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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st May 2009

No. 3978—Ii/1(B)-46/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th March 2009 in I. D. Case No. 63 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s NALCO Ltd., Bhubaneswar and their workman Shri Padma Charan Ojha was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 63 OF 2003

Dated the 4th March 2009

Present :

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

Between :

The Management of
Ms NALCO Ltd., Bhubaneswar. . . First Party—Management

And

Their Workman
Shri Padma Charan Ojha. . . Second Party—Workman

Appearances :

For First Party—Management . . Shri S. K. Mishra, Chief Manager (HRD)

For Second Party—Workman himself . . Shri P. C. Ojha

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 for adjudication vide Order No. 9267—Ii/ 1(B)-46/2003-LE., dated the 16th September 2003 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows :

> "Whether the action of the management of Ms NALCO Ltd., Bhubaneswar in terminating the employment of Shri Padma Charan Ojha with effect from the 4th January 1999 is legal and/ or justified ? If not, what relief Shri Ojha is entitled to ? "

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

The workman was working as Technical Assistant(Helicopter) in the management of NALCO for the period from the 17th August 1998 to the 3rd September 1999. He was getting a salary of Rs. 4,050 per month. On the 4th September 1999 the management refused employment to him. Though he had completed 240 days of work during the preceding twelve months from the date the 4th September 1999, Section 25-F of the Industrial Disputes Act, 1947 was not complied by the management and he was terminated from service in an illegal manner. He raised an industrial dispute and a conciliation proceeding was initiated which ended in failure. Accordingly the reference was received for adjudication.

4. The management in the written statement has submitted that NALCO is a Government of India Enterprise having its Board of Directors who are responsible for the affairs of the Company. The Company has a separate Recruitment Rules for non-executive and executive staffs. In order to meet temporary recruitment for specific work and for specific period some persons are temporarily engaged. The NALCO had purchased a Helicopter in the year 1984 and for the purpose of maintenance of the said Helicopter an Aviation Department was opened. For the maintenance of the Helicopter, the workman was engaged as per verbal order on a daily wage of Rs. 134 per day for a period of 89 days with effect from the 1st September 1998. He was getting his wages in respect of the days he had actually worked. His engagement was subsequently extended on the 15th December 1998, the 8th March 1999 and the 15th June 1999. His last term of employment expired on the 4th September 1999 and thereafter his employment was not extended as it was not required. During Super Cyclone the Helicopter was severely damaged and so there was no need to engage the workman further. The management has also denied the fact that the workman was getting a sum of Rs. 4,050 per month as his salary. Since the workman was engaged on a temporary basis for a specific period and to do a specific work and as there was no further requirement to engage him after dated 4th September 1999, so the management was not required to comply Section 25-F(a) and (b) of the Industrial Disputes Act, 1947 at the time of termination of his service. Therefore the reference is liable to be answered negatively.

5. The following issues were settled in this case :

ISSUES

(i) "Whether the action of the management of M/s NALCO Ltd., Bhubaneswar in terminating the employment of Shri Padma Charan Ojha with effect from the 4th September 1999 is legal and/or justified ?

(ii) If not, to what relief Shri Ojha is entitled ?"

6. In support of his case the workman examined himself as W.W.1. The management also examined two witnesses. M.W. 1. is working as the Chief Manager (I & E) of NALCO and M.W. 2 is working as Chief Manager (Co-ordination), NALCO.

FINDINGS

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

In the case of Range Forest Officer *V*. S.T. Hadimani reported in 1053-I-LLJ/2002 it was held as follows :

> "XXX In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more that 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

This decision was also referred by the Apex Court in the case of Surendranagar District Panchayat *V*. Dahyabhai Amarsingh reported in AIR 2006 S.C. 110 and Chairman, Oil and Natural Gas Corporation Ltd., and another *V.* Shyamal Chandra Bhowmik reported in AIR 2006 S.C. 392.

8. In the view of the aforesaid position of law the burden of proof lies on the workman to establish the fact that he had actually worked for more than 240 days during the preceding twelve calendar months from the date of retrenchment. Unless and until this is established he will be not entitled to claim the protection under Section 25-F of the Industrial Disputes Act, 1947.

