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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th February 2009

No. 1709—li/1(B)-14/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd December 2008 in I. D. Case No. 2 of 1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s S. F. D. C. (Plantation) Division, Jajpur Road, Dist. Jajpur and its Workmen Shri Lokanath Das, Shri Pravakar Pradhan and Shri Ajaya Kumar Swain was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 2 OF 1991

Dated the 23rd December 2008

Present :

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

Between :

The Management of M/s S. F. D. C. . . . First Party—Management
(Plantation) Division, Jajpur Road,
Cuttack.

And

Its Workmen . . . Second Party—Workmen
Shri Lokanath Das,
Shri Pravakar Pradhan and
Shri Ajaya Kumar Swain

Appearances :

Shri B. K. Pattanaik, A.L.O.	..	For First Party—Management
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Shri Lokanath Das	}	.. For Second Party—Workmen Themselves
Shri Pravakar Pradhan		
Shri Ajaya Kumar Swain		

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 referred the dispute between the parties to this Court for adjudication vide Order No. 387, dated the 5th January 1991 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of reference is as follows :

“Whether the action of the management of M/s S. F. D. C. Division, Jajpur Road, Cuttack in terminating the services of Shri Lokanath Das, Office Assistant, Shri Pravakar Pradhan, Mate and Shri Ajaya Kumar Swain, Office Assistant, with effect from 15th December 1988 is legal and/or justified ? If not , what relief are the workmen entitled to ? ”

3. After receipt of the reference both the parties appeared and contested the case. After conclusion of trial an Award was passed on the 8th March 1994 by this Court against which O.J.C. No. 4090 of 1995 was filed by the management in the Hon’ble Court. Vide Order No. 9, dated the 10th May 1996. The Hon’ble Court set aside the Award and remitted the matter back to this Court for readjudication.

4. After receipt of the reference on the 10th September 1991 out of three workmen, only Shri Lokanath Das filed statement of claim. The other two workmen did not file statement of claim. As said by me earlier the Award passed by this Court on the 8th March 1994 was quashed by the Hon’ble Court with a direction for readjudication. At that time the other two workmen joined in the proceeding and adduced evidence by examining themselves. The order passed in this regard by this Court on the 1st August 1997 and the 2nd August 1997 were challenged by the management in the Hon’ble Court vide O. J. C. No. 16962 of 1997. The Hon’ble Court vide order No. 7, dated the 28th August 2008 refused to interfere in the matter and dismissed the writ petition with a direction to dispose of this case as early as possible.

5. According to the statement of claim filed by the workman, Lokanath Das he was illegally retrenched by the management on the 15th December 1988. Before retrenchment no seniority list was prepared. He was engaged in 1987 and was absorbed in the regular post from January 1988. After his retrenchment some new persons were engaged in the same rank and place. The management illegally blamed him that he is not fit to perform duty. So according to Section 25-F of the Industrial Disputes Act, 1947 he is entitled to be reinstated in service with full back wages from the 15th December 1988.

6. The management in its written statement filed on the 3rd April 1992 has stated that S.F.D.C. is a Government of Orissa undertaking engaged in temporary seasonal works of plantation by engaging employees on daily wage basis. After completion of plantation work in Anandapur Subdivision no further work was allotted and therefore the employees including the three workmen were disengaged. At the time of retrenchment the retrenchment benefit as provided under Section 25-F of the Industrial Disputes Act, 1917 was paid to them. The workmen were retrenched due to non-availability of work and abolition of Division. So the same is legal and justified. For the same reason maintenance of seniority list of such employees was not necessary before retrenchment. The management has further denied that the workmen were engaged with effect from 1987 or that they were regularised from January 1988.

7. On the basis of the above materials, the following issues were settled :—

ISSUES

- (i) Whether the workmen were employees under the management and worked for 240 days in a calendar year ?
- (ii) Is their termination of services with effect from the 15th December 1988 is legal and/or justified ?
- (iii) To what relief ?

