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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th July 2009

No. 6221-li/1(B)-120/1999-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th March 2009 in I. D. Case No. 200 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of the Orissa State Seeds Corporation Limited, Samantarapur, Bhubaneswar and its Workman Shri Radhu Pradhan was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 200 OF 2008

Dated the 25th March 2009

Present :

Shri P. C. Mishra, o.s.J.S. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar.

Between :

The Managing Director .. First Party—Management
Orissa State Seeds Corporation Limited
Samantarapur, Bhubaneswar.

And

Shri Radhu Pradhan .. Second Party—Workman
At Budhipada, P.O. Sisilo
Via. Balakati, Dist. Khurda.

Appearances :

For the First Party—Management .. Shri Pramod Kumar Mishra
For the Second Party—Workmen himself .. Shri Radhu Pradhan

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 1983—li/1(B)-120/1999-L.E., dated the 4th February 2000 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008.

“Whether the termination of services of Shri Radhu Pradhan, Attendant by way of verbal refusal of employment with effect from the 17th March 1998 by the Management of M/s. Orissa State Seeds Corporation Limited, Samantarapur, Bhubaneswar is legal and/or justified? If not, what benefit he is entitled to?”

2. The case of the second party-workman in brief is that being employed as N.M.R. Attendant, he was working under the management continuously from the 2nd January 1988 to the 16th March 1998 and in the process, he had completed more than 240 days of continuous service in twelve calendar months. He alleged that he was refused employment w.e.f. the 17th March 1998 and such refusal amounts to retrenchment. It is alleged that prior to this, the management had terminated his service but by virtue of a settlement entered into between him and the management On the 25th August 1995, he was offered employment with continuity of service but without any back wages and while continuing so, he was again refused employment on the 17th March 1998. According to the workman, his termination from service being contrary to the provisions of the I.D.Act, he is entitled to reinstatement in service with full back wages and other service benefits.

3. The first party-management filed its written statement asserting therein *inter alia* that the workman was engaged as a daily labourer to work in its Cold Storage and thereafter he was engaged by the then Chairman as his personal attendant purely on temporary basis for the period from the 25th May 1993 to the 21st October 1994 and thereafter in view of the settlement, he was engaged as a Casual Labourer w.e.f. the 1st September 1995. It is specifically pleaded by the management that since engagement of all the casual employees has been discontinued with a view to get rid of the loss sustained by the Corporation for years together, there was no justification to retain the workman in service alone. While the management disputed about the engagement of the workman as an N. M. R. Attendant from the 2nd January 1988 to the 16th March 1998, it has admitted about his engagement w.e.f. the 1st September 1995 on daily wage basis as per the terms of the settlement of the 25th August 1985. It is averred in the written statement of the management that since the workman was engaged casually purely on temporary arrangement, it was not at all necessary to issue him prior notice of disengagement. Lastly it is pleaded that since the workman was not appointed against any sanctioned post, the claim of the workman is not at all tenable.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (1) Whether the termination of services of Shri Radhu Pradhan, Attendant by way of verbal refusal of employment with effect from the 17th March 1998 by the management of M/s. Orissa State Seeds Corporation Limited, Samantarapur, Bhubaneswar is legal and/or justified ?
- (2) If not, what benefits he is entitled to ?

5. In order to substantiate his case, the workman has examined himself and brought on record two documents which have been marked Exts .1 and 2. The management, on the other hand, examined two witnesses on its behalf but did not adduce any documentary evidence.

6. In his affidavit evidence, the workman has stated to have worked continuously under the management from the 2nd January 1988 till the 16th March 1998. He deposed that while working under the management, he was disengaged from work w.e.f. the 21st October 1994 for which he had raised a dispute before the D.L.O., Khurda and on his intervention the matter was settled as per Ext.1, the copy of settlement drawn up in Form-K on the 25th August 1995 and pursuant to that, he joined his duty w.e.f. the 1st September 1995. He stated that again on the 17th March 1998, he was disengaged from employment without any notice/notice pay and paying him any retrenchment compensation. Ext. 1, the copy of the settlement reveals that it was agreed between the workman and the management that the workman would join duty as a casual labourer from the 1st September 1995, he will be accorded seniority from the 21st October 1994. In cross-examination, the workman admitted that he started his work w. e. f. the 25th May 1993 under the management and was attached to the residence of the Chairman on daily wage basis. It further reveals from his cross-examination that he was working under the management from the 1st September 1995 till the 16th March 1998, Continuously with artificial breaks of 1 or 2 days in between.

Both the management's witnesses have also deposed in their evidence that the workman was working with the management as a casual labourer as and when required and consequent to the settlement Ext.1, he was absorbed under the management as a Casual Labourer. M.W.No.1 admitted in his cross- examination that the workman was not paid any retrenchment benefit when his services were terminated.

7. From the evidence as above, it is clear that though the workman was engaged under the management but he was granted seniority w.e.f. the 21st October 1994 and therefore, it can be undisputedly said that he was under the management from the 21st October 1994 till the 16th March 1998. Regarding his claim that during the period, he had worked continuously for more than 240 days preceding the date of his disengagement from service, M.W.N. 2 has stated in his examination in-chief that on and from the 1st September 1995, the

workman was allowed to continue in his job till availability of workload in the Corporation. On the basis of the aforesaid evidence, read with Ext.1, therefore it can be held that the workman was employed under the management and has rendered more than 240 days of continuous service preceding the date of his termination from services and as such, he was entitled to the benefit of Section 25-F of the Industrial Disputes Act. The admitted fact being that management has not complied with the provisions of Section 25-F of the Industrial disputes Act while effecting termination of the workman, its action cannot be held to be legal or justified one. In this connection, the decision reported in 2008(119) FLR 398 (Division Manager, New India Assurance Co.Vrs .A.Sankaralingam) may be seen.

8. In view of he discussion, as aforesaid, it is held that the termination of service of the workman w.e.f. the 17th March 1998 by the management is neither legal nor justified, and consequently he is entitled to reinstatement in service with 25% back wages. The management is directed to implement the award within a period of two months from the date of publication of the same in the Official Gazette.

Dictated and corrected by me.

P. C. MISHRA
25-3-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
25-3-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government