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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2009

No. 5099—li/1(BH)-31/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2009 in Industrial Dispute Case No. 1 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Rehabilitation Division, Subarnarekha Irrigation Project, Laxmiposi renamed as Executive Engineer, Jambhira Canal Division-1, Subarnarekha Irrigation Division, Baripada, Dist. Mayurbhanj and their workman Shri Subash Ch. Samal was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2004

Dated the 28th March 2009

Present :

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

Between :

The Management of
Executive Engineer, Rehabilitation
Division, Subarnarekha Irrigation
Project, Laxmiposi renamed as
Executive Engineer, Jambhira Canal
Division-1, Subarnarekha Irrigation
Project, Laxmiposi, Baripada,
Dist. Mayurbhanj. . . First Party—Management

And

Its Workman
Shri Subash Ch. Samal. . . Second Party—Workman

Appearances :

For First Party—Management	..	Shri P. K. Samal, Jr. Clerk
Second Party—Workman himself	..	Shri S. Ch. Samal

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 2, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute between the parties to this Court for adjudication vide Order No. 55—li/1(BH)-31/2003-LE., dated the 2nd January 2004 of the Labour & Employment Department, Bhubaneswar.

2. The Schedule of Reference is as follows :

“Whether the termination of services of Shri Subash Ch. Samal, Ex-Operator by the Executive Engineer, Rehabilitation Division, Subarnarekha Irrigation Project, Laxmiposi with effect from the 13th April 2002 is legal and/or justified ? If not, what relief is Shri Samal entitled to ?”

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

The workman Shri Subash Chandra Samal was working as a Water Supply Operator under the control of the management from the 26th February 1980 to the 12th April 2002. On the 13th April 2002 he was retrenched from service. At the time of retrenchment he was getting Rs. 8,600 per month as his wage. Though he had worked for more than 240 days continuously in the previous 12 calendar months, Section 25-F (a) and (b) of the Industrial Disputes Act, 1947 was not complied at the time of retrenchment. Further it is complained by him that the policy of ‘last come first go’ as provided in Section 25-G of the Industrial Disputes Act, 1947 was not followed at the time of his retrenchment inasmuch as, some employees who were junior to him were retained in service. Being aggrieved he raised an industrial dispute and a conciliation proceeding was initiated by the labour machinery. As conciliation failed the matter was referred to this Court for adjudication.

4. The management in the written statement has submitted that due to reduction of work, the Government decided to retrench the surplus staff vide Order No. 20222, dated the 29th May 2001 of the Department of Water Resources, Orissa, Bhubaneswar. The workman of the present case was found to be a surplus employee in his category and so he was retrenched from service on the 14th April 2002. Prior to retrenchment one month notice was served on him vide Notice No. 1034, dated the 14th March 2002. Also the retrenchment benefit amounting to Rs. 1,65,492 in shape of Bankers Cheque bearing No. BC00-024-832584, dated the 30th March 2002 was paid to him. Also the provision of Section 25-G of the Industrial Disputes Act, 1947 was kept in view while giving effect to the retrenchment. Hence the workman is not entitled to get any relief in the present case.

5. The following issues were framed :—

ISSUES

- (i) “Whether the termination of services of Shri Subash Ch. Samal, Ex-Operator by the Executive Engineer, Rehabilitation Division, Subarnarekha Irrigation Project, Laxmiposi with effect from the 13th April 2002 is legal and/or justified ?
- (ii) If not, what relief is Shri Samal entitled to ?”

6. In order to substantiate his claim, the workman examined two witnesses including himself as W.W. 1, W.W. 2 is one of his co-worker. The management also examined a witness as M. W. 1 who is working as Executive Engineer, Jambhira Canal Division.

