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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd March 2009

No. 2296—li/1(B)-13/2003-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. 19 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Indian Paints and Chemicals Private Limited, Madhupatna, Cuttack and their workman Shri Jayanta Kumar Rout was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 19 OF 2003

Dated the 17th February 2009

Present :

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

Between :

The Management of .. First Party—Management
M/s. Indian Paints and Chemicals
Private Limited, Madhupatna, Cuttack.

And

Their workman .. Second Party—Workman
Shri Jayanta Kumar Rout

Appearances :

For First party—Management .. None
Second Party—Workman himself .. Shri J. K. Rout

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the dispute between the parties to this Court vide Order No. 3496—li(B)-13/2003-L.E., dated the 4th April 2003 of the Labour & Employment Department, Orissa, Bhubaneswar for adjudication.

2. The schedule of reference is as follows :

“Whether the termination of services of Mr. Jayanta Kumar Rout, Typist-Assistant by the management of M/s. Indian Paints and Chemicals Private Limited, Industrial Estate, Cuttack-10 with effect from the 10th June 2002 is legal and/or justified ? If not, what relief he is entitled to ?”

3. The case of the workman may be briefly stated as follows :

Initially he joined as Office Assistant-*cum*-Typist in the organisation of the management on the 10th May 1993. On the 18th August 1993 he was directed to do the work of Kardex posting, Dak despath and receiving, preparing of Gatepass, posting work of Central Excise and Store Section besides his usual work as Typist-*cum*-Assistant. On the 1st April 1994 he was appointed as Typist-*cum*-Assistant (on Probation) for six months with consolidated salary of Rs. 750 per month. On the 30th September 1994 his probation period was completed and he was confirmed in service with pay of Rs. 930 per month. He was also awarded as the best staff for the year 1995-1996 and again in the year 1998-1999. On the 6th July 2001 he was transferred to the Administrative Department of the management and directed to discharge the function of Junior Officer (Admn.). After he worked there for 9 and 1/2 months, he was transferred to the Works Department of the management on the 29th April 2002. As because he was allotted several type of work he requested the management for enhancement of salary and for implementation of revised minimum wages like other workers. On the 7th June 2002 the management terminated his service with effect from the 10th June 2002 on a false ground. Even though the letter of termination was typed on the 7th June 2002 yet the same was not communicated to him till 4.06 P.M. of the 10th June 2002. On the 12th June 2002 he was called by a special messenger and the management handed over another letter, dated the 7th June 2002 wherein the particulars of accounts settled to be paid were noted like salary for the month of June 2002, encashment of Earned Leave till the 8th June 2002, gratuity for the period from the 1st April 1994 to the 8th June 2002 and one month's salary in lieu of notice period. Further according to him he had signed in the attendance register on the 8th June 2002, the 10th June 2002 and had performed duty on those two days. At the time of termination of his service the management had not complied the Section 25-F of the Industrial Disputes Act, 1947 except stating in the letter of termination to approach the Accounts Department on the 30th June 2002 for settlement of his accounts knowing fully well that the 30th June 2002 was a Sunday. He had been to the Accounts Department of the management on the 30th June 2002 but as it was Sunday the office was closed and there was no one in the office except the Watchman. On the next day i.e. on the 1st July 2002 he again went to the office and approached for payment of his dues. The management handed over one Post Dated Cheque of the 15th July 2002. The said Cheque was returned back being dishonoured with the remark

'insufficient D.P.' So he intimated the said fact to the management on the 19th July 2002. On the same day the management handed over a Bank Draft to him which was prepared on the 17th July 2002, amounting to Rs. 13,077.40 which includes salary for the month of April, May and up to the 9th June 2002, gratuity Rs. 8,768, earned leave for 48 days Rs. 3,040 and Rs. 1,900 towards on month's pay in lieu of notice, the total of which comes to Rs. 17,477.40, out of which Rs. 4,400 was deducted towards the advance taken by him earlier. The retrenchment benefit as provided in Section 25-F of the Industrial Disputes Act, 1947 was not paid to him. Though he had worked for the 10th June 2002 his salary for the said day was not calculated and paid to him. Therefore his termination of services with effect from the 10th June 2002 is illegal and unjustified, as such he is entitled for reinstatement in service with full back wages and other consequential service benefits.

