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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th November 2008

No. 11884—li/1(B)-152/2007-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th November 2008 in Industrial Dispute Case No. 181 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Executive Engineer, Capital Construction Division No. I, Bhubaneswar and its workman Shri Akhaya Kumar Samantaray was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 181 OF 2008

Dated the 5th November 2008

Present :

Shri PURNA CHANDRA MISHRA, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Executive Engineer, .. First Party—Management
Capital Construction Division No. I,
Bhubaneswar.

Versus

Shri Akhaya Kumar Samantaray, .. Second Party—Workman
At Kulabrahman Sailo,
P.O. Brahmansailo,
Dist. Cuttack.

Appearances :

For the First Party—Management . . . Shri Rajani Kanta Mohapatra,
Asst. Engineer.

For the Second Party—Workman himself . . . Shri Akhaya Ku. Samantaray

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 15164—li/1(B)-152/1998-L.E., dated the 23rd December 1998, but subsequently it transferred the dispute to be adjudicated by the Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008 :—

“Whether the action of the Executive Engineer, Capital Construction Division No. I, Bhubaneswar in terminating the services of Shri Akshaya Kumar Samantaray, N.M.R. by way of refusal of employment with effect from the 1st March 1983 is legal or justified ? If not, what relief he is entitled to ?”

2. The case of the workman may briefly be stated as follows :

That, the workman was employed as a Mate under the management on a monthly wages of Rs. 180. He continued as such from the 1st September 1981 till the 28th February 1983 and on the 1st March 1983 he was refused employment by the management without any reason or rhyme. According to the workman, he having rendered service under the management for a continuous period of more than 240 days, it was obligatory on the part of the management to comply the provisions of Section 25-F of the Industrial Disputes Act, 1947 but it was not done while terminating his service by way of refusal of employment. As to the delay in raising the disputes it is stated in the claim statement that as the Union did not raise the dispute of the workman, he himself took steps in the matter and he being ignorant about the legal procedures some delay has occurred, which is not at all intentional. In his case the mandatory provisions of law having not been followed by the management, the workman has prayed for his reinstatement in service with full back wages.

3. The management filed its written statement challenging the reference to be not maintainable and further asserting that the workman was not engaged by any Section of the management in the post of Mate, but he was engaged on casual basis. Disputing the averment of the workman that his services were terminated, it is pleaded by the management that he was never refused employment by the management. Rather, he absconded from service and as he had not completed 240 days of service, the provisions of Industrial Disputes Act were not applicable. The management has accordingly prayed to answer the reference in favour of the management.

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

ISSUES

Whether the action of the Executive Engineer, Capital Construction Division No. I, Bhubaneswar in terminating the services of Shri Akshaya Kumar Samantaray, N.M.R. by way of refusal of employment with effect from the 1st March 1983 is legal or justified ? If not, what relief he is entitled to ?

5. In order to substantiate his case, the workman has examined two witnesses including himself and has proved copy of a certificate marked Ext. 1. On behalf of the management, one witness was examined and no documentary evidence was adduced by it.

6. As held by Their Lordships in *R. M. Yellatti Vrs. Assistant Executive Engineer*, reported in 2006 (108) FLR-213, in a case of this nature 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 view of the above, it is therefore to be seen whether the workman had worked for 240 days as claimed by him.

In his evidence W. W. No. 1 has stated that he was engaged as an N.M.R. under the management with effect from the 1st September 1981 and worked till the 28th February 1983. He stated that his services were terminated by the management with effect from the 1st March 1983 by way of refusal of employment although he had worked continuously for more than 240 days. The evidence of W. W. No. 1 stands corroborated by W. W. No. 2, who stated that the workman was working as an N. M. R. at Stores Division since the 1st September 1981. Ext. 1, which is a certificate granted in favour of the workman by the Assistant Engineer of the Section No. I, Stores Subdivision of the management also reveals that the workman was employed under the management from the 1st September 1981 to the 28th February 1983. The document Ext. 1 has neither been assailed nor objected to by the management.

M. W. No. 1 in his evidence has admitted about the engagement of the workman, but deposed that his engagement was with effect from the 1st November 1981. He stated that he had never worked for a continuous period of 240 days in a year till he was disengaged with effect from the 28th February 1983, as his engagement was as per the need. During cross-examination he denied the suggestion that the workman had worked continuously from the 1st September 1981 to the 28th February 1983.

7. The evidence of the workman read with Ext. 1 conclusively proves that the workman was engaged under the management for a continuous period of more than 240 days preceding the date of his termination.

8. Now it is to be seen whether the termination of service of the workman can be said to be a retrenchment' within the meaning of Section 25-F of the Industrial Disputes Act or a voluntary abandonment of service as pleaded by the management. In this connection, it is worthwhile to refer to a decision of our own Hon'ble High Court in the case of *Shri Madhabananda Jena Vrs. Orissa State Electricity Board and others*, reported in 68 (1989) CLT-684, wherein Their Lordship have held that in order to prove a case of voluntary abandonment of service, the party pleading the same should have a reasonable and plausible reason and material to pursue the same in order to consider abandonment of employment. Except taking a stand, the management has neither produced any oral nor documentary evidence to the effect that it had issued notice to the workman to resume duty, if at all it was presumed by the management that the workman abandoned his service and fled away. In absence of evidence, therefore, it cannot be said that it is a case of voluntary abandonment of service.

9. In view of the finding arrived at in the preceding paragraph that the workman had worked continuously under the management for more than 240 days preceding the date of his termination, which is otherwise termed as 'retrenchment', and further in view of the admitted fact that the provisions of Section 25-F of the Industrial Disputes Act were not complied by the management, which was a precondition to such retrenchment of the workman, it is held that the workman is entitled to reinstatement in service. However, in absence of any evidence that during the period of his retrenchment, the workman was not gainfully employed elsewhere, no back wages can be granted in his favour.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
5-11-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
5-11-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

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