9. So let us now examine as to whether the workman has discharged this burden satisfactorily or not.

In the written statement the management has admitted that initially the workman was appointed for 89 days on daily wages basis at the rate of Rs. 134 per day with effect from the 1st September 1998. The engagement was extended from the 15th December 1998 to the 28th February 1999, then from the 8th March 1999 to the 4th June 1999 and finally from the 15th June 1999 to the 4th September 1999. According to the management the workman was getting wages in respect of the

days for which he had actually worked. Of course the management has not specifically stated that during the preceding twelve calendar months from the 4th September 1999 the workman had not worked for 240 days or more. But the management has taken the stand that he was getting wages only in respect of the days he had actually worked. So it was necessary for the workman to prove that he had actually worked for 240 days or more during the preceding twelve calendar months from 4th September 1999. The workman has filed the attendance statement for the months of March, 1999, February, 1999, January, 1999 and December, 1998 marked as Exts. 9, 10, 11 and 12. According to Ext. 12 out of total working days of 31 in the month of December, 1998, the workman was present for 22 days. Similarly as per Ext. 11 in the month of January, 1999 out of total days of 31, he was present on 28 days. Ext. 10 reveals that in the month of February, 1999 out of total days of 28, he was present on 26 days and as per Ext. 9 in the month of March, 1999 out of 31 days, he was present only on 10 days. He was not filed that attendance sheet for the month of April, 1999 till the 4th September 1999. So in view of Exts. 9 to Ext. 12 at best it can be said that during the month of December, 1998 to March, 1999 he had worked for 86 days in total. Besides Exts. 9 to 12 the workman has also filed the Provident Fund statement issued by the management marked as Exts. 1 to 8. Exts. 1 and 2 are only relevant and Exts. 3 to 8 are not relevant because no entry has been made regarding contribution in respect of any month in those documents. As per Exts. 1 and 2 the workman had contributed some amounts in the month of December, 1998, January, February, March, May, June, July, August and September, 1999. Admittedly he was retrenched in the month of September, 1999 and therefore as it appears for the said reason no entry has been made from October, 1999 onwards. These documents, i.e. Exts. 1 and 2 can at best prove that in the month of December, 1998 as well as from January to March, 1999 and from May to September, 1999 he had contributed some amount towards Provident Fund. But these documents, i.e. Exts. 1 and 2 are not sufficient to calculate the days he had actually worked in the above months. The workman has not filed any other document regarding number of days he had worked, in the management. So, I come to the conclusion that he has failed to discharge the burden of proving that he had actually worked for 240 days or more during the preceding twelve calendar months from the date of retrenchment.

10. M. W. 1 has filed a copy of the Rule regarding recruitment and promotion of non-executive employees of the management which was given effect from the 2nd January 1991 marked as Ext. D. He has also filed a copy of the Rules relating to designation of non-executive employees marked as Ext. E. According to him there is no designation such as “Technical Assistant of the Helicopter” in the management. During cross-examination he has admitted that the workman was appointed as a Helper which comes within unskilled category. He further stated that the workman was appointed on temporary basis to do a particular work and therefore after completion of the said work he was retrenched. M.W. 2 in his testimony stated that he was incharge of the Aviation Department in the year, 1998-1999. The said Department is not in existence at present. Before the Super Cyclone the Helicopter of the management had sustained some damage and therefore the Board of Directors had taken a decision to dispose of the same.Subsequently during the Super Cyclone the Helicopter was further damaged. For the said reason the Aviation Department of the management was closed. He filed a copy of the decision taken by the Board of the Management for disposal of the Helicopter marked as Ext. F. He also filed a copy of intimation given to the Insurance Company to depute their Surveyor to assess the damage caused to the Helicopter after the Super Cyclone which is marked as Ext. G.

From the aforesaid testimony of M. Ws. 1 and 2 it is clear that the workman was given appointment on temporary basis for a specific period to do a specific work and as the said work was no longer required after the 4th September 1999 in view of the damage caused to the Helicopter his engagement was not further renewed. Now under this circumstance let us proceed to examine as to if the management was required to comply Section 25-F of the Industrial Disputes Act, 1947. In this regard the authorised representative of the management has filed a large number of decisions.

11. Perused the decision reported in 1153-II-LLJ/2002 in the case of Haryana State F.C.C.W. Store Ltd. and another *V*. Ram Niwas and another. In that case the respondents who were engaged as Watchmen/Chowkidar to watch the stock of food grains lying in an open area on contract basis, on payment of daily wages till the disposal of the stock or for a period of three months. They were appointed in the month of May and June, 1993 and terminated on the 26th April 1994 after the stock lying in the open field was clear. In that case 25-F of the Industrial Disputes Act, 1947 was not complied before the termination. It was held by the Apex Court that the workman are not entitled to any relief in this case because their appointments was for a specific purpose, for a particular period and also because the purpose for their engagement was over. In the case of Mahboob Deepak *V*. Nagar Panchayat, Gajraula and another reported in 2008 LLR 117 at Para. 9 it was held as follows :

> "9. Due to some exigency of work, although recruitment on daily wages or on an *ad hoc* basis was permissible, but by reason thereof an employee cannot claim any right to be permanently absorbed in service or made permanent in absence of any statute or statutory rules. Merely because an employee has completed 240 days of work in a year preceding the date of retrenchment, the same would not mean that his services were liable to be regularised."