4. The management filed written statement on the 1st March 2004. But subsequently did not participate in the hearing, so the management was set *ex parte* on the 24th January 2007.

5. In support of his case, the workman examined himself as W. W. 1 and proved some documents.

The copy of his joining report was marked as Ext. 1. The letter issued by the management on the 18th August 1993 by which work was assigned to him was marked as Ext. 2. After completion of training he was appointed as Typist-Assistant with effect from the 1st April 1994 and the relevant letter was marked as Ext. 3. On the 1st September 1994 he was asked to take charge of the Excise Section, in addition to his normal duty and the copy of the said letter was marked as Ext. 4. He was confirmed with effect from the 1st October 1994 and the copy of the relevant letter was marked as Ext. 5. The copy of the certificates issued by the management on the 25th May 1996 and 25th May 1998 were marked as Exts. 6 and 6/a. He was transferred from Works Department to Administrative Department on the 6th July 2001 and the copy of the said letter was marked as Ext. 7. He had written a letter to the Executive Director of the management on the 18th July 2001 and the copy of the said letter was marked as Ext. 8. On the 29th April 2002 his services were placed under the Works Department and the copy of the said letter was marked as Ext. 9. On the 7th June 2002 a letter was issued for retrenchment of his services and the copy of the said letter was marked as Ext. 10. On the same day another letter was issued to him towards settlement of his dues and the copy of the said letter was marked as Ext. 11. The management had issued a cheque amounting to Rs. 13,077.40 which bounced and the copy of the said cheque, as well as the intimation received from the Bank was marked as Ext. 12. He had intimated the management regarding the dishonour of the cheque and the copy of the said letter was marked as Ext. 13. He has also filed copy of one experience certificate issued by the management, E.S.I. Card, annual statement towards E.P.F., representation addressed to the Regional Provident Fund Commissioner etc. which were marked as Exts. 14 to 18 respectively.

6. As I have said earlier, the management has not come forward to context the case, as such the oral evidence given by the workman has remained uncontroverted and the documents filed by him have remained unchallenged. Under the above circumstances, I have no other option but to believe the evidence both oral and documentary adduced by him.

7. Since Section 25-F of the Industrial Disputes Act, 1947 was not complied by the management at the time of retrenchment of the workman from service and particularly because the retrenchment compensation as provided under Section 25-F(b) of the Industrial Disputes Act, 1947 has not yet been paid to him, it can be safely said that the retrenchment of the workman from service is illegal and unjustified and the workman is entitled to be reinstated in service with back wages. But Para. 13 of his affidavit evidence reveals that he has already joined as a Junior Typist in the Court of S.D.J.M., Baliguda in the District of Kandhamal with effect from the 1st September 2004. So I find no justification to give a direction to the management at this stage to reinstate him in service. He has been working since the 1st September 2004 in another office and so there is also no justification to award any amount towards back wages with effect from that date. It is complained by him that his pay for the 10th June 2002 was not paid to him. So also retrenchment compensation at the rate of fifteen days' average pay for every completed years of service or any part thereof in excess of six months was not paid to him. Undoubtedly he was entitled to get the amount on the above two counts at the time of retrenchment. Since he was retrenched in an illegal manner and was not employed till the 31st August 2004 from the 10th June 2002, so he is also entitled to get back wages for the above period. But fact remains that he has actually not rendered any service to the management during the period the 10th June 2002 to the 31st August 2004.

8. So under these circumstance, I feel it will be just and appropriate to direct the management to pay 50% of the back wages to the workman for the period from the 10th June 2002 to the 31st August 2004 within two months from the date of publication of the Award in the Official Gazette. If the amount is not paid as stated above, the workman will be entitled to get interest at the rate of 6% per annum on the aforesaid amount of back wages from the date when it becomes due till the date of actual payment.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

M. R. TRIPATHY
17-02-2009
Presiding Officer,
Labour Court,
Bhubaneswar.

M. R. TRIPATHY
17-02-2009
Presiding Officer,
Labour Court,
Bhubaneswar.

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