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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th February 2009

No. 1714—li/1(BH)-51/1995(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th January 2009 in Industrial Dispute Case No. 95 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of the Divisional Manager, Keonjhar Plantation Division, O.F.D.C. Ltd., Keonjhar and its workman Shri Purna Chandra Giri was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 95 OF 2008

Dated the 19th January 2009

Present :

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

Between :

The Divisional Manager, .. First Party—Management
Keonjhar Plantation Division,
O.F.D.C. Ltd., Keonjhar.

And

Shri Purna Chandra Giri, .. Second Party—Workman
At/P.O. Nuagan, Via Raruan,
Dist. Mayurbhanj.

Appearances :

For the First Party—Management	..	Shri B. K. Pattanaik, Assistant Labour Officer.
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Second Party Workman himself	..	Shri Purna Chandra Giri

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. 15828(5)—li/1-BH-51/1995-L.E., dated the 6th November 1995, 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 action of the Management of Divisional Manager, Keonjhar Plantation Division, O.F.D.C. Ltd., Keonjhar in refusing employment to Shri Purna Chandra Giri, Daily Wages, Watcher with effect from the 1st December 1994 is legal and/or justified ? If not, what relief Shri Giri is entitled to ?”.

2. Shortly stated, the case of the second party (hereinafter referred to as the ‘workman’) is that he was engaged as a Watcher on daily wage basis under the first party, i.e. the Divisional Manager, Keonjhar Plantation Division of the O.F.D.C. (hereinafter referred to as the ‘Management’) and was working in its Keshari Subdivision at Joshipur since the 1st March 1991. Such engagement of the workman was verbal one and no written order was issued in his favour. Initially he was getting his wages @ Rs. 11 per day which was subsequently raised to Rs. 25 per day from the 1st September 1992. It is alleged that suddenly on the 1st December 1994 the Supervisor in-charge of Keshari Subdivision, Joshipur refused him employment without assigning any reason thereof. It is pleaded that the workman has rendered continuous service as a Watcher under the management from the 1st March 1991 to the 30th November 1994 and in the process he has completed more than 240 days of work preceding the date of his disengagement and as such his refusal of employment squarely comes within the ambit of the definition ‘retrenchment’ and non-compliance of the provisions of Section 25-F of the Industrial Disputes Act renders the action of the management as illegal and unjustified one. Further it is pleaded in the claim statement that during the tenure of service of the workman neither he was charge-sheeted nor any enquiry was ever conducted against him for any act of misconduct. It is alleged that since the management has engaged fresh hands ignoring the claim of the workman, it has also violated the provisions of Section 25-H of the Industrial Disputes Act. In the aforesaid premises, the workman has prayed for his reinstatement in service with full back wages.

3. The management in its written statement has pleaded *inter alia* that the workman was never appointed as a Watcher but was engaged as a daily rated labourer with effect from the 1st April 1991 to do the nursery work of rubber plantation in the Keshari Subdivision as and when required like other labourers. His engagement was purely on casual basis on daily wages and he was paid wages for the days he reported for work. It is the specific stand of the first party that the labourers like the workman have never been engaged by the management but by the Supervisors, Mates and sometimes by the Subdivisional Managers and such engagement is not against any vacancy or against any permanent post. It is categorically averred in the written statement that since the second party-workman voluntarily abandoned

the work, the question of payment of retrenchment compensation does not arise at all. Lastly, it is pleaded by the management that due to ban on felling of timber and transfer of bamboo operation to the Raw Materials Procurers the workload of the Corporation has been decreased and there is no sufficient work even for the regular employees for which steps have already been taken to retrench the employees due to dearth of work. In the situation therefore, the management has pleaded its inability to reinstate the workman, who was working as a daily rated casual labourer on as and when need basis. In the aforesaid circumstance, 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 issue which falls for consideration is :—

ISSUE

“Whether the action of the Management of Divisional Manager, Keonjhar Plantation Division, O.F.D.C. Ltd., Keonjhar in refusing employment to Shri Purna Chandra Giri, Daily Wages, Watcher with effect from the 1st December 1994 is legal and/or justified ? If not, what relief Shri Giri is entitled to ?”.