FINDINGS

8. *Issue Nos. (i) and (ii)* :—Both the issues are interlinked, so for the sake of convenience both the issues are taken up together.

In the written argument at Para. 1 the workmen have stated that they were appointed by the management in the year 1987 and their services were regularised from the 2nd February 1988. They have further stated that they had performed their duties continuously till the 15th December 1988. On the other hand, the management in Para. 3 of the written argument have stated that the workmen were engaged on daily wage basis with effect from the 2nd February 1988 in Anandapur Subdivision to look after the plantation work till the 19th September 1988. Thereafter for a temporary period they were engaged in other works till the 15th December 1988. So, they have not worked for one calendar year or for a continuous period of 240 days.

9. W. W. 1 in his testimony has stated that on the 2nd February 1988 he joined as a Mate in the management. On the 15th December 1988 the management stopped the work. Though his juniors were continuing in the services he was retrenched from service and no reason was assigned for termination of his service. He has nowhere stated that he was appointed in the year 1987. W.W. 2 in his testimony has also stated that he joined as a Mate on the 2nd February 1988 and continued to work till the 15th December 1988. Thereafter he along with others were retrenched. Some persons who were junior to him were absorbed in the service after their termination. He has also not stated that he was appointed by the management in the year 1987. W.W. 3 in his testimony has stated that he joined as Office Attendant in the year 1985. On the 2nd January 1988 his service

was regularised. He was terminated on the 15th December 1988. None of them have filled their appointment letters, rather two of them i.e. W.Ws. 1 and 2 have admitted that no written appointment order was issued at the time of their appointment. So, there is no material to say that any one of them was appointed in the year 1987. The management has examined a witness who has stated that the workman was working on daily wage basis as a Mate since February, 1988. Thereafter he was engaged to work in the office from the 20th September 1988. He has further stated that Anandapur Subdivision was abolished on the 15th December 1988 and thereafter no one was engaged whether in the plantation work or in the office. At the time his evidence was recorded the workmen namely Shri Pravakar Pradhan and Shri Ajaya Kumar Swain were not in picture because they were not participating in the hearing of the case. So all that he has stated in his testimony is related to the workman, namely Shri Lokanath Das. After Shri Pravakar Pradhan and Shri Ajaya Kumar Swain gave their evidence on the 1st August 1997 and the 2nd September 1997 no witness was examined from the side of the management. So on the basis of the depositions of the witnesses and facts stated by the management in Para. 3 of the written argument, I come to the conclusion that all the three workmen were working under the management from the 2nd February 1988 to the 15th December 1988.

10. It is contended by the management that the workmen have not worked continuously for one year or continuously for a period of 240 days. As such they are not entitled to get the benefit given in Section 25-F of the Industrial Disputes Act, 1947. But I find no merit in the aforesaid argument of the management. According to Section 25-B(2)(a)(ii) of the Industrial Disputes Act, 1947 even if a workman has not been in continuous service under an employer for a period of one year he shall be deemed to have been in continuous service for a period of one year if he has actually worked under the employer for 240 days in the preceding period of 12 months.

In the written argument the authorised representative of the management by referring to some citations has submitted that the workmen have not produced or exhibited any document to prove their engagement for 240 days during the preceding 12 months from the date of retrenchment. The burden of proof was on them and they have failed to discharge the same for which they are not entitled to get the benefit claimed by them. But the question of requirement of proof would arise only when employment for 240 days is denied by the management (employer). In the written statement the management has nowhere stated that the workmen had not worked continuously for a period of one year or for a total period of 240 days during the preceding 12 months from the date of retrenchment. Rather the management in Para. 6 of the written statement has stated that the retrenched employees have been paid the benefits as provided under Section 25-F of the Industrial Disputes Act, 1947. Even the witness examined on behalf of the management i.e. M.W. 1 has proved a document (which is erroneously marked as Ext. 1 and which should have been marked as Ext. A) i.e. a voucher to prove that retrenchment benefit in lieu of one month notice i.e. pay for one month amounting to Rs. 630 was paid to the workman Lokanath Das on the 15th December 1988. The other two workman i.e. W.Ws. 2 and 3 have stated in their deposition that one month salary was paid to them at the time of their termination. Thus it is clear that the management had