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 was working as a regular Water Supply Operator in the management from the 26th February 1980 to the 12th April 2002. His services were terminated by the management on the 13th April 2002 without compliance of Section 25-F(a) and (b) of the Industrial Disputes Act, 1947. The policy of 'last come first go' as provided in Section 25-G of the Industrial Disputes Act, 1947 was also not followed at the time of termination of his employment. Though some employees who were junior to him namely, Shri Rabindra Das, A. K. Parija, Benudhar Das, Gadadhar Behera, Rama Chandra Sahu, Dwarika Nath Sahoo, Nabakishore Dhal, Akul Gauda, etc. were allowed to continue in service, he was retrenched. He has filed the xerox copy of the seniority list of work-charged employees of Major Irrigation Project marked as Ext. 2. During cross-examination he admitted that after he raised the dispute one of his junior who was in service was retrenched. No suggestion has been given by the management to him regarding the genuineness and correctness of the seniority list filed by him marked as Ext. 2, during the time of cross-examination. W.W. 2, Shri Pravakar Patnaik on oath has stated that he was working as an Operator in the same office from the 23rd March 1981. The workman of the present case was working as Water Supply Operator. He also stated that Nabakishore Dhal, Akula Gouda, Dwarikanath Sahoo, Gadadhar Behera, etc. were junior to the workman of the present case but they were retained in service whereas the workman was retrenched. No question has been asked to him by the management during the time of cross-examination.

8. M. W. 1 in his testimony has stated that on the basis of the order passed by the Government, the Engineer-in-Chief, Department of Water Resources, Bhubaneswar prepared a list of employees who were to be retrenched. He proved the letter written by the Engineer-in-Chief to the Engineer & Basin Manager, Baitarani, Subarnarekha & Budhabalanga Basin, Laxmiposi, Baripada in that regard marked as Ext. B and according to him on the basis of Ext. B, the workman was retrenched on the 14th April 2002. He has denied the fact that some workers who were junior to workman were retained when the workman was retrenched. According to him in this connection a letter was written to the Engineer-in-Chief, Bhubaneswar who was maintaining the common seniority list. It was intimated to him vide letter No. 14057, dated the 26th October 2005 of the above authority that those persons are not junior to the workman and they were also retrenched. He filed a copy of the said letter marked as Ext. D. Perused Ext. D. Nothing is specifically stated in this letter that Shri Gadadhar Behera, Rama Chandra Sahoo, Dwarikanath Sahoo, Nabakishore Dhal, Akula Gouda, Abhin Kumar Parija, Rabindra Das and Balmiki Pradhan are not junior to the workman of the present case. As it appears one Govinda Ch. Das who was working as Operator Gr. IV was retrenched and when he raised a dispute the gradation list was verified and it was intimated to M.W. 1 that Shri Gadadhar Behera is senior to Shri Govinda Ch. Das whereas Shri Dwarikanath Sahoo, Nabakishore Dhal, Akula Gouda, Abhin Kumar Parija, Rabindra Das are junior to him and all of them were retrenched as surplus staff. The name of the workman of the present case is nowhere mentioned in Ext. D. Along with the written statement the management has also filed a copy of the letter bearing No. 139, dated the 5th January 2006 signed by the Director,

Personnel of the office of the Engineer-in-Chief, Water Resources, Orissa, Bhubaneswar. As it appears this letter was issued with reference to the dispute raised by the workman of the present case regarding seniority. Though the name of Shri Gadadhar Behera, Rama Chandra Sahoo, Dwarikanath Sahoo, Nabakishore Dhal, Akula Gouda, Abhin Kumar Parija, Rabindra Das and Balmiki Pradhan is noted in this letter, nothing is mentioned as to if they are junior or senior to the workman of the present case. Only in respect of one Gadadhar Behera it is noted that he is junior to the workman. There is no material to know when the above named persons were retrenched, i.e. before or after the workman was retrenched. The workman has also not stated anywhere as to when the above named persons were retrenched from service. However, from the cross-examination of M. W. 1 it appears that Shri Abhin Kumar Parija who is junior to the workman was retrenched on the 31st March 2003 that means much after the retrenchment of the workman of the present case. Hence it can be safely concluded that Section 25-G of the Industrial Disputes Act, 1947 was not properly followed by the management at the time of retrenchment of the workman.

