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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th March 2009

No. 3235—li/1(BH)-7/1999 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th February 2009 in Industrial Dispute Case No. 227 /2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Horticulturist, At./P.O. Saptasajya, Dist. Dhenkanal and his Workman Shri Gobardhan Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 227 OF 2008

Dated the 19th February 2009

Present :

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

Between :

The Horticulturist, .. First Party —Management
At./Post. Saptasajya, Dist. Dhenkanal.

And

Shri Gobardhan Sahoo, .. Second Party—Workman
S/o. Sanatan Sahoo,
Vill. Sadeiberent, P. O. Saptasajya,
Dist. Dhenkanal.

Appearances :

None .. For the first Party —Management

Shri T. Lenka, .. Second Party—Workman himself.

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. 10292-li/1(BH)-7/1999-LE., dated 26th July 2000 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 4th April 2008.

“Whether the termination of services of Shri Gobardhan Sahoo, Watchman with effect from the 29th May 1996 by the Horticulturist, Sapatasajya Farm is legal and/or justified ? If not, what relief Shri Sahoo, is entitled to ?”

2. The case of the workman in short is that he was working under the management being engaged in different capacities such as Watchman, Helper and Attendant continuously for a period of more than 15 years and in the year 1990 when the minimum wages were revised by the Government he was being paid Rs. 25 per day on monthly basis. He pleaded that he was very often engaged to do the work of Attendant. It is stated that after waiting for a long period when his services were not regularised in any Class-IV post he made a complaint before the D. L. O., Dhenkanal and as a consequence of such redressal of his grievance the management became annoyed and all of a sudden terminated his service w.e.f. the 29th May 1996 without complying with the provisions of the Industrial Disputes Act knowing fully well that he was the seniormost worker and juniors to him are continuing in employment. It is in his claim statement that during his continuance under the management he was never charge sheeted nor any enquiry was conducted for any alleged misconduct. With the averments, the workman has prayed for his reinstatement in service with all back wages and other consequential benefits.

3. Disputing the averments made in the claim statement, the management filed its written statement stating therein *inter alia* that the workman was working as a casual worker only to provide water to the staff on daily wage basis. The specific stand of the management is that when there is no order of appointment the question of termination of service of the workman becomes redundant and therefore, he is not entitled to any relief in the present dispute.

4. On the basis of the pleadings of the parties, the following two issues have been framed :—

ISSUES

(i) “Whether the termination of services of Shri Gobardhan Sahoo, Watchman with effect from the 29th May 1996 by the Horticulturist, Sapatasajya Farm is legal and/or justified ?

(ii) If not, what relief Shri Sahoo is entitled to ?”

5. The management though filed written statement but did not chose to contest the case for which it was set *ex parte* vide Order No. 8, dated the 1st August 2002. The workman submitted his evidence on affidavit and brought on record eight documents which have been marked Exts. 1 to 8.

6. In this evidence on affidavit the workman has stated that being engaged under the management from the year 1980 he was working in the Sapatasajya Garden and in the agricultural farm of the management with other attendants and was receiving his monthly

salary @ Rs. 25 per day. He stated that when he made a complaint before the D. L. O., Dhenkanal for his regularisation, the management terminated his service w.e.f. the 29th May 1996. He further stated that his employment under the management was continuous one from the year 1980 till the 29th May 1996 and without any reason or rhyme the management terminated his service being aware of the fact that he was the seniormost worker and at the same time did not even comply the provisions of Section 25-F of the Industrial Disputes Act. He has filed and proved two of his engagement orders marked Exts. 1 and 2. Ext. 3, the copy of the notice dated the 6th September 1994 discloses that the workman was asked to face an interview for the post of Chowkidar. Ext. 4 is the copy of the experience certificate which shows that he was working under the management since the year 1980 as a casual worker. A perusal of the evidence of the workman and the documents filed and proved by him in the proceeding shows that he was under the employment of the management for a period more than 15 years and during the period he had rendered services continuously. The stand of the workman is found to have been well substantiated through his own evidence as well as the documents filed and proved by him. There being no rebuttal evidence available on record, it is held that the termination of service of the workman w.e.f. the 29th May 1996 amounts to retrenchment and the same is illegal and unjustified in view of non-compliance of the provisions of Section 25-F of the Industrial Disputes Act by the management.

7. In view of the finding, as aforesaid, the workman is held entitled to reinstatement in service. He is, however, not entitled to any back wages in absence of any evidence on record that from the date of his termination till date he was not gainfully employed elsewhere.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
19-2-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
19-2-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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