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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th March 2008

No. 3633—li/1(J)-39/2006 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th December 2007 in I. D. Case No. 18/2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of the Executive Engineer, Chikiti Irrigation Division, Berhampur, Ganjam and their Workman Shri Bijaya Kumar Sasmal 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.18 OF 2007

Dated the 5th December 2007

Present :

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

Between :

The Executive Engineer, Chikiti Irrigation .. First Party—Management
Division, Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

Versus

Shri Bijaya Kumar Sasmal, .. Second Party—Workman
S/o Shri Narahari Sasmal,
At/P.O. Haldiapadar, Via Gosaninuagam,
Dist. Ganjam.

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

Appearances :

For the Management	.. Self
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For the Workman	.. Self
Date of Argument	.. 28-11-2007
Date of Award	.. 5-12-2007

The Government of Orissa, in the Labour & Employment Department in exercise of the power 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 disputes vide their Order No. 7178 (5), dated the 21st June 2007 for adjudication of the following disputes :

SCHEDULE

“Whether the termination of services of the workman Shri Bijaya Kumar Sasmal, ex-Driver w.e.f. the 8th March 2003 by the management of the Executive Engineer, Chikiti Irrigation Division, Berhampur, Ganjam is legal and/or justified ? If not, to what relief the workman is entitled ?”

AWARD

2. This is a case deems 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 termination of the workman effected by management in favour of the workman coupled with any other relief to be granted in consequence of such determination.

3. The facts given raised to the workman’s case may be described in optimized form that he was engaged as a driver from the 12th February 1990 and continued as such till the 8th March 2003 when his service was terminated by the management. It is alleged that his continuity of service having been affirmed by the authority from 1990 to 1997 and supported by the logbook showing his duty, the termination effected by the management is illegal and unjustified for which he claims for reinstatement and back wages.

4. The management on the contrary appears to have repudiated the assertions put forth by the workman and contended *inter alia* that the workman being engaged on daily wage basis according to the need of requirement, the termination does not amount to retrenchment as he is not completed 240 working days in a calendar year preceding the date of termination.

5. As a matter of fact the workman was engaged as a driver from the 24th April 1990 to 5/1997 to drive the vehicle, bearing No. O.R.G.-3799 and his continuity of service has been affirmed by the Assistant Executive Engineer, Paralakhemundi Irrigation Subdivision. After the aforesaid period no such continuity in service has been reflected through any documents furnished by the workman. He has been engaged time and again by the authority to drive the vehicle engaged for utilisation of the different project or scheme entertained by the Government, specially in relation to election duty or pulse polio and other scheme or projects. The documents furnished by the workman gives an indication that as per the requirement, he was engaged for particular period. No order of appointment seems to have been issued to perform his duty. The engagement of the workman in different project on a scheme was purely temporary and casual. The logbooks so produced by the workman does not indicate from January 1995 to June 2003 that he has worked more than 240 days in any calendar year even if the calendar year preceding to the date of termination. The management also disputed the continuity of service as alleged by the workman. Since the workman was engaged on daily wage basis according to the requirement of the service his service cannot be said to have continued as per law. The period of daily wages labourer is to end on the expiry of the said period, until his engagement is continued further at the desire of the employer. Since the employee is not engaged against the permanent vacancy, the workman cannot claim any regularisation of service. Only protection has been given by the I.D. Act for security of the job if the workman appears to have completed 249 working days in a calendar year prior to the date of termination, the continuity of service as mandated under Section 25-F of the I.D. Act is observed. The workman is to be issued with one month notice for the purpose of termination of service or to pay one month salary or compensation as deemed proper. For non-compliance of the provision, penalty is imposed on the employer with respect to the reinstatement of the workman with full back wages. It is the duty of the employee to establish the continuity of service by producing documents, if he has no document with him, he may call for the muster roll from the employer. The employee concerned has taken his own initiative for producing documents in order to sustain the case of continuing in service. There appears for continuity in service of the workman as shown or revealed from the logbook or any other documents furnished on behalf of workman. Therefore no compliance as mandated under Section 25-F is required to be effected by the management. No such protection can be given to the workman on account of no such continuity of service. There being no necessity of requirement of job for engagement of the workman as a driver, he cannot accrue any right to such continuity. So the requirement having not been available the termination of the workman does not amount to retrenchment. Therefore it cannot be said that any illegality is committed by the management in disengaging the driver. The workman has been disengaged from the job. The order of termination as entertained by the management is found to be legal and justified, thereby no relief shall be granted to the workman.

ORDER

The reference is answered accordingly. The termination of service of the workman by the management is legal and justified.

Dictated and corrected by me.

G. K. MISHRA
5-12-2007
Presiding Officer
Labour Court, Jeypore
Koraput

G. K. MISHRA
5-12-2007
Presiding Officer
Labour Court, Jeypore
Koraput

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