9. it is alleged by the workman that Section 25-F of the Industrial Disputes Act, 1947 was not followed by the management at the time of his retrenchment which is denied by the management. If Section 25-F of the Industrial Disputes Act, 1947 was properly followed the management could have proved the same by filing the relevant documents. But except Ext. C which is a notice to the workman no other document was exhibited or proved by the management during the course of hearing. According to Ext. C the workman was directed to collect his dues as admissible under Section 25-F of the Industrial Disputes Act, 1947 from the office of the concerned S. D. O. on the 13th April 2002. Regarding the date of actual payment a document was annexed with the written statement by the management as Annexure-A/2. But for reasons unknown, the same was not exhibited and admitted into the evidence. As per the said document an amount of Rs. 1, 57,009 was paid to the workman on the 13th August 2003. In this regard it is explained by the management in the written statement that the retrenchment benefit was calculated and kept ready vide Bankers Cheque bearing No. BC 00-024-835304, dated the 30th March 2002 for Rs. 1,65,492 but the workman deliberately avoided to receive the same. If the workman deliberately avoided to receive the same, the management could have sent the amount to the workman by Registered Post either on the date of retrenchment or on the next day. But there is no material in the record to say that such a procedure was followed by the management. Payment of retrenchment compensation is a condition precedent to retrenchment. In the case of Shyam Sundar Rout V. O.S.R.T.C. and others reported in 69(1990) C.L.T. 357 it was held by Their Lordships as follows :

“The compliance of Section 25-F(b) of the Act will be there if the payments are made simultaneously along with the order of retrenchment. The *bona fide* endeavour on the part of the employer to pay the compensation amount and one month's wages in lieu notice along with the retrenchment order should be taken as due compliance where the workman avoids acceptance of compensation with a view to invalidate the order of retrenchment. The tender must be *bona fide* and within time.”

In the present case I have indicated earlier that there is no material to say that a *bona fide* endeavour was made by the management to pay the compensation amount to the workman simultaneously at the time of retrenchment. Therefore, I am not able to agree with the submission of the management that Section 25-F of the Industrial Disputes Act, 1947 was duly complied at the time of retrenchment of the workman.

10. The management has not filed the copy of the seniority list maintained in the office of the Engineer-in-Chief, Bhubaneswar. The copy of the seniority list filed by the workman has not been challenged by the management during the time of cross-examination. As per the seniority list marked as Ext. 2, the workman was senior to Shri Govinda Chandra Das, Arakhita Jena, Benudhar Das, Padmanav Nanda, Gadadhar Behera, Rama Chandra Sahoo, Dwarikanath Sahoo, Nabakishore Dhal, Akula Gouda, Balmiki Pradhan, Rabindra Das, Abhina Kumar Parija and others. It is stated by M.W. 1 that the above named persons have already been retrenched from service but the date on which they were retrenched is not known as there is no material to that effect in the case record. But it is admitted by M. W. 1 that Shri Abhina Kumar Parija was retrenched from service on the 31st March 2003. Admittedly the workman was due to retire from service on superannuation with effect from the 26th December 2006. So an order for his reinstatement in service cannot be passed now. However since Section 25-F and 25-G of the Industrial Disputes Act, 1947 was not properly followed, so he is entitled to get back wages at least till the date his junior Shri Abhina Kumar Parija was retained in service, i.e. the 31st March 2003. Accordingly both the issue are answered.

11. Hence ordered :

The termination of service of Shri Subash Ch. Samal, Ex-Operator by the Executive Engineer, Rehabilitation Division, Subarnarekha Irrigation Project, Laxmiposi now renamed as Executive Engineer, Jambhira Canal Division No. 1, Subarnarekha Irrigation Project, Laxmiposi, Baripada, Mayurbhanj with effect from the 13th April 2002 is illegal and unjustified. The workman Shri Samal is entitled to get full back wages from the date of retrenchment, i.e. the 13th April 2002 till the 31st March 2003. The management shall comply the aforesaid direction within one month from the date of its publication in the Official Gazette, in default, the workman shall be entitle to get interest at the rate of 6% per annum on the back wages from the date it becomes due till the date of actual payment.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
28-03-2009
Presiding Officer,
Labour Court,
Bhubaneswar.

M. R. TRIPATHY
28-03-2009
Presiding Officer,
Labour Court,
Bhubaneswar.

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