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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th March 2008

No. 3623—li/1(J)-8/2007-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd December 2007 in I. D. Case No. 11 of 2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of Director, Jagannath Institute for Technology and Management, Alluri Nagar, R. Sitapur, Parlakhemundi, Dist. Gajapati and their workman Shri Devendra Kumar Sharma 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. 11 OF 2007

Dated the 3rd December 2007

Present :

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

Between :

Shri D. N. RAO, Director, Jagannath Institute for Technology and Management,
At Alluri Nagar, P. O. R. Sitapur,
Parlakhemundi Dist. Gajapati .. First Party—Management

And

Shri Devendra Kumar Sharma, .. Second Party—Workman
At Panchima Street, P. O. Gurandi,
Via Parlakhemundi, Dist. Gajapati.

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

Appearances :

For the Management.....	None
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For the Workman	Self
Date of Argument	29-11-2007
Date of Award.....	3-12-2007

AWARD

1. The Government of Orissa in the Labour & Employment Department, in exercise of 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 for adjudication vide their Order No. 7373(5), dated the 5th June 2007 for adjudication of the following disputes:—

“ Whether the termination of services of Shri Devendra Kumar Sharma, with effect from the 3rd March 2005 by the management of Jagannath Institute for Technology and Management, At Alluri Nagar, P. O.-R. Sitapur, Parlakhemundi Dist. Gajapati is legal and/or justified ? If not, what relief the workman Shri Sharma is entitled to ?”

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 passed by the management and reinstatement of the workman and the relief to be granted in consequence of such determination.

3. The brief matrix of factual aspect presented by the workman may be described here under that on the basis of the appointment given by the management he was working as a Mechanic Foundryman under the management since the 28th March 2000, continuously with out any break but unfortunately his service was terminated on the 2nd March 2005 by the Management without resorting to any enquiry or giving any notice. In this respect the order of termination is challenged to be illegal and unjustified for the non-compliance of the principles of natural justice.

4. The management though entered his appearance to contest the case but no witness statements seems to have been filed to counteract the assertions presented by the workman.

5. The workman seems to have been appointed by the management as Machanic Foundryman on *ad hoc* basis with a consolidated pay of Rs. 3,500 per month. Though his appointment was for the period of one year his service was continued without any break till the 2nd March 2005 with the provisions of providing annual increments as shown from the documents furnished by the workman. Continuity of service without any break is very much writ large from the nature of job acquired by the workman. In this conection the continuity of the service of the workman does not depend upon the renewal of the service as manifested from the very inception of appointment given by the managenent. The termination of workman from the service by the management by any reasons whatsoever otherwise than a punishment inflicted by way of disciplinary proceeding may be connoted as a retrenchment as per Section 2 (oo) of the I.D. Act, 1947. From the facts presented by the workman it will would be seen that the nature of the service required by the workman was a permanent one. There is no fix term contract of service as shown from the documents between the Management and the

employee. There was, therefore, no question of service being terminated in respect of the workman. In absence of any fixed term of contract the termination entertained by the management should be within the purview of Sec. 25 F of the I.D. Act, 1947. The workman having performed his duty for a period more than 240 days in a calendar year, he should not have been terminated without issuing any notice or notice pay. The service of the workman being permanent in character his service can not be terminated illegally without compliance of the principles of natural justice. Reliance has been placed in a decision rendered in Delhi Transport Corporation *Vrs.* D.T.C. Mazdoor Sangh 1991 S.C.-101. By virtue of the service rendered the workman has accrued the right to livelihood which can not be taken away without due procedure which will be violative to the right to life. The permanent workman must be given security of his job. Otherwise the right to life guarantee under 21 constitute will have no meaning. It is therefore necessary on the part of the Management to adopt the principles of natural justice before termination of his service or to comply the mandatory provision U/s 25-F of the I. D. Act, 1947. The service of the workman having been terminated without adopting any procedure befitting the rule law, is act of the management, is considered to be illegal and inoperative to law, which violates the very foundation of Articles 14 and 16 of the Indian constitution. The act of the management in terminating the service of the workman without any just and fair case is absolutely illegal and unjustified. Therefore, the illegal termination paves way for this Court to grant leave for reinstatement and full back wages.

ORDER

6. The reference is answered *ex parte* accordingly. The management is directed to reinstate the workman and to pay full back wages from the date of termination of the date of disposal of the case within six months otherwise he be at liberty to take shelter of the appropriate authority for effecting such order and realisation of back wages.

Dictated and corrected by me.

G. K. MISHRA
3-12-2008
Presiding Officer
Labour Court, Jeypore

G. K. MISHRA
3-12-2008
Presiding Officer
Labour Court, Jeypore

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