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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2009

No.5109—li/1(B)-68/2003-LE.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th March 2009 in Industrial Dispute Case No.6 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Managing Director, Orissa State Fishermen Co-op. Federation Ltd., Bhubaneswar and their Workman Shri Krushna Chandra Swain was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 61 OF 2003

Dated Bhubaneswar, the 30th March 2009

Present :

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

Between :

The Management of Managing .. First Party — Management
Director, Orissa State Fishermen
Co-op. Federation Ltd.
Bhubaneswar.

And

Its Workman .. Second Party —Workman
Shri Krushna Chandra Swain.

Appearances :

Shri A. P. Mishra .. For First Party—Management

Shri K. C. Swain .. Second Party—Workman himself

A W A R D

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 matter in dispute between the parties to this court for adjudication vide Order No.9239—li/1(B)-68/2003-LE., dated the 15th September 2003 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The schedule of reference is as follows:

“Whether the termination of services of Shri Krushna Chandra Swain, N.M.R. worker with effect from the 20th February 2002. by the management of M/s.Orissa State Fishermen’s Co-operative Federation Ltd. (A Government of Orissa Undertaking), Matsya Sadan, Cuttack Road, Bhubaneswar is legal and/or justified ? If not what relief is Shri Swain entitled to ?”

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

The workman Shri Krushna Chandra Swain joined as a N. M. R. worker in the office of the management on the 29th December 1996 and continued to work till the 19th February 2002. He was getting salary of Rs.930 per month .The management had not paid his wages for the period from June,1998 to December,1998 amounting to Rs 6,510 and when he demanded for payment of the above amount , the management in an illegal manner terminated his service with effect from the 20th February 2002. According to him, during the tenure of his employment, no disciplinary proceeding was initiated against him on the ground of misconduct. On the 20th February 2002 when he reported for duty the management calculated the retrenchment compensation and paid the amount to him. However his arrear wages for the period from June,1998 to December, 1998 was not paid to him. It is further stated by him that Shri Surendra Budek and Shri M. R. Patnaik who are junior to him were retained in service but he was illegally terminated from service. The policy of 'last come first go' was not followed by the management at the time of his retrenchment .Therefore he is entitled to be reinstated in service with full back wages and all other service benefits.

4. The management in the written statement has submitted that the workman was engaged as contingent worker on daily wage basis at Kaushalyagang Fish Farm on the 29th December 1996 at the rate of Rs.30 per day. Subsequently his wage was enhanced to Rs.40 per day with effect from the 1st June 1999. The Government decided to disengage the surplus staff in view of the acute financial stringency, accordingly the management passed an order on the 11th February 2002 for retrenchment of 26 numbers of surplus contingent workers including the workman of the present case. Therefore on the 20th February 2002 the workman of the present case and others were retrenched from service after payment of one month’s pay in lieu of one month notice and retrenchment compensation as per the provisions of the Industrial Disputes Act,1947. The management has denied the fact that some junior workers, namely Shri Surendra Budek and Shri M. R. Patnaik were retained in service while the workman was retrenched on the 20th February 2002. Regarding payment of arrear wages for the period from June,1998 to December ,1998 the management has stated that the same was paid to the workman on the 25th April 2002. Therefore the workman is not entitled to get any relief in this case.

5. The following issues were framed .

I S S U E S

(i) Whether the termination of services of Shri Krushna Chandra Swain, N. M. R. worker with effect from the 20th February 2002 by the management of M/s. Orissa State Fishermen's Co-operative Federation Ltd. (A Govt. of Orissa Undertaking), Matsya Sadan, Cuttack