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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd February 2009

No. 947–li/1(J)-4/2009-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th December 2008 in Industrial Dispute Case No. 18/2005 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of Central Home for Woman, Berhampur and its Workman Shri Bira Kishore Pattnaik, Ex-Guard was referred to 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 2005

Dated the 24th December 2008

Present :

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

Between :

The Management of .. First Party—Management
Central Home for Woman, Berhampur
Near R.D.C. Bunglow, Berhampur
At/P.O. Berhampur, Dist. Ganjam

Versus

Shri Bira Kishore Pattnaik, Ex-Guard .. Second Party—Workman
C/o Shri Simanchal Pattnaik
Qr. No. IR/25, R.D.C. Colony
At/P.O. Anukuli, Via Berhampur
Dist. Ganjam.

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

Appearances :

For the Management	..	Shri Sasanka Mishra G.P., Jeypore.
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For the Workman	..	Shri K. Ch. Mishra, Advocate Berhampur.
Date of Argument	..	18-12-2008
Date of Award	..	24-12-2008

AWARD

This is a reference u/s 10(1) read with Section 12(5) of the Industrial Disputes Act, 1947 made by the State Government of Orissa in their Labour & Employment Department memo No. 9066(4), dated the 27th October 2005 for adjudication of the dispute mentioned below :—

SCHEDULE

“Whether the termination of services of Shri Bira Kishore Pattnaik, Guard by the management of Central Home for Woman, Berhampur, Dist. Ganjam with effect from the 28th December 2002 is legal and/or justified ? If not, to what relief the workman Shri Pattnaik is entitled to ?”

2. The brief facts of the case of the second party workman is that during his tenure of his service, he served four year four months and five days as Guard daily wages in Central Home for Woman under the control of the Superintendent, Central Home for Woman, Berhampur. As per the pleadings of the workman Bira Kishore Pattnaik he joined in the service on the 26th March 1998 in Central Home for Woman, Berhampur and prior to him one Suryakanta Jena was working there as daily wage Guard since the 4th January 1998 under the said management. As per the contention of the workman, Superintendent, Central Home for Woman vide letter No. 64, dated the 14th May 1998 terminated his service as well as service of Shri Jena with effect from the 15th May 1998. It is also the case of the workman that he was again reappointed by the management on the 17th September 1998 vide letter No. 105, dated the 16th September 1998 of the Superintendent, Berhampur while Shri Jena was reappointed on the 9th September 1999 by the management. According to workman he continued in his service till the 27th December 2002 and the management illegally terminated his service from the 28th December 2002. At the time of reporting duty on the said date he was verbally refused by the Superintendent, Central Home for Woman, Berhampur to perform his duty without any reason and prior notice. It is also pleaded by the workman B. K. Pattnaik that he has not been paid any retrenchment compensation as per Section 25-F of the I. D. Act. As per the submission of the workman he served for four (4) years four (4) months and five (5) days prior to termination whereas Suryakanta Jena who is junior to him served for three years and seven months. After his termination one Jatiya Sahu who was working in the Observation Home for Boys has been posted in his place as a Guard under the Control of

Superintendent, Central Home for Woman. In order to get relief the workman submitted his compliant petition before the District Labour Officer, Berhampur claiming his illegal termination by the management and in the conciliation proceeding by the D.L.O., Berhampur the matter was referred to Government for adjudication due to failure of conciliation. As per the claim of the workman he has been illegally terminated from his service by the management and prayed the Court to re-engagement him with full back wages.