paid one month's pay in lieu of notice as required under Section 25-F(a) of the Industrial Disputes Act, 1947 to all the three workmen. Now the question is if the workmen were not in continuous service for one year or for a total period of 240 days during the period of preceding 12 months, why the management decided to pay one month's pay in lieu of notice is not understood. Since the management had paid one month's pay in lieu of one month prior notice, so that itself proves that the workmen were in continuous service for one year under the management within the meaning of Section 25-B of the Industrial Disputes Act 1947, because payment of salary for one month in lieu of notice as required under Section 25-F(a) of the Industrial Disputes Act, 1947 was made by the management prior to the retrenchment of the workman, so under the circumstances, the workmen were not obliged to discharge the burden of proving that they were in continuous service within the meaning of Section 25-B of the Industrial Disputes Act, 1947.

11. As indicated by me earlier, the management in the written statement has stated that the retrenched employees were paid the benefits as provided under Section 25-F of the Industrial Disputes Act, 1947 but two of the workmen i.e. W.Ws. 2 and 3 have stated that no compensation was paid to them at the time of retrenchment as provided under Section 25-F(b) of the Industrial Disputes Act, 1947. Though the management has filed a document to prove that Section 25-F(a) of the Industrial Disputes Act, 1947, was complied in respect of workman Shri Lokanath Das, no document was filed by the management to prove that Section 25-F(b) of the Industrial Disputes Act, 1947 was complied in respect of all the three workmen at the time of retrenchment on the 15th December 1988. Therefore, I believe the version of the workman that at the time of retrenchment compensation which shall be equivalent to 15 days average pay as provided under Section 25-F(b) of the Industrial Disputes Act, 1947 was not paid to them. According to the settled position of law the services of a workman cannot be terminated without compliance of Section 25-F(a) (b) of the Industrial Disputes Act, 1947. The workmen are entitled to claim for reinstatement in service with back wages if it is proved that Section 25-F of the Industrial Disputes Act, 1947 was not duly complied before they were retrenched. In the instant case as I have said earlier Section 25-F(b) of the Industrial Disputes Act, 1947 was not complied. Therefore, the workmen are entitled to claim for reinstatement in service and back wages.

12. Since the workmen had worked for 240 days within the meaning of Section 25-B(2)(a)(ii) of the Industrial Disputes Act, 1947 and they were retrenched without compliance of Section 25-F(b) of the Industrial Disputes Act, 1947 I would say that their termination of services with effect from the 15th December 1988 was not legal or justified. Accordingly both the issues are answered.

13. *Issue No. (iii)* :—In the earlier issues I have already come to a conclusion that the workman had worked for a period of 240 days within the meaning of Section 25-B(2)(a)(ii) of the Industrial Disputes Act, 1947 and before their retrenchment Section 25-F(b) of the Industrial Disputes Act, 1947 was not complied by the management. Therefore in view of the settled position of law they are entitled to claim for reinstatement in service as well as for back wages. There is no

material that after they were retrenched they have been engaged gainfully elsewhere but fact remains that during the last twenty years they have not rendered service of any type to the management. Keeping in view the aforesaid facts I think it will be just and proper if the management is directed to reinstate all the three workmen in service with a lump sum amount of Rs. 20,000 as back wages to each of the workman. Accordingly Issue No. (iii) is answered.

14. Hence ordered : All the three workmen shall be reinstated in service and each of them shall be paid a sum of Rs. 20,000 (Rupees twenty thousand only) towards back wages within a period of two months from the date of publication of the Award in the Official Gazette, in default the management will be liable to pay interest at the rate of 6% (six per cent) per annum on the amount of back wages as stated above from the date on which it becomes due till the date of actual payment.

The reference is thus answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
23-12-2008
Presiding Officer
Labour Court
Bhubaneswar

M. R. TRIPATHY
23-12-2008
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government