more than 240 days. The only controversy which needs to be determined in the proceeding is whether the workmen were terminated from service upon a proved misconduct, as pleaded by the management or for their Union activities the management bore a grudge and terminated them from service without compliance of Section 25-F of the I. D. Act.

7. W. W. No.1 stated in his evidence that as the management did not hike their wages as per the Minimum Wages Act, 1990, they raised protest through Union for which the management became annoyed and sent him a termination letter along with a Bank Draft for Rs.910/- (One month pay) and refused him employment w.e.f. 28-11-1992. He deposed that no retrenchment compensation and other dues were paid to him nor any enquiry was conducted. He has proved his termination letter marked Ext. 2. In cross-examination, he has stated that he had never lodged any written report before the management due to non-payment of enhanced wages. He denied the suggestion of the management that due to police investigation, they had absconded.

Like W. W. No.1, W. W. No.2 also deposed that when the management did not implement the minimum wages, they raised a dispute whereupon the management refused them employment w. e. f. 28-11-1992. He stated that neither he himself nor Abdul Ranga Khan, the other workman has been given any notice/notice pay and compensation. It is also in his evidence that before refusing employment, they were neither chargesheeted nor any enquiry was initiated against them. He denied the suggestion of the management that since they absconded and the management could not procure their attendance, finding no other alternative they were refused employment. He also denied the suggestion that they refused to accept the notice pay and compensation sent by the management.

8. No evidence is found to have been adduced on behalf of the management which would show that for any proved misconduct in a duly constituted enquiry, the workmen were inflicted with the punishment of termination of services. Not a single scrap of paper is filed in support of the stand of the management that the workmen were involved in an act, which was detrimental to the interest of the management warranting the severe punishment of termination of their services. Rather, the plea of the workmen that all of a sudden the management terminated their services without complying with the provisions of the I. D. Act seems probable. Admittedly, the management has not complied with the provisions of the I. D. Act while effecting termination. Although notice pay was given to workman Suresh Ch. Barik, but it is not sufficient to hold that the provisions of 25-F

were fully complied. There having admitted infraction of the provisions of the I. D. Act by the management , it is held that they are all entitled to reinstatement in service.

As regards back wages , in absence of any evidence that during the period from 1992 till date they were not gainfully employed anywhere, it is held that they are entitled to 25% back wages.

The referencne is answered accordingly .

Dictated and corrected by me.

PURNA CHANDRA MISHRA
21-10-2008
Presiding Officer, Industrial Tribunal
Bhubaneswar

PURNA CHANDRA MISHRA
21-10-2008
Presiding Officer, Industrial Tribunal
Bhubaneswar

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