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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd August 2009

No. 7763—li/1(B)-92/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th June 2009 in Industrial Dispute Case No. 10/2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s Bhusan Steel & Strips Ltd., Jayadev Vihar, Bhubaneswar and their workman Shri Sadananda Sethi was referred to for adjudication is hereby published as in the scheduled below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 10 OF 2007

Dated the 25th June 2009

Present :

Shri M. R. Tripathy,
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The Management of M/s Bhusan Steel .. First Party—Management
& Strips Ltd., Jayadev Vihar,
Bhubaneswar.

And

Its Workman, .. Second Party—Workman
Shri Sadananda Sethi.

Appearances :

For First Party—Management .. Shri P.C. Biswal
For Second Party— Workman himself .. Shri S. N. Sethi

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court for adjudication vide Order No.1487—li/1(B)-92/2006-L.E., dated the 21st February 2007 of the Labour & Employment Department, Orissa, Bhubaneswar.

2.The case of the workman may be briefly stated as follows :

He was engaged as a Peon by the management and he worked as such from the 15th May 2003 to the 8th December 2004 on a salary of Rs. 2,500 per month, besides free food twice on each working day. On the 9th December 2004 when he reported for duty the management refused employment to him . Since no notice or notice pay as provided in Section 25-F of the Industrial Disputes Act, 1947 was given to him at the time of retrenchment, he approached the labour machinery. Accordingly a conciliation proceeding was initiated by the District Labour Officer, Khurda , Bhubaneswar and as the conciliation failed the matter was referred to this Court for adjudication of the following dispute :—

“Whether the action of the employer of M/s Bhusan Steel & Strips Ltd., F-41, H.I.G., B.D.A., Jayadev Vihar, Bhubaneswar in terminating the services of Shri Sadananda Sethi, workman by way of verbal refusal of employment is legal and/or justified ? If not, what relief the workman is entitled to ? “

3. In the written statement the management has submitted that the workman was never employed by the management . By joining hand with one of the ex-employee of the management namely, Mr. Sanjaya Pratap and by using the letter pads, the workman has created some documents. In fact the workman was working as a domestic servant of Mr.Sanjaya Pratap and therefore question of retrenchment by the management or payment of retrenchment compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 by the management did not arise. According to the management , the workman is not entitled to get any relief in the present case..

4. The following issues were framed :—

ISSUES

(i) “Whether the action of the management of M/s Bhusan Steel & Strips Ltd., F-41, H.I.G., B.D.A., Jayadev Vihar, Bhubaneswar in terminating the services of Shri Sadananda Sethi, workman by way of verbal refusal of employment is legal and/or justified ?

(ii) If not, what relief the workman is entitled to ?”

5. In support of his case, the workman examined himself as W.W.1. Similarly the management also examined one witness who is now working as Deputy General Manager in the management.

FINDINGS

6. *Issue Nos. (i) and (ii)* — For the sake of convenience, both the issues are taken up together.

According to the workman he joined as a Peon in the establishment of the management on the 15th May 2003 and worked as such till the 8th December 2004 . He was getting wage at the rate of Rs. 2,500 per month besides food twice on each working day. On the 9th December 2004 the management refused employment to him without compliance of Section 25-F of the Industrial Disputes Act, 1947. Though another person was employed in his place subsequently the management did not recall him to resume duty and therefore Section 25-H of the Industrial Disputes Act, 1947 was also not complied. He has not been gainfully employed anywhere else after the date of retrenchment, so he is entitled to be reinstated in service with full back wages. He has filed a copy of the letter issued by Mr. Sanjay Pratap the then Deputy General Manager of the management addressed to the Commercial Manager, Indian Airlines, Bhubaneswar on the 5th May 2003 marked as Ext. 1, a copy of similar letter issued by the same person to the same authority on the 18th September 2003 marked as Ext. 2 and a copy of another letter issued by the Personal Manager of the management addressed to the Branch Manager, Urban Co-operative Bank, Cuttack on, dated the 22nd December 2003 marked as Ext. 3. During cross-examination he admitted that no appointment letter was issued in his favour. He also admitted that no pay slip was issued by the management in his favour at the time of disbursement of his salary and the management has not deducted any amount from his salary towards provident fund. He denied the fact that he was working as a private servant in the house of Mr. Sanjay Pratap and that the certificate filed by him marked as Exts. 1, 2, 3 are fictitious and baseless.

M. W. 1 in his deposition stated that the workman was never engaged by the management and no letter of appointment was issued in his favour . By misusing the letter pads of the management and by joining hand with one ex-employee of the management namely, Mr. Sanjay Pratap he has created some documents and has filed the same in the case. Further he stated that the W. W. 1 was earlier working as a domestic servant in the house of Mr. Sanjay Pratap and still he is working as such , therefore W. W. 1 is not an un-employed person.

7. It is consistently stated by W. W. 1 that he joined in the management on the 15th May 2003 and worked as a peon up to the 8th December 2004. Regarding the period of work the management has not said anything specifically . Only it is said by the management that W. W. 1 was working as a domestic servant in the house of one of its ex-employee namely, Mr. Sanjay Pratap and that he was never given appointment in the management by following rules and procedures. W. W. 1 has relied on three documents, i.e. Exts. 1, 2 and 3 out of which, Ext.1 seems to have been issued on the 5th May 2003. Since W. W. 1 himself has stated that he joined in the management as a peon on the 15th May 2003 and Ext.1 was issued prior to the date of his joining , so, no importance can be given on that document. But Ext. 2 was issued on the 18th September 2003 by Mr. Sanjay Pratap who was an ex-employee of Bhushan Steel & Strips Ltd. He was not an ordinary employee as he was working as the Deputy General Manager, as such, a responsible Officer. Let us believe that W. W. 1 and Mr. Sanjay Pratap have managed to create Ext. 2 by misusing the letter pad of the Company. But such a view cannot be taken so far as Ext.3 is concerned. Ext. 3 is a

certificate issued by another Officer of the Company namely, Mr. Nabeen Sing. It is stated by M. W. 1 that Mr. Nabeen Sing was not working as a Personal Manager of the Company but he was working as an Assistant Manager. If that is so, the management could have produced relevant documents to prove that actually Mr. Nabeen Sing was not working as a Personal Manager and that Ext. 3 having been issued by Nabeen Sing by describing himself as a personal Manager, is a forged document. M. W. 1 said that he is acquainted with the signature of Shri Nabeen Sing but he could not say specifically as to if Ext. 3 was issued by Nabeen Sing or his signature in Ext. 3 was forged. The management could have filed other documents with admitted signatures of Sri Nabeen Sing to prove that Ext.3 was not issued by him. But the management did not do so. The management has also not stated a word as to how Nabeen Sing was interested in favour of W. W. 1 or what was the relationship between them while Nabeen Sing was working in the management. I may here note that in Ext. 3 W. W. 1 has been identified as a Peon working at Meramundali site of the Company and his salary was Rs. 2,500 per month.

8. It is claimed by the workman that he had worked as a Peon continuously from the 15th May 2003 to the 8th December 2004, i.e. for a period of more than 240 days during the 12 calendar months preceding the 8th December 2004. In order to establish the above fact he has filed certain documents whereas no adequate rebuttal evidence has been adduced by the management. The management has simply taken the plea that the workman was never employed in the management, but in view of Exts. 2 and 3 such a plea cannot be accepted. Added to that, it is stated by the management that the workman was working as a domestic servant in the house of Mr. Sanjay Pratap. Thus indirectly the management has admitted the employment of the workman under Mr. Sanjay Pratap. Admittedly Mr. Sanjay Pratap was working as a Deputy General Manager of the management. So it cannot be said that there was no master and servant relationship between the management and the workman.

It is admitted by M.W.1 that he joined in the management sometime in the month of October, 2003. It is also said by him that he has never seen the workman working in the management. But Ext. 2 was issued prior to his joining in the management. So he cannot be expected to know under what circumstance the workman was appointed initially. Moreover, as the workman claims that he joined on the 15th May 2003 the management could have examined any of its employee who was working at the relevant time to prove that the workman was actually not working during the said period of May,2003 to October, 2003, i.e. before the date of joining of M.W.1.

9. In view of the oral testimony given by the workman and the documents filed by him marked as Exts. 2 and 3 and as because no adequate rebuttal evidence has been adduced by the management, I come to the conclusion that the workman had worked for more than 240 days before his employment was terminated verbally on the 9th December 2004. Therefore as provided in Section 25-F of the Industrial Disputes Act, 1947, the workman was entitled to get one month's prior notice or one month's pay in lieu thereof and compensation equivalent to fifteen day's average pay for every completed year of service or any part thereof in excess of six months. Admittedly Section 25-F of the Industrial Disputes Act, 1947 was not complied with when his employment was terminated verbally on the 9th December 2004. Therefore I

would say that the action of the employer, i.e. M/s Bhushan Steel & Strips Limited, Bhubaneswar in terminating his services by way of verbal refusal of employment on the 9th December 2004 is illegal and unjustified.

10. It is stated by M.W.1 that the workman was earlier working as domestic servant in the house of Mr. Sanjay Pratap and still he is working as such and therefore, the workman is not an unemployed person. But there is no material in the record to believe that the workman is still working in the house of Mr. Sanjay Pratap.

11. In this meanwhile more than four years have passed from the date on which the services of the workman was terminated verbally. There is no material to say that initially he was appointed following the rules and procedures of the management Company. During the intervening period, i.e. from the date of termination of service till today the workman has not rendered any type of service to the management Company. So under these circumstances I feel it would not be appropriate to direct the management Company to reinstate the workman as a Peon and to pay full back wages to him. In my view ends of justice would meet if the management is directed to pay a lump sum amount of Rs.25,000 to the workman towards compensation. Accordingly both the issues are answered.

12. Hence it is ordered:

The action of the employer of M/s Bhushan Steel & Strips Limited, Bhubaneswar in terminating the services of Shri Sadananda Sethi, workman by way of verbal refusal of employment is illegal and unjustified. The workman Shri Sethi is entitled to get a lump sum amount of Rs.25,000 towards compensation in lieu of reinstatement and back wages.

Accordingly the reference is answered.

Dictated and corrected by me.

M. R. TRIPATHY
25-6-2009
Presiding Officer
Labour Court, Bhubaneswar.

M. R. TRIPATHY
25-6-2009
Presiding Officer
Labour Court, Bhubaneswar.

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