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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th February 2008

No. 1632—li/1(B)-26/2008 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th December 2007 in I. D. Case No. 196 of 1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Express Publication (Madhurai) Ltd., Visakhapatnam and its workman Sk. Siraj Mahamad, was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.196 OF 1998

Dated the 24th December 2007

Present :

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

Between :

The Management of M/s Express Publication (Madhurai) Ltd.,
Visakhapatnam. .. First Party—Management

And

Its Workman, Sk. Siraj Mahamad .. Second Party—Workman

Appearances :

Shri B. M. Patnaik, Advocate .. For First Party —
Management.

Shri S. Mohapatra .. For Second Party —
Workman.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s Express Publication (Madurai) Ltd., Visakhapatnam and its workman Sk. Siraj Mahamad under Notification No.5323-L.E., dated the 18th May 1998 vide memo No. 13713(4), dated the 1st December 1998 for adjudication by this Court.

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

“Whether the termination of services with effect from the 27th November 1996 of Sk. Siraj Mahamad by the management of M/s Express Publication (Madurai) Ltd., Visakhapatnam is legal and/or justified ? If not, to what relief the workman is entitled ?”

3. Shorn of all unnecessary details, the case of the workman is that he had been employed as full time Journalist under the management in the year 1989 and was posted at Bhubaneswar. The workman was paid wages at the rate of Rs. 750 per month since February, 1990. From Bhubaneswar the workman was transferred to Khurda Road to work as Reporter with effect from the 1st May 1992. The management increased the salary of the workman to Rs.1,250 per month with effect from the 1st September 1994. When the workman demanded implementation of Wage Board Award for Journalists he was suddenly transferred to Cuttack in November, 1995. While effecting transfer to Cuttack the management had sent two copies of letters, dated the 30th October 1995 which the workman refused to sign. In the said letter it had been falsely mentioned that the workman had expressed his inability to work as Reporter at Khurda Road. When the workman wanted to meet Mr. Srimoy Kar, the Bureau Chief of Bhubaneswar he was prevented by one Correspondent namely, Mr. Manoj Kar and the workman was also disallowed to work at Cuttack. The workman made representation to the Manager, Indian Express, Visakhapatnam by Registered Post and also copies to the Chairman-cum-Managing Director of Express Publications, (Madurai) Ltd., Chennai and to the Resident Editor, Indian Express, Hyderabad and News Editor, Indian Express, Visakhapatnam under certificate of posting. Since the workman demanded payment of statutory wages, his service was terminated with effect from the 27th November 1996 by the Express Publication Ltd. (Madurai), Visakhapatnam. Being aggrieved by the order of termination of his service, the workman raised an industrial dispute during which the management denied that Sk.Siraj Mahamad, i.e. the workman was not an employee of the management but was a News Contributor only having contractual assignment which terminated on the 27th November 1996 as per terms of the contract. Therefore the conciliation efforts made by the District Labour Officer, Cuttack failed and he submitted a report to the Government under Section 12 (4) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act) and thereafter the Government made a reference to this Court for adjudication of the present industrial dispute.

4. The management in its written statement has challenged the maintainability of the present case and has contended that there was never any employer-employee relationship between the management and the present workman. The second party namely, Sk. Siraj Mahamad was under a contractual assignment as a Regular Contributor to the newspaper of the management and the very contract made clear that the principal avocation of the

second party was not that of a Journalist. Under the contract the second party had been permitted to carry on his existing occupation/business and there was no fixed hours of work. The payments that was made to the second party was in the form of retainership fee against the work entrusted as a regular News Contributor vide letters, dated the 22nd January 1990 and the 1st November 1995 and not as monthly wages as claimed by the second party. The second party falsely claimed to be a regular employee of the management. The second party was never a regular workman under the management at anytime and there was never any master and servant relationship. There was no supervision or control by the management over the second party with regard to his work. The question of posting and transfer of the second party never arose in view of the basic terms of his engagement on contract as a News Contributor. The contract was terminated at the discretion of the management as per terms. On these averments the management has contended that the second party is not entitled to any relief whatsoever.

