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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th April 2008

No.4899-1i/1(J)-5/2006/LE.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 25th January 2008 in Industrial Disputes Case No.6/2006 of the Presiding Officer, Labour Court, Jeypore to whom the Industrial Dispute between the Management of Deputy Director of Horticulture, Kandhamal Range, Phulbani and their workman Shri Tapan Kumar Sahu was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE NO.6/2006

The 25th January 2008

Present : Shri G.K. Mishra, O.S.J.S. (Junior Branch)

Presiding Officer,
Labour Court, Jeypore

Dist : Koraput

Between: The Deputy Director of Horticulture,

Phulbani
At/P.O.-Phulbani,

Dist: Kandhamal

.. First-Party— Management

Versus

Shri Tapan Kumar Sahu,

S/o- Markand Sahu
At- Bhanjarmunda,
P.O.- Balaskumpa,

P.S.- Khajuripada,

Dist: Dhenkanal

.. Second-Party— Workman

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

<i>Appearances</i> : For the Management	.. None
For the Workman	.. Self
Date of Argument	.. 19-01-2008
Date of Award	.. 25-01-2008

1. 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. 3452, dated the 2nd May 2006 for adjudication of the following disputes :—

SCHEDULE

“Whether the action of the Management of Deputy Director, Horticulture, Phulbani in terminating the service of Shri Tapan Kumar Sahu with effect from 19th August 2001 is legal and/or justified ? If not to what relief is Shri Tapan Kumar Sahu entitled to ?”

AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government for determination of an issue regarding the validity and justifiability of the termination entertained by the Management in respect of the workman.

The Management having not participated in the proceeding the case was *set exparte*.

3. The brief facts presented by the workman may be that though he was appointed as a casual labourer with effect from 20th May 1985 and continued till 18th August 2001 but the engagement was not further accepted by the Management whenever he demanded his unpaid wages of Rs. 5000/-. It is further avered that the retrenchment was not preceded with any notice pay or any compensation as per the protection provides U/s 25-F of the Industrial Disputes Act. For this scope he challenged the maintainability of the termination which is the subject matter of the reference.

4. The continuity of service of the workman has been clearly emphasized in the claim statement. The workman appears to have rendered service for a period of more than 240 days. Once the workman is engaged in service right is accrued to work till he is deprived of from the job in accordance with the procedure established by the law. The right to work is concomitant to the right to livelihood. The deprivation of right to work will entail starvation of his family members. Thereby provision provides U/s 25-F of the Industrial Disputes Act to secure his right to work. No one shall be deprived of his job arbitrarily which amounts to violation of Artc. 14 and 16 of the Constitution. Arbitrariness is the sworn enemy of rule of the law. Mere plea of non availability of job cannot substitute the positive action of the Management. The disengagement might have under taken by the Management at the very inception of the workman service. The continuity of the service will naturally accrue the right of the workman to livelihood by the time. The workman might have crossed the age and family members might have grown up depending upon the

income of the workman. If the step had been taken earlier the workman would have searched for a job within the age limit. The deprivation of right to work at the late stage definitely will effect his living standard. Therefore the workman should not be deprived of the job unless special and urgent situation accrues. No situation has been reflected for deprivation of his job. In this contest the right to work availed up by the workman can be protected by the procedure envisaged in the Industrial Dispute Act. Before termination the requirements of the law have not complied with by Management. The act of the Management in absence of such compliance is considered to be illegal and in operative law. Therefore the workman is entitled to be reinstated. The workman has not pleaded anything regarding the nonengagement during the period of termination. Accordingly no back wages to be granted in his favour.

The reference is answered accordingly.

ORDER

The Management is directed to reinstate the workman as he was without any back wages.

Dictated and Corrected by me

G.K. Mishra

dt. 25-01-2007

Presiding Officer,

Labour Court,

Jeypore, Koraput

G.K. Mishra

dt. 25-01-2007

Presiding Officer,

Labour Court.

Jeypore, Koraput

By order of the Governor

G.N. JENA

Deputy Secretary to Government