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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th January 2008

No. 784–li/1(B)-44/1994-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th August 2007 in I. D. Case No. 192/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Orissa Small Industries Corporation Ltd., Cuttack and its workman Shri Naba Kishore Barik was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 192 OF 1995

Dated the 24th August 2007

Present :

Shri S. K. Mohapatra, o.s.j.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of M/s Orissa Small .. First Party–Management
Industries Corporation Ltd., Cuttack.

And

Its workman .. Second Party–Workman
Shri Naba Kishore Barik

Appearances :

For the First Party–Management .. Shri D. Barik, Advocate

For the Second Party–Workman .. Shri B. C. Bastia, Advocate

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s Orissa Small Industries Corporation Ltd., Cuttack and its workman Shri Naba Kishore Barik under Notification No. 7559-L.E., dated the 27th June 1995 vide memo No. 8858(5)-L.E., dated the 19th July 1995 for adjudication by this Court.

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

“Whether the termination of service of Shri Naba Kishore Barik, Watchman with effect from the 1st August 1992 by the management of M/s Orissa Small Industries Corporation Ltd., Cuttack is legal and/or justified ? If not, to what relief Shri Barik is entitled ?”

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

The workman was initially appointed as Watchman on the 1st November 1991 under the management of M/s Orissa Small Industries Corporation Ltd., Cuttack (hereinafter referred to as the management) and worked in the said post for 10 months continuously. Without prior notice the management terminated the service of the workman vide order, dated the 1st August 1992. The workman had completed more than 240 days of employment during the period preceding one year from the date of his retrenchment from service but the management did not comply the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act). Thereafter in violation of the provisions of the I. D. Act, the management vide its order, dated the 15th May 1993 appointed Shri S. K. Swain who was junior to the workman as Watchman. After the management illegally terminated the service of the workman, he made several representations to the management but no action was taken by the management on the said representations. Therefore, the workman brought the matter to the notice of the District Labour Officer, Cuttack who tried for a conciliation which ultimately failed and thereafter the present reference was made to this Court. In his statement of claim, the workman has claimed the relief of reinstatement in service with full back wages.

4. The management in its written statement has fully refuted the claim of the workman stating the same to be totally false and concocted. The management has contended that the workman had never been appointed on the 1st November 1991 by the management at any time. The workman was a casual worker and was being engaged for some casual nature of work as and when required by the management for which the workman was being paid daily wages through vouchers. The workman had never worked for 240 days under the management for the management at any time and therefore, the provisions under Section 25-F of the I. D. Act is not at all applicable to give any relief whatsoever to the workman. The pleading of the workman that M/s Konark Rubber Industries (P) Ltd., Cuttack is an undertaking of the management is completely incorrect. The said Company M/s Konark Rubber Industries (P) Ltd. is a separate Company registered under the Company's Act and the management Corporation is a Government own registered Company engaged in promotional activities and it has only a share holding of 6% in the said M/s Konark Rubber Industries (P) Ltd. which is a private owned Company. The workman in his statement of claim has made false and frivolous pleadings and has unnecessarily impleaded the management as a party in the instant case although the workman was never an employee under the management. Shri S. K. Swain had been engaged as a casual labourer in Private Company i. e.

M/s Durga Cable Private Ltd. and was being paid his wages by the said Company and he has also been disengaged since long as the temporary work for which the said Shri Swain had been engaged was completed long back. On all these averments the management has claimed that the workman is not entitled to any relief whatsoever.

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

ISSUES

(i) Whether the termination of service of Shri Naba Kishore Barik, Watchman with effect from the 1st August 1992 by the management of M/s Orissa Small Industries Corporation Ltd., Cuttack is legal and/or justified ?

