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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2009

No. 5084—li/1(J)-9/2004(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd March 2009 in Industrial Dispute Case No. 9 of 2004 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the Industrial Disputes between the management of M/s Aska Co-operative Sugar Industries Ltd., Aska, At Nuagaon, P.O. Aska, Dist. Ganjam and its workman Shri Sahadeb Bisoi (Mason), At Nuagaon, P.O. Aska, Dist. Ganjam was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE NO. 9 OF 2004

Dated the 23rd March 2009

Present :

Shri P. K. Jena, o.s.J.s. (Jr. Branch),
Presiding Officer, Labour Court, Jeypore,
Dist. Koraput.

Between :

The Management of .. First Party—Management
M/s Aska Co-operative Sugar
Industries Ltd., Aska, At Nuagaon,
P.O. Aska, Dist. Ganjam.

Versus

Its Workman, .. Second Party—Workman
Shri Sahadeb Bisoi (Mason),
At Nuagaon, P.O. Aska,
Dist. Ganjam.

Under Sections 10 and 12 of the Industrial Disputes Act, 1947

Appearances :

For the Management	..	Shri Hubert Lugun, Personnel Manager on behalf of the Managing Director, Aska Co-op. Sugar Industries Ltd., Aska.
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For the Workman	..	Self
Date of Argument	..	21-3-2009
Date of Award	..	23-3-2009

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following disputes vide their Order No. 9070 (5), dated the 11th October 2004 for adjudication of the following disputes :—

“Whether the termination of the services of Shri Sahadeb Bisoi, Mason in the guise of superannuation with effect from the 31st August 2003 by the management of Aska Co-operative Sugar Industries, Aska is legal and/or justified ? If not, to what relief Shri Bisoi is entitled ?”.

2. This case seems to have been originated out of the reference submitted by the Government in Labour & Employment Department for determination of the illegality of the termination effected by the management in favour of the second party-workman in the guise of superannuation coupled with granting of relief otherwise entitled to the wokman in consequence of such determine.

3. In this regard this Court passed an Award on the 30th May 2006 in favour of the workman. The management aggrieved by the Award and preferred a writ before the Hon’ble Court. The Hon’ble Court passed an Order in W.P.C. No. 10737 of 2007 and remitted back the case to this Court for fresh disposal as expeditiously as possible preferable within a period of four (4) months. After receiving the said order from the Hon’ble Court both the parties are intimated to participate in the proceeding. But the first party-management did not participate in the hearing . Considering documents, affidavit evidence, claim statement and written statement filed by both parties the Award is passed.

4. In the present case the controversy regarding the date of birth of the workman who was superannuated on the 31st August 2003 on the basis of the report of Medical Board. The second party-workman has already been reached the superannuation age as joined by

the management. It is admitted case that, the workman has been given service on the basis of the School Leaving Certificate long before 15 years and odd and there was no allegation against the workman. His certificate has been accepted by the management and he has been rendering service with full satisfaction of the authority. His service also regularised by the authority. It is not known why the management suspected the workman and referred the case of the workman to one Medical Board and subsequently to another Medical Board and got a report and took the chance to suspect him. Suspicion whatsoever should have been detected in the earlier stage. The workman submitted in his cross-examination that, at the time of his joining he has submitted a School Leaving Certificate. In that certificate his date of birth is the 1st July 1952. Further the workman also submitted in his cross-examination, that his correct birth date is the 5th December 1948 while he admitted in Nuagaon School in Class-I as per Ext. 5/1.

5. The Election Commission of India determine the age of the workman as on the 1st January 1994 as 42 years basing on the date of birth of the workman as the 1st July 1952. The Photo Identity Card issued by the Election Commissioner is considered to be genuine document. Further the workman submits in his affidavit evidence that, at the time of challenging the date of birth, i.e. the 1st July 1952 by the management, he came to know that initially he had taken admission in Government Primary School, Nuagaon in Class-I. At the time of leaving from the School the workman obtained School Leaving Certificate and the authority of that School while issuing the School Leaving Certificate mentioned therein that, the date of birth of the second party-workman is the 5th December 1948.

6. The report of the Medical Board is also subject to scrutiny and no Doctor has been examined by the first party-management before this Court. On the other hand, the workman who has filed the affidavit evidence and has been cross-examined by the first party-management nothing substantial has been elicited in favour of the management. The most important fact of the cross-examination is that the management has not given any suggestion to the workman that the Photo Identity Card issued by the Election Commissioner is erroneous and does not give correct picture of the age. If it is considered that the date of birth of the workman is the 5th December 1948 then it is found that, there is ambiguity between the Photo Identity Card which has been prepared basing on the date of birth as the 1st July 1952 issued by the Election Commissioner and age of the workman basing on the date of birth as the 5th December 1948.

7. In my considered opinion, I find that, there is an ambiguity in respect of proof of age of the workman basing on two available School Leaving Certificates of different classes. So for the interest of justice, I am of the opinion that it would be better if the management scrutinise both the School Leaving Certificates vide Ext. 2 and 5/1 of the second party-workman from various angles in order to get the correct age. If the management found the date of birth of the workman is the 1st July 1952 after proper verification then only he is directed to reinstate the

workman in his former post and pay the financial benefits. If the management found the date of birth of the second party-workman to be the 5th December 1948 then the workman is entitled to be reinstated in his former post and to receive all the financial benefits from the first party-management.

ORDER

8. The termination of the workman by the management with effect from the 31st August 2003 guise of superannuation is illegal and unjustified. The management is directed to reinstate the workman with immediate effect and pay the financial benefits as per the above observation.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. JENA
23-3-2009
Presiding Officer
Labour Court, Jeypore

P. K. JENA
23-3-2009
Presiding Officer
Labour Court, Jeypore

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