12. In the matter of State of M. P. and others *V*. Arjunlal Rajak reported in 104-II-LLJ/2006, a Chowkidar was appointed by the appellants as a daily wager without following recruitment rules. He had worked in different Departments for about 8 years. His service stood terminated on the closure of the Division and without following the provisions of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court and the Hon'ble High Court held that he had worked for more than 240 days and was entitled for reinstatement with full back wages. On appeal the Hon'ble Supreme Court observed that the daily wager did not hold the post. Nor were the rules in terms of the constitutional or statutory provisions followed in his appointment. Keeping in view the fact that the termination of respondent service was on the ground that the unit in which he was working had been closed, interest of justice would be sub-served if compensation of Rs.10,000 was granted to him.

In the case of Mohan D. *V*. Presiding Officer, Central Government Industrial Tribunal-*cum*-Labour Court, Chennai reported in 912-III-LLJ/2006 it was held as follows :

> "The rule of equality in public employment is a basic feature of our constitution and if appointment is made flouting the rules, without proper competition among qualified persons, the same would not confer any right on the appointee. Assuming the appointment is contractual appointment or daily wage or casual basis, the same would come to an end when it is discontinued."

In the case of Steel Authority of India Ltd., *V*. Workman, Steel Authority of India Ltd., Bokaro Steel Plant, Steel City reported in 185-I-LIJ/2007, respondent-workman was engaged as Khalasi for a period of 3 months. The engagement was extended from time to time but not after the1st January 1986. He raised a dispute before the Labour Court. It answered the reference in favour of the respondent and held that Section 25-F of the Industrial Disputes Act, 1947 was violated by appellant . On appeal it was held by the Hon'ble High Court that the appointment of the respondent workman was for a fixed term and extended from time to time. His service automatically came to an end on completion of the terms of engagement. The case of the workman was covered by Section 2(oo) (bb) of the Industrial Disputes Act, 1947 and Section 25-F of the Industrial Disputes Act, 1947 was not attracted in his case. As such, there was no requirement for the employer to give him one month notice or retrenchment compensation as provided in Section 25-F of the Industrial Disputes Act, 1947. The same view was taken by Their Lordships in the case of BSES Yamuna Power Ltd. *V*. Rakesh Kumar reported in 253-I-LIJ/2007, in the case of Surjeet Kumar *V*. Presiding Officer and others reported in 999-II-LLJ/2007, in the case of Executive Engineer, H.U.D.A., Gurgaon *V.* Presiding Officer, Industrial Tribunal-*cum*-Labour Court, Gurgaon and another reported in 157-II-LIJ/2008, in the case of State of Rajasthan and others *V*. Rameshwar Lal Gahlot reported in AIR 1996 S.C. 1001, etc.

13. In the present case initially the appointment was given to the workman for 89 days. Of course the same was extended from time to time till the 4th September 1989 but he was given appointment each time for a specific period and for a particular purpose. It is said by the management that the Helicopter was badly damaged before Super Cyclone in the year, 1999 and therefore there is no need to keep the workman in employment. There is an approved rule of the management to give appointment to persons in non-executive posts and there is no post of Technical Assistant of the Helicopter of the management. The workman was not appointed on the basis of any interview or according to the rules prescribed by the management. For a particular purpose, that is, to maintain the Helicopter he was given appointment as a Helper and till his services were required the management was giving employment to him for different period. It was purely of contractual and temporary in nature and liable to be terminated due to non-renewal of the contract. So in view of the settled position of law as discussed above his termination from service with effect from the 4th September 1999 cannot be termed as retrenchment and the management was not required to comply the Section 25-F of the Industrial Dispute Act, 1947 at that time.

Once it is said that the management was not required to comply the Section 25-F of the Industrial Dispute Act, 1947 the conclusion would be that the termination of service of the workman was legal and justified. Accordingly both the issues are answered.

14. Hence ordered :

The action of the management of M/s NALCO Ltd., Bhubaneswar in terminating the employment of Shri Padma Charan Ojha with effect from the 4th September 1999 is legal and justified. The workman Shri Ojha is not entitled to get any relief in this case.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
4-3-2009
Presiding Officer
Labour Court
Bhubaneswar

M. R. TRIPATHY
4-3-2009
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government

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