5. In order to substantiate their respective stand, the workman examined himself and proved four documents which have been marked as Exts. 1 to 4. The management on the other hand, examined three witnesses on its behalf and brought on record documents which have been marked as Exts. A to D/2.

6. In the present litigation it is not disputed that the workman was not engaged under the management. But the management has challenged the averment of the workman that his engagement was continuous one and thereby it was obligatory on the part of the management to comply with the provisions of Section 25-F of the Industrial Disputes Act before effecting termination of his service. The specific stand of the management is that the workman was being engaged by the Supervisor to do casual nature of work on as and when need basis and was paid accordingly and on and from the 1st December 1994 he having voluntarily abandoned the work, the question of terminating or violating Section 25-F of the Industrial Disputes Act by the management does not arise. In view of the above, it is therefore required to be determined on the basis of the evidence available on record as to, if the workman has voluntarily abandoned the job as pleaded by the management or he had rendered continuous service under the management and ultimately suffered refusal of employment with effect from the 1st December 1994, which can otherwise be termed as ‘retrenchment’ requiring compliance of Section 25-F of the Industrial Disputes Act by the management.

7. In connection with the above, the workman examined as W. W. No. 1 has stated that he was working as a Watcher under the management from the 1st March 1991 till he was refused of employment, i.e. the 1st December 1994 and he was receiving his salary @ Rs. 750 per month after signing on the Muster Roll. Although he has deposed to have worked as a Watcher continuously under the management during the period but in his cross-examination he has admitted that no document is with him to show that he was working as such during the period. In Para. 4 he has admitted that he was working sometime as a labourer. Except his own statement, there is no documentary proof to corroborate his version that he was working as a Watcher under the management and that his such engagement was continuous one. The management on the other hand examined three witnesses on the issue. Out of them, M. W. No. 1 is a Field Assistant, who while admitting about the engagement of the workman under the management has deposed that he was working as a ‘Mulia’ on daily wage basis and was getting wages as per his certificates. He stated that the workman was

not paid on the days he remained absent from duty. He denied the engagement of the workman as a Watcher and specifically deposed that the management has not refused employment to the workman, as alleged, rather he voluntarily left the job with effect from the 1st December 1994.

M. W. No. 2 is the Sectional Supervisor of the O.F.D.C. he deposed similarly as that of M. W. No. 1. He stated that from the 1st December 1994 onwards the workman did not turn-up and remain absent wilfully and he was never engaged as a Watcher. Although M. Ws. 1 and 2 were cross-examined by the workman nothing was elicited from them to discredit their version.

M. W. No. 3 is a Forester. He deposed that the workman was working as a Mulia and was receiving payment on vouchers.

The documentary evidence Exts. A, A/1 B, C and D filed on behalf of the management also disclose that the workman was engaged under the management as 'Mulia' and he was being paid his wages @ Rs. 25 per day on the days he worked.

8. On a perusal of the evidence led by both the parties, there remains no doubt that the workman was engaged under the management as a daily wage earner and not as a Watcher as claimed by him. It further reveals that he was not refused employment but on his own sweet will the workman remained absent from duty and thereby voluntarily abandoned the job and hence, the question of refusal of employment to him does not arise.

9. Now coming to the question of relief to which the workman is entitled, it is seen from the evidence of M. W. Nos. 1 and 2 that all the labourers who were working with the workman have got retrenchment compensation in the year 1997 and had the workman continued till then he would have also got the same. In view of such evidence and taking into consideration the admitted fact that prior to the abandonment of job the workman was under the employment of the management for a period of more than three years as a daily wage earner, it would be appropriate if he is also paid the retrenchment benefit like the other workman, who were retrenched in the year 1997. Accordingly, the management is directed to extend retrenched benefit in favour of the workman within a period of one month from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
19-1-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
19-1-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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