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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th March 2008

No. 3618—li/1(J)-27/2004-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2007 in I. D. Case No. 15 of 2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of M/s Indodenish Comprehensive Watershed Development Project (IDCWDP), Jeypore and their workman Shri Sarat Chandra Hental was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 15 OF 2005

Dated the 15th December 2007

Present :

Shri G. K. Mishra, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Principal, .. First Party—Management
M/s Soil Conservation Training Institute,
P.O./Dist. Koraput.

Versus

Shri Sarat Chandra Hental .. Second Party—Workman
Ex-Driver-Workman, Irrigation Colony,
P.O. Jeypore, Dist. Koraput.

Under Sections 10 & 12 of the Industrial Disputes Act, 1947.



Appearances :

For the Management.....Self

For the WorkmanShri V. B. Ramana A/R of the workman,
Maharipeta, Jeypore.

Date of Argument15-12-2007

Date of Award.....15-12-2007

The Government of Orissa in the Labour & Employment Department, in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute vide their Order No. 9076(4), dated the 27th October 2005 for adjudication of the following dispute:—

“ Whether the termination of services of Shri Sarat Chandra Hental, Driver by the Management of M/s Indodenish Comprehensive Watershed Development Project, Jeypore with effect from the 5th February 2001 is legal and/or justified ? If not, to what relief he is entitled?”

AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government before this court for determination of an issue with regard to the validity and justifiability of the order of termination in respect of the workman coupled with any of the relief granted in consequence of such determination.

3. The conspectuous of the facts presented by the workman may be described hereunder that though the workman was engaged in different capacity like cook then gardener then driver under the management since the 4th June 1993 continuously without any break unfortunately his service was terminated on the 5th February 2001 arbitrarily without compliance of the mandatory provisions prescribed U/s 25-F of the I.D. Act, 1947. The workman in this connection challenged the order of termination to be unjustified and illegal for which he sought for reinstatement and full back wages.

4. The management on the contrary traversed the entire assertions put forth by the workman and contended *inter alia* that though workman was engaged in different capacities at different stages as a D.L.R. and N.M.R. with some intervening breaks but he having not completed 240 working days in a calendar year, there is no question of reinstatement of full back wages, nor any compliance U/s 25-F of the I.D. Act is required. It is further averred that the workman being arrested involving in a robbery case vide P.S. Case No. 19/5-2-2001 by the police and he having not joined thereafter, there was no occasion to terminate him from his service and therefore the allegation of termination levelled against the workman is quite misconceived. In this connection the management prayed for dismissal of the case.

5. It is undisputed fact that the workman was engaged by the management in different capacities as a cook from the 9th January 1996, as gardener from the 5th September 1996 and lastly as a driver from the 20th June 1999 and continued as such till his termination on the 5th February 2001 was effected. The continuity of service was renewed from time to time with some break after expiry of the particular period. The disputed fact seems to have not been espoused by any materials particular. The management has not furnished any documents to show that any intermittent order was passed in favour of the workman so as to dislink the continuity of the service. The background of the case as ventilated before the Labour Officer would point out the fact that the workman being appointed as a driver was directed to perform his duty on daily wage basis as and when required. And the payment was being made to the workman basing upon the entries made in the logbooks. The workman has refuted to have received his salary till the 4th January 2001. The management present allegations that on the 5th February 2001, the workman returned to the headquarter and handed over the logbook being produced by the management. The detailed fact could have been divulged regarding duties performed by the workman. The circumstances presented above becomes crystal clear that the workman though worked being engaged in 1999 till the 5th February 2001, he can be said to have served as a driver for a period of more than 240 days preceding the year of termination.

6. The contention of the management that the workman being arrested by the police on the 22nd February 2001, he did not return to join thereafter in the work. The fact is true that the workman was involved in the robbery case by using the management vehicle for which a case was instituted vide P.S. Case No. 19/5-2-2001 .But the question of arrest on the 5th February 2001 as alleged by the management is completely shrouded with doubt . It is admitted by the workman during the course of furnishing evidence that the workman was arrested on the 14th February 2001. The same has been also vouchsafed by the positive statement given by the workman. A case being instituted against the workman on the 5th February 2001, he was directed to surrender the vehicle and logbook before the office as clearly revealed from the record. Since the workman was not arrested till the 14th February 2001 by the police there was no necessity of surrender the vehicle before the management. It may be a prosecution due to the involvement of the workman in the robbery case. He was not allowed to further continue as a driver . This became the case of grievance unfeasted on the part of the workman. The evidence given by the management is quite contradictory in nature. The statement of the management that he was arrested by the police on the 5th February 2001. There is no necessity of termination of service there is purely illogical and illusive. In fact a workman was not arrested on the 5th February 2001. He was forceably remained out by the management, control consequent upon his involvement in the robbery case, permission being not accorded to work as such it can be construed that it amounts to retrenchment. The intention of the workman was very much required to be attributed anything against the workman for

