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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd March 2009

No. 2276—li/1(B)-21/1998(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th February 2009 in Industrial Dispute Case No. 166 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Jaya Durga Industries, New Industrial Estate, Jagatpur, Cuttack and their workman Shri Dharendra Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 166 OF 2008

Dated the 17th February 2009

Present :

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

Between :

The Managing Partner,
M/s. Jaya Durga Industries,
53/29, Phase-II, New Industrial Estate,
At/P.O. Jagatpur, Cuttack.

.. First Party—Management

And

Shri Dharendra Behera,
At Gujarpur, Post Bhayarpur,
Via. Bahugram, Dist. Cuttack.
Orissa.

.. Second Party—Workman

Appearances :

For the First Party—Management	..	None
For the Second Party—Workman himself	..	Shri Dharendra Behera

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. 10877—li/1(B)-21/1998-L.E., dated the 8th October 1998, 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 service of Shri Dharendra Behera, Helper by the management of M/s. Jayadurga Industries, New Industrial Estate, Jagatpur, Cuttack with effect from the 4th December 1995 is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

2. The case of the second party is that initially he joined as a Helper under the management in the year 1989 and continued as such up to the 3rd December 1995 and during the period he discharged his duties sincerely and satisfactorily without any stigma. It is alleged that since the management was not implementing the minimum wages fixed by the Government and not extending the benefits of the E.S.I. and E.P.F. in favour of the workmen, the workman along with others insisted upon the management for fulfilment of their aforesaid demands but without considering their legitimate demands, the management bore a grudge and all of a sudden refused him employment with effect from the 4th December 1995, which is an act of retrenchment. According to him, such action of the management is illegal and unjustified in view of the fact that neither the management had given him any notice nor notice pay and retrenchment compensation as provided under Section 25-F of the Industrial Disputes Act while effecting such retrenchment. The workman has therefore, prayed for his reinstatement in service with full back wages.

3. The management despite notice neither appeared nor filed its written statement for which it was set *ex parte* vide order No. 10, dated the 3rd August 2001. In the *ex parte* hearing, the workman submitted his evidence on affidavit and proved Ext. 1 series, which are correspondences made with the Labour machineries and with the management.

4. The workman in his affidavit evidence has stated that he was continuously working under the management being employed as a Helper from the year 1989 till the 3rd December 1995 on a monthly salary of Rs. 610 and as he along with others insisted the management for implementation of minimum wages and for extending the benefits of E.S.I. and E.P.F., the management bore a grudge against him and refused him employment with effect from the 4th December 1995. He further stated in his affidavit that during his continuance under the management neither he was chargesheeted for any misconduct nor any explanation was ever called for from him. He deposed that since the date of his termination he is not gainfully employed elsewhere and is maintaining his family with much financial difficulties. A perusal of

his unchallenged evidence together with Ext. 1 series indicates that he was employed continuously for five years under the management and for that reason it was incumbent for the management to comply with the statutory requirements of Section 25-F of the Industrial Disputes Act while refusing him employment, which otherwise can be termed as termination of his service. Due to non-compliance of the aforesaid provision by the management, its action cannot be held to be legal or justified. Hence, the workman is held entitled to reinstatement in service forthwith but without any back wages as there is nothing in the pleading of the workman that during the period he suffered termination of his service he was not gainfully employed elsewhere. The management is directed to implement the Award 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
17-02-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
17-02-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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