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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 19th March 2009

No. 2943—li/1(B)-125/2005-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th February 2009 in Industrial Dispute Case No. 17/2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of State Resource Centre for Adult Education, Orissa, Bhubaneswar and their workman Shri Bijay Kumar Nayak, was referred for adjudication is hereby published as in the Schedule below:

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 17 OF 2006

Dated the 28th February 2009

Present :

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

Between :

The Management of State Resource Centre for Adult Education,
Orissa, Bhubaneswar.

.. First Party —Management

And

Their Workman
Shri Bijay Kumar Nayak.

.. Second Party—Workman

Appearances :

Shri G. Nayak, Office Secretary .. For First Party—Management

Shri B. K. Nayak. .. Second Party—Workman himself

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. 1412—li/1 (B)-125/2005, dated the 13th February 2006 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of Reference is as follows :

“Whether the termination of service of Shri Bijay Kumar Nayak, the workman by the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar from the 1st June 1995 is legal and/or justified ? If not, to what relief the workman Shri Nayak is entitled ?”

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

The workman namely, Shri Bijay Kumar Nayak joined as casual worker on daily wage basis in the management on the 1st April 1988 and while he was working as such, he was appointed as Peon vide Office Order No. 46, dated the 4th January 1992. He worked in the above post till the 31st May 1995 and his services were terminated with effect from the 1st June 1995 without any reason. At the time of termination of his service he was receiving salary at the rate of Rs. 1,200 per month along with Medical Allowance at the rate of Rs. 1,200 per year and House Rent Allowance at the rate of Rs. 180 per month. During the course of employment his Service Book was opened and maintained by the management. Though he had performed duty for more than 240 days during the previous twelve months from the date of termination, Section 25-F of the Industrial Disputes Act, 1947 was not complied and therefore according to him the termination is void *ab initio* and he is entitled to be reinstated in service with full back wages. He has also prayed to pass an order for payment of Rs. 5,000 by the management to him towards litigation expenses.

4. The management in the written statement has submitted that it is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. It is a Voluntary Organisation and the workers are working to fulfil their philanthropic passion and mission, without any intention to gain. It is a non-profit making institution working on adult education only to fulfil its charitable mission. There is no employer and employee relationship between the management and the workers. That apart the reference has been made about ten years after the date of alleged termination, as such, not maintainable. Further according to the management the workman had joined as a social worker on the 4th January 1992 and was entrusted with the duty of a Peon with a consolidated honorarium of Rs. 600. He was not sincere in his duty and was remaining absent for long period without any intimation. He had never worked for a period of 50 days at a stretch. He was not being paid salary and allowances. Of course a Service Book was maintained but that was done only to maintain the office decorum. Hence for all the aforesaid reasons the workman is not entitled to get any relief in this case.

5. The following issues were framed.

ISSUES

- (i) "Whether the termination of service of Shri Bijay Kumar Nayak, the workman by the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar from the 1st June 1995 is legal and/or justified ?
- (ii) If not, to what relief the workman Shri Nayak is entitled ?"

6. In support of his case the workman examined himself as W. W. 1. The management has also examined a witness who is working as Office Secretary in the management.

FINDINGS

7. *Issue Nos. (i) and (ii)* : Both the issues are taken up together for the sake of convenience.

The workman in his deposition has stated that he joined as a Peon in the management on the 1st March 1990 on daily wage basis. Subsequently on the 1st January 1992 he was paid consolidated salary of Rs. 600 per month. He has proved an order passed in that regard by the Administrative Officer bearing No. 46, dated the 4th January 1992 marked as Ext. 1. Thereafter his Service Book was opened and he has filed a copy of the same marked as Ext. 2. He has also filed a copy of the duty allotment order passed by the Director of the management on the 5th April 1993 marked as Ext. 3. According to him he was retrenched from service with effect from the 31st May 1995 without any reason. At the time of retrenchment no notice was served on him. Also pay for one month and compensation was not paid to him. Further according to him one Shri M. K. Sarangi who was appointed along with him is still continuing in his service. During cross-examination he has admitted that initially he was appointed in the management to work on piece rate basis. He has denied that he was disengaged on the 30th June 1993 and re-engaged on 1st July 1993. There is no other material in his cross-examination to take an adverse view against all that he has stated in his Examination-in-Chief.

8. M. W. 1 filed his Examination-in-Chief in shape of affidavit which is just a copy of the written statement. Though the management has taken the plea that the management organisation is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, no document has been filed to establish the said fact. Along with the written statement a xerox copy of the certificate of registration of societies has only been filed. But there is nothing in the said certificate to take a view that it is not coming within the definition of Section 2(j) of the Industrial Disputes Act, 1947.

9. During cross-examination M.W. 1 has admitted that the workman was getting salary of Rs. 600 per month on consolidated basis. He has further admitted that Service Book was opened and he was putting his signature in the attendance register daily. Also casual leave was granted in his favour whenever requested by him. As per the Service Book marked as Ext. 2 the workman joined as a Peon attached to M.P.C.L. on the 1st January 1992 with a consolidated salary of Rs. 600 per month. Though the workman has claimed that at the time of retrenchment he was getting salary of Rs. 1,200 per month besides other allowances the same cannot be accepted as the workman has not filed any document to that effect. It is

stated by him that he was retrenched from service with effect from the 31st May 1995. The management has not produced any material to prove that he was retrenched on some date prior to the 31st May 1995. So I believe the version of the workman that he was working as a Peon in the management with effect from the 1st January 1992 till the 31st May 1995. Thus it can be safely concluded that he had worked for more than 240 days during the preceding twelve months from the date of retrenchment. Admittedly no notice or notice pay or retrenchment compensation as provided under Section 25-F of the Industrial Disputes Act, 1947 was given to him at the time of retrenchment. So in view of the settled position of law I have no hesitation to say that the retrenchment is void *ab initio* and he is entitled to be reinstated in service.

10. According to the workman he was retrenched from service with effect from the 1st June 1995. The conciliation report reveals that he filed a complaint before the labour machinery on the 6th May 2004. It is not known as to why he did not approach the labour machinery prior to the 6th May 2004. By the 6th May 2004, almost a period of 9 years had elapsed. So under the circumstance stated above I think it will not be appropriate to award any amount towards back wages. Accordingly both the issues are answered.

11. Hence Ordered :

The termination of service of the workman Shri Bijay Kumar Nayak by the management of the Director, State Resource Centre for Adult Education, Orissa, Bhubaneswar from the 1st June 1995 is held to be illegal and unjustified. The workman Shri Nayak is entitled to be reinstated in service but without any back wages. The management shall reinstate the workman in service within two months from the date of the publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
28-2-2009
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
28-2-2009
Presiding Officer
Labour Court, Bhubaneswar

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