voluntary abandonment of his service. In order to constitute abandonment of service there must be failure to perform duties pertaining the office, with actual and imputed intention on the part of the workman to abandon or relinquish the office. The intention may be inferred from the act and conduct of the workman. Reliance has been placed in a decision referred by the Hon'ble Apex Court in *G.T.Lad Vrs. Chemicals and Fibers India Ltd.*, AIR-1979 Supreme Court 582. If the second party workman himself willingly abandoned his service it cannot be said that he has been retrenched. In the instant case if the statement of the first party management's taken into consideration that after the 5th February 2001 the workman was founded absent. In every case absence with permission or not requirements of observing the principles of natural justice is a requirement of the form of fair treatment. Reliance has been placed in a decision rendered by S. C. in *D. K. Jadeb Vrs. J. M. Industry Ltd.*, LLR-1984. The legal position has been properly explained by our Hon'ble S.C. in *Syndicate Bank Vrs. General Secretary Association 2000-LLR-68* on the point of the fact that (1) the workman should not be of the nature of the allegations (2) the workman must have to state his case, the action of the management should be fair and reasonable in justice. The compliance of natural justice would not mean that a full-fledged departmental enquiry is required. An enquiry is limited as to whether the employee concerned have furnished sufficient explanation for not reporting to duties after his absence is observed. Reliance has been placed in a decision rendered by our S.C. in *Bibekananda Sethy Vrs. the Chairman, J. & K. Vank Ltd.*, -2005-LLR-641. The failure to give explanation amounts to sufficient compliance with the requirement of the principles of natural justice. This rule has been propounded by the Hon'ble our S.C. in *V.C. Banarash Hindu University Vrs. Srikant Manu Patra*, S.C.-2006 Page 386.

7. The workman though was found absent from the 5th February 2001 a show cause notice could have been issued to the workman for his non return to the duty. Though he was arrested on the 14th February 2001. In absence of any explanation called for it can be presumed that the workman was compulsorily disallowed to join in the duty. The contradictory statement given by the management also gives abundant strength to such presumption which becomes a fact. In the meantime the workman has been acquitted by the court concerned. If the management takes the plea that the workman has not been terminated by them why it was not put forth before the Labour Officer to take the workman back to his job. The non-allowing the workman to work in his job tentamounts to retrenchment. The management having not justified the act of the misconduct shown to have been committed by the workman involving in the case of the Dacoity with act recouring to principles of natural justice. The disallowing of the workman from the job from the 5th February 2001 is quite illegal and not in confirmity of the law. The act of the management is considered to be illegal and unjustified, as the workman has not voluntarily abandoned his service as proved from the above circumstances.

8. The result of illegal termination will definitely paved the way for granting relief for reinstatement and full back wages. But there is no straight Jacket formula for comply the above norm. The Hon'ble S.C. in the case of Bainsidhar Vrs. State of Rajstan-2007 (112) FLR-687 that back wages should not be granted automatically although the order of termination passed against the workman is found to be invalid. It depends upon the fact and circumstances of the case. In the instant case the project has been abolished without any incumbrance and temporarily the management is incharge of the said project which is totally defunct. Where there is no establishment in existence for accepting the service of any workman in that case reinstatement does not occasion. Where there is no possibility for reinstatement back wages cannot be granted. Only award of compensation is the justified requirement. In this connection justice would be subserved if the compensation of Rs. 25,000 is awarded to the workman for the unjustified act as entertained by the management.

ORDER

The reference is disposed of accordingly. The management is directed to pay Rs. 25,000 to the workman within six months otherwise the workman is at liberty to take shelter of the appropriate authority for getting such order and realisation of lump sum amount.

Dictated and corrected by me.

G. K. MISHRA
15-12-2007
Presiding Officer
Labour Court, Jeypore
Koraput

G. K. MISHRA
15-12-2007
Presiding Officer
Labour Court, Jeypore,
Koraput

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