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

6. *Issue No. (i)*—Having regard to the facts of the present case, it is first to be decided as to whether the workman was an employee of the management and as to whether there was a relationship of employee and employer between the workman and the management at all. On these questions the evidence of the workman W. W. 1 is that he was working in M/s Konark Rubber Industries (P) Ltd. as Watchman and the management was paying him the wages. In his cross-examination the workman has admitted that he had not been given any appointment order by the management at any time. In the office order, dated the 1st August 1992 passed by the Assistant Manager of the management it has been noted that the service of the workman who was working as N.M.R. Watchman under M/s Konark Rubber Industries (P) Ltd. was discontinued with effect from 6 A.M. of the 1st August 1992. In Ext. 2 one Assistant Manager of the management has issued a character certificate to the workman stating that the workman was working in the raw material depot of the management for a period of 10 months. But from both these documents it can not be said conclusively that the workman was an employee under the management. Firstly in Ext. 1 it has been specifically noted that the workman was working in the M/s Konark Rubber Industries (P) Ltd. as a N.M.R. Watchman. There is no material on record to show that the said Private Company namely M/s. Konark Rubber Industries (P) Ltd. was ever an unit of the management Corporation. Ext. 2 is only a character certificate but not an official document issued by the management. The officer who issued it had done it in his private capacity as it does not bear any letter number of the management. Moreover in absence of any letter of appointment issued by the management, Exts. 1 and 2 are not documents from which it can be conclusively held that there was any employer and employee relationship between the management and the workman. M.W. 1 has specifically stated that the workman was never an employee of the management. Therefore, the workman was never a workman of the management at any time and consequently the existence of any dispute between the workman and the present management is a misnomer.

7. Now the question as to whether the workman had rendered 240 days of work to the management or not is a question of only academical in nature. Since the management in its written statement has stated that as and when occasion arose the management had employed the workman for casual work, it is necessary to examine as to whether the workman had completed 240 days of work under the management within the meaning of Section 25-B of the I. D. Act. In the decision *RAMGE, FOREST OFFICER Vrs. S. T. HADIMANI* reported in 2002–I–LLJ Supreme Court 1053, the Hon'ble Supreme Court have held as follows :

“Termination of Service—Workman claimed he had worked for 240 days and services terminated without paying retrenchment compensation—Appellant denied respondent workman worked for 240 days—held. Tribunal not right in placing onus on Appellant-Management without first determining that respondent workman had worked for 240 days in preceding year—Claimant has to load evidence to show that he had worked for 240 days in preceding year by producing receipt of salary or wages or letter of appointment—Mere filling of affidavit by claimant not sufficient evidence as it is his own statement.” (Placitum).

In his evidence the workman W.W. 1 has only stated that he joined in the service under the management on the 1st November 1991 and that the management refused him employment on the 1st August 1992 and that he had worked continuously under the management without any break. But save and except this bald statement the workman has not proved any letter of appointment and has not proved any pay slip or pay voucher to show that the management had employed him for 240 days during the period of 12 months preceding the date of termination of service i. e. from the 1st August 1992. As already discussed Ext. 2 can not be taken to be an authentic document to prove continuous employment of the workman by the management. Thus in the absence of any documentary proof it can not be said that the workman had worked continuously under the management within the meaning of Section 25-B of the I. D. Act, and therefore, the workman is not entitled to any of the benefits enumerated in Section 25-F of the I. D. Act. Consequently even if the management terminated the service of the workman under Ext. 1 it was not necessary for the management to issue any prior notice or to give any compensation of any nature to the workman. Hence, it is held that the termination of service of Shri Naba Kishore Barik, Watchman with effect from the 1st August 1992 by the management of M/s Orissa Small Industries Corporation Ltd., Cuttack is legal and justified. The issue No. (i) is answered accordingly.

8. *Issue No. (ii)* :— In view of the answer to Issue No. (i), the workman is not entitled to any relief whatsoever. The Issue No. (ii) is answered accordingly.

Consequently the reference is answered that the termination of service of the workman with effect from the 1st August 1992 is legal and justified and that the workman is not entitled to any relief whatsoever.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
24-8-2007
Presiding Officer, Labour Court
Bhubaneswar

S. K. MOHAPATRA
24-8-2007
Presiding Officer, Labour Court
Bhubaneswar

By order of the Governor
P. MALLICK
Under-Secretary to Government
