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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th February 2009

No.1960-1i/1(B)-140/1995(Pt.)/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 6th February, 2009 in Industrial Dispute Case No. 118/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Kalinga Packers (P) Ltd., 75 New Industrial Estate, Jagatpur, Cuttack and their Workman Shri Kabindra Ghadei was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 118 OF 2008

The 6th February 2009

Present: Shri P.C. Mishra, O.S.J.S. (Sr. Branch)

Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between: The Managing Director,
M/s. Kalinga Packers (P) Ltd.,
75 New Industrial Estate,
Jagatpur, Cuttack

.. First Party—Management

And

Shri Kabindra Ghadei,
At- Imam Nagar (Khaire),
Post- Bhairpur,
Via- Bahugram,
Dist- Cuttack

.. Second Party—Workman

Appearances :

None .. For First Party—Management

Shri Satyabadi Mishra,
Authorized Representative .. For Second Party—Workman

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.111-li/1-(B)-140/1995/LE., dated the 2nd January 1996, 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/LE., dated the 4th April 2008.

“Whether the termination of services of Shri Kabindra Ghadei, Helper with effect from the 21st June 1994 by the Management of M/s. Kalinga packers Pvt. Ltd., New Industrial Estate, Jagatpur, Cuttack is legal and/or justified ? If not, to what relief he is entitled ?”

2. The case of the Workman in brief is that in the year 1990 he joined the Management as a Helper on a monthly wage of Rs. 650/- but as against this he was being paid Rs. 550/- per month. The wages paid to him being less than the minimum wages he complained several times for which the Management bore a grudge against him and on the 21st June 1994 when the Workman was about to left the factory after finishing his shift duty from 6 A.M. to 2 P.M., the production Manager directed him to do over-time and on his denial to do so, he was refused employment with effect from the 21st June 1994 and his attendance card was snatched away. It is stated in the claim statement that despite his rendering continuous service for four years under the Management neither he was given any written notice nor notice pay and retrenchment compensation and further the Management has neither framed any charge sheet nor conducted any enquiry while terminating his service. It is averred that on many occasions the Management compelled the Workman to sign on plain papers with a view to utilize the same against the Workman and therefore, the plea resorted to by the Management that at any time the Workman submitted his resignation is false one. While admitting about receipt of Rs. 262/- from the Management, the Workman has stated that the same represents his wages for the days he had worked during June, 1994. The Workman was covered under the E.S.I. & E.P.F. Scheme during his continuance under the Management. According to him, the termination of his service which amounts to retrenchment is illegal and unjustified in view of the non-compliance of the provisions of the Industrial Disputes Act by the Management. Therefore, he has prayed for his reinstatement in service with full back wages.

3. The Management filed its written statement stating therein *inter alia* that the Workman joined the organization of the First Party on the 1st February 1994 and on the

same day he was covered under the E.S.I. Act and E.P.F. Act. The Management has denied the averment of the Workman that on the 21st June 1994 the production Manager asked him to do over-time work and so also the payment of wages made to him @ Rs. 550/- per month. The specific stand of the Management is that on the 22nd June 1994 the Workman tendered resignation which was accepted on the 23rd June 1994 and he having worked only for four months and some days he is not entitled to the protection of the Industrial Dispute Act, as claimed. The Management, in the circumstances, has prayed to answer the reference as against the Workman.

4. During hearing of the dispute the Management did not appear nor took any step for which it was set *ex parte* vide order No. 33, dated the 10th August 2004. In the *ex parte* hearing the Workman examined himself and brought on record some documents which have been marked Exts. 1 to 7/1.

5. It being the settled principle of law that the claimant, who has raised the dispute, has to prove that he had worked continuously for more than 240 days under the employer in order to attract the ingredients of Section 25-F of the Industrial Dispute Act, it is first to be seen as to whether the Workman has discharged the said burden successfully.

6. In Para-6 of his affidavit evidence the Workman has deposed that since 1990 to 21st June 1994 he worked continuously under the Management without any break. Although the Workman is not able to file all the documentary evidence in support of his engagement from 1990 to 21st June 1994 but the attendance cards marked Exts. 7 and 7/1 reveal that he was under the employment of the Management since March, 1993 and on the basis of that documentary evidence alone it can be said that he had worked for more than 240 days continuously under the Management preceding the date of his termination from service i.e. 21st June 1994. The factum of continuous service having been proved, the other question which comes for consideration is whether the Management has complied with the provisions of Industrial Dispute Act while terminating the services of the Workman. In the context, the Workman in his unchallenged evidence has deposed that the Management has neither given him any notice nor notice pay and paid any retrenchment compensation while doing away with his job. In absence of any contrary evidence to the effect, there is no reason to disbelieve the version of the Workman. Similarly, the plea resorted to by the Management that the Workman tendered resignation cannot be accepted in absence of any evidence to that effect. The Workman having put in continuous service under the Management for more than 240 days, it was obligatory for the Management to comply with the provisions of the Industrial Disputes Act and non-compliance of the same renders its action as illegal and unjustified.

7. In the result it is held that the termination of service of the Workman with effect from the 21st June 1994 by the Management is neither legal nor justified and consequently the Workman is held entitled to reinstatement. As regards back wages, since there is nothing on record that during the period of termination of his service the Workman was not gainfully employed elsewhere, he is not entitled to the same.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. Mishra, O.S.J.S. (Sr. Branch)
Dt. 06-02-2009
Presiding Officer,
Industrial Tribunal,
Bhubaneswar

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