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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th February 2009

No. 1591—li/1(BH)-12/2000-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st January 2009 in Industrial Dispute Case No. 213 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Deputy Director, Horticulture, Baripada, Takatpur and its workman Shri Khirod Naik was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 213 OF 2008

Dated the 21st January 2009

Present :

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

Between :

The Deputy Director,
Horticulture, Baripada,
Takatpur, Mayurbhanj.

.. First Party—Management

And

Shri Khirod Naik,
At/P.O. Sagunabasa,
Via Laxmiposi,
Dist. Mayurbhanj.

.. Second Party—Workman

Appearances :

For the First Party—Management	.. Shri Deepak Kumar Dey, Asst. Horticulture Officer.
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For the Second Party—Workman	.. Shri Subrata Mishra

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. 6370—li/1(BH)-12/2000-L.E., dated the 15th May 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 Khirod Naik by the management of Deputy Director, Horticulture, Baripada with effect from the 11th August 1997 is legal and/or justified ? If not, what relief Shri Naik is entitled to ?”

2. Briefly stated, the case of the second party-workman is that he was employed as a Choukidar-cum-Attendant-cum-Nursery Worker under the first party-management in the scale of pay of Rs. 750—12—870—EB—14—940 per month and continued as such from the 11th August 1994 till the 10th August 1997. According to him, on the 11th August 1997 the management terminated his service without any reason or rhyme and further violated the provisions of Section 25-F of the Industrial Disputes Act, inasmuch as, while terminating his service the management had neither served on him any notice or notice pay nor paid any compensation. It is pleaded that during his continuance under the management the workman was neither charge-sheeted for any misconduct nor any enquiry was ever conducted for his dereliction in duty. His termination being contrary to the provisions of the Industrial Disputes Act, the workman has prayed for his reinstatement in service with full back wages.

3. The first party-management entered appearance and filed its written statement. In its written statement the management while admitting about the engagement of the workman in different spells, specifically pleaded that such engagement of the workman was not continuous one and in none of the years the workman had worked continuously for 240 days and as such, the management is not guilty of contravening the provisions of Section 25-F of the Industrial Disputes Act. In the premises therefore, the management has prayed to answer the reference in the negative as against the workman.

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

ISSUES

- (i) “Whether the termination of services of Shri Khirod Naik, by the management of Deputy Director, Horticulture, Baripada with effect from the 11th August 1997 is legal and/or justified ?

(ii) If not, what relief Shri Naik is entitled to ?”

5. In order to substantiate their respective stand, both parties have adduced oral as well as documentary evidence. The workman examined himself and proved ten documents which have been marked as Exts. 1 to 1/h and 2. The management on the other hand examined one witness on its behalf and filed eight documents which have been marked as Exts. A to A/6 and B.

6. It being the settled principle of law that the initial burden lies on the workman to prove that he had worked continuously for 240 days preceding the date of his termination from service, it is first to be seen whether such burden has been discharged by the workman adducing cogent evidence, both oral and documentary.

The workman examined as W. W. No. 1 deposed in his evidence that he was working as a Choukidar-cum-Attendant under the management since the 11th August 1994 and suddenly on the 11th August 1997 he was refused employment. He has proved xerox copies of appointment orders issued by the management in his favour marked Exts. 1 to 1/h and the xerox copy of a statement prepared by the management showing the details of working of the workman in different spells marked Ext. 2. A perusal of the documents reveals that Exts. 1 to 1/d are the appointment orders issued in favour of the workman during the year 1994, Exts. 1/e and 1/f relate to the year 1995 and Exts. 1/g and 1/h relate to the year 1996 and on a scrutiny of the same it is found that in none of the years the workman had completed 240 days of continuous service under the management. Ext. 2, the statement also discloses that even during the twelve calendar months preceding the date of his termination the workman had not rendered continuous service for 240 days.

M. W. No. 1, who is the Deputy Director of Horticulture deposed in his evidence that the workman had worked for 140 days in 1994; 168 days in 1995, 22 days in 1996. He deposed that besides the period of work mentioned above, the workman had also worked in different spells as a casual labourer under their establishment for 170 days from the 8th August 1994 to the 30th March 1997. In that connection he referred to Ext. B, the statement showing the engagement of the workman as a casual labourer under the management from the year 1994 to 1997. The same reveals that besides the aforesaid period, the workman had worked as a casual labourer for two days in 1994; 109 days in 1996 and for 61 days in 1997.

7. In view of the evidence, as aforesaid, led by both the parties, there remains no doubt about the fact that the workman was not continuously employed under the management for a period of 240 days preceding the date of his termination from service and accordingly it is held that the burden is not discharged by the workman and he failed to show that he had worked for 240 days in the year preceding his termination. Thus, it is held that the claim of the workman that his termination amounts to ‘retrenchment’ and the same is illegal and unjustified in view of non-compliance of the provisions of the Industrial Disputes Act is not at all sustainable.

8. In the result, it is held that the termination of service of the workman with effect from the 11th

August 1997 is neither illegal nor unjustified one and consequently he is not entitled to any relief in the present reference.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
21-01-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
21-01-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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