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

ISSUE

(i) “Whether the termination of services with effect from the 27th November 1996 of Sk. Siraj Mahamad by the management of M/s Express Publication (Madhurai) Ltd., Visakhapatnam is legal and/or justified ? If not, to what relief the workman is entitled ?”

6. *Issue No. (i)*—While answering the Issue No. (i), it is of paramount importance to first determine as to whether there was employee and employer relationship between Sk. Siraj Mahamad and the management of M/s Express Publication (Madhurai) Ltd., Visakhapatnam as alleged or as to whether the workman was only a News Contributor on contractual basis and not an employee under the management.

The workman has examined himself as W.W.1. In his evidence the workman has stated that he joined the service of the management in the year 1989 November as a Reporter and has proved Ext. 1 as the letter of appointment. Further evidence of the workman W.W. 1 is that his monthly wages was Rs. 750 which was increased to Rs. 1,250 per month since September, 1994 under Ext. 2. A plain reading of Ext. 1 proved by the workman himself it is clear that the management under Ext.1 had offered a contract assignment to the second party for collecting and despatching news as a Regular Contributor and Rs. 750 per month was a retainership fee and not monthly wages. In Ext. 1 it had been made clear that the second party had only contractual relationship with the management and there was no master and servant relationship and that the contract could be terminated by the either party without assigning any reason on one month’s notice in writing to be sent to the address mentioned in the letter. Since Ext. 1 itself makes it very clear that there was no master and servant relationship and the second party (workman) was only a Regular News Contributor under contract assignment. In Ext. 2 also it has been mentioned that the second party would be paid a retainer fee of Rs. 1,250 per month. In Ext. 3 also it has been mentioned that in continuation of the contract assignment the second party was shifted from Bhubaneswar to Khurda Road for collecting and despatching news as a Regular Contributor. It is to be made clear that

under Ext. 1 there was no fixed hours of work for W. W. 1 and he had been permitted to carry on his existing occupation/business. Thus it is very clear that there was never any employer and employee relationship between the management and the second party namely, Sk. Siraj Mahamad and therefore, it can never be accepted the contention of W. W. 1 that he was an employee under the management. When the documents are very clear in themselves that the appointment of the second party was only contractual and there was no master and servant relationship, it is needless to go into the oral evidence of W. W. 1 in minute detail. W. W. 1 has proved Exts. 3 to 9 but nowhere the second party has been described as an employee under the management. In all these documents the second party has been described as News Contributor.

7. M. W. 3 in his evidence has categorically stated that the second party was not an employee under the management and that he had only been assigned contract to collect News items from the locality on contract basis as News Contributor and that the assignment of the second party was purely on contractual basis. M.Ws. 1 and 2 have also deposed that the second party was under a contractual assignment with the management and was not an employee under the management.

8. Since there was never any employer-employee relationship between the management and the second party namely, Sk. Siraj Mahamad, the present dispute cannot be regarded as an industrial dispute and the termination of services of the second party with effect from the 27th November 1996 cannot be termed as retrenchment within the meaning of Section 2 (oo) of the I. D. Act. Since the assignment was purely contractual it would come under the exception provided under Section 2(oo) (bb) of the I.D. Act. Therefore the termination of services of Sk. Siraj Mahamad by the management of M/s Express Publication (Madhurai) Ltd., Visakhapatnam with effect from the 27th November 1996 is not a retrenchment and being a contractual assignment only it was only a termination of contract and therefore, the same is legal and justified. Therefore the second party namely, Sk. Siraj Mahamad is not entitled to any relief whatsoever. The Issue No.(i) is answered accordingly.

The reference is answered accordingly .

Dictated and corrected by me.

S. K. MOHAPATRA
24-12-2007
Presiding Officer
Labour Court, Bhubaneswar

S. K. MOHAPATRA
24-12-2007
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

K. TRIPATHY

Under-Secretary to Government