3. On the other hand the management filed their counter stating that, the termination of service of Shri B. K. Pattnaik, Guard by the management from the 28th December 2002 from Central Home for Woman is legal and justified. As per the pleadings of the management two Costs of Guard have been sanctioned by Government of Orissa in Women and Child Development Department with effect from the 1st October 1997 for the Observation Home. As against those two posts one Suryakanta Jena was engaged from the 4th January 1998 whereas the present workman Shri B. K. Pattnaik was engaged in the same Department as Guard with effect from the 26th March 1998. But both the guards namely Shri Jena and Pattnaik were terminated by the management on the 15th May 1998. Further as per the order of the Government, Women and Child Development Department vide letter No. 10912, dated the 7th September 1998 both Shri Jena and Pattnaik were re-engaged in the said Department by the Superintendent, Berhampur vide Ext. L.E.J. In response of the above letter by the Government, B.K. Pattnaik was re-engaged in service with effect from the 17th September 1998 vide letter No. 105, dated the 16th September 1998 of the Superintendent, Central Home for Woman, Berhampur. But Suryakanta Jena was re-engaged in service with effect from the 10th September 1999 in the said Department. As per the management both the engagements were purely temporary right from beginning with a break after each spell of 89 days engagement till the 16th October 2002. Later on as per the instruction of Director dated the 7th December 2002 the Superintendent terminated the service of Shri B. K. Pattnaik with effect from the 28th December 2002 being the junior most employee in that organisation and in his place engaged Shri Jatiya Sahu, a disengaged person of Observation Home and Special Home. As per the contention of the management first time seniority was taken into consideration and accordingly B.K. Pattnaik was terminated from his engagement, even though he worked for more days than Shri Jena. Hence the termination of the service of Shri B.K. Pattnaik junior most Guard by the management of Central Home for Women, Berhampur with effect from the 28th December is legal and justified.

4. Previously this court heard both parties and on perusal of certain documents, passed *ex parte* order in favour of the workman in absence of the appearance of the management, in spite of receipt valid notices. As per the Award, dated the 26th May 2006 of this Court the workman was ordered to be reinstated in his previous post and the management was directed to pay half of the back wages to the workman. As against that Award the management filed appeal before the Hon'ble High Court in W.P. (C) No. 15304 of 2007 in which the Hon'ble Court vide order, dated the 25th April 2008 set aside the impugned Award, dated the 26th May 2006 passed by the Presiding Officer, Labour Court, Jeypore in I.D. Case No. 18/2005

and remitted back this matter for reconsideration by giving reasonable opportunity to the parties to substantiate their case. As per the order of the Hon'ble High Court this Court after giving opportunity to both the parties took evidence from both the sides. The management though not filed W.S. previously but after the order of the Hon'ble Court the management filed his W.S. on the 22nd October 2008 i.e. after too delay.

5. In course of hearing, the workman examined himself as W.W. No. 1 whereas, the management examined two witnesses in their favour as M.W. No. 1 and M.W. No. 2. Both parties have also filed their respective documents. Before going to discuss the evidence value of both the parties, it is to be seen that whether the termination of service of Shri B. K. Pattnaik Guard by the management of Central Home for Woman, Berhampur with effect from the 28th December 2002 is legal/or justified and if not, then what relief the workman Shri Pattnaik is entitled to ?

6. It is admitted but not disputed that as against two sanction posts the workmen Shri B.K. Pattnaik was working as daily wages guard with effect from the 26th March 1998 in Central Home for Women, Berhampur. Similarly another daily wage guard namely, Shri S.K. Jena was also working there since the 4th January 1998 under the said management. But one Jatiya Sahu was working as Building Guard in another establishment i.e. in the Observation Home for Boys. Subsequently both B.K. Pattnaik and S.K. Jena were terminated from the service vide letter No. 64, dated the 14th May 1998 with effect from the 15th May 1998 of Superintendent, Central Home for Women. Again vide letter No. 105, dated the 16th September 1998, workman Shri Pattnaik was reappointed under the said management on the 17th September 1998 whereas S.K. Jena reappointed on the 9th September 1999 i.e. after laps of about one year from Shri Pattnaik. If we consider the date of reappointment of Shri Pattnaik and Jena then no doubt Shri Pattnaik is senior to Shri Jena as well as the detail length of service period performed by Shri Pattnaik. But if we consider the first time seniority from the beginning of engagement then no doubt Shri Jena is senior to Shri Pattnaik as Jena joined in the duty with effect from the 4th January 1998. The workman in his claim statement has pleaded that he rendered four years four months and five days of service in the capacity of Guard on daily wage basis with effect from the 26th March 1998 under the Superintendent Central Home for Women, Berhampur. It has also been admitted by the management that Shri Pattnaik was reinstated in service with effect from the 17th September 1998 by the order of Superintendent and terminated from service with effect from the 28th December 2002 as the junior most employee in the organisation. No doubt, if we calculate the total length of engagement of Shri Pattnaik from the 17th September 1998 till the 27th December 2002 then it would be near about four years and some months which the workman claims on the other hand, the management admits the claim of the workman, regarding his first engagement on the 26th March 1998, then his re-engagement in service with effect from the 17th September 1998 till the 27th December 2002 with a gap of different periods at different time. Further Ext. 15 filed by the workman issued by the Superintendent, Central Home for Women, Berhampur to Director, Social Welfare, Women and Child Development Department, Orissa, Bhubaneswar clearly shows the performance of the workman of Shri Pattnaik to be satisfactory

vide letter No. 392, dated the 11th December 2002. As per Ext-15, it clearly shows that the workman Shri Pattnaik was doing his duty satisfactorily without any complain from the year 1998 till the 11th December 2002. But on the 28th December 2002 he was being terminated by the management with a plea as junior most employee in the organisation. After perusal of oral testimony of both parties as well as documentary evidence it clearly goes to show that, for no fault of workman, in his duty he has been terminated by the management. Further on carefully scrutiny of evidence of both parties as well as on perusal of documentary evidence, it clearly shows that the total length of service of the workman Shri Pattnaik is more than as against the total length of service of Shri Jena as discussed above.

7. In course of argument the learned counsel for workman contended that the management has not filed the W.S. within stipulated time but filed the same after laps of three (3) years. Further he contended that no enquiry has been conducted before the alleged termination from service to the workman with effect from the 28th December 2002 and the workman has also not been paid retrenchment compensation as per provisions of Section 25-F of the I.D. Act. It is also his contention that the workman has not been issued with one month notice or paid one month pay in lieu of notice before the alleged termination. Admittedly in this case no retrenchment compensation has been paid to the workman nor one month notice pay has been issued to the workman before his termination. Though management admits the total length of engagement of the workman in his duty by virtue of oral as well as documentary evidence, but to that effect, provision of Section 25-F has not been complied by the management. For no fault of the workman after rendering more than one year in the service in the said management he has been deprived from his service by the management.

8. Accordingly to Section 25-F of the I.D. Act, the workman employed in an Industry and in continuous service for at least one year can be retrenched from service of one month notice in writing of notice pay in lieu of such notice and on payment of retrenchment compensation. As per the evidence of the workman no retrenchment benefits has been paid to him while, he was refused employment. It has been established in the evidence of the workman as well as on the strength of documents filed by both parties, he has worked more than 240 days at the minimum under the management. It is highly improvable that in these hard days the workman voluntarily remained absent in duty and discontinued to work without any reason. Now-a-days the service is a question of bread and butter to the workman and he struggles for his survival and existence. The management has not filed much less proved the N.M. R. rules as stated in their W.S. However no such rule can be accepted overriding the provision of Section 25-F of the I.D. Act. Considering the above fact and circumstances of the case, I am of the opinion that the management has refused the workman to provide employment without fault of the workman with plea of junior most employee of that Department which is illegal and unjustified.

9. It is best known to the authority concerned as to how he would give engagement or adjust to the workman as because he has no fault at the time of disengagement. Further, Ext. 15 shows that the performance of the workman to be satisfactory which goes in favour of the workman, couple with Ext. H filed by management.

Hence ordered.

ORDER

10. In the result the reference is answered on contest against the management. Accordingly the workman be reinstated in his previous post and the management is directed to pay half of the back wages to the workman form the date of his termination till reinstated.

Dictated and corrected by me.

P. K. JENA
24-12-2008
Presiding Officer
Labour Court, Jypore

P. K. JENA
24-12-2008
Presiding Officer
Labour Court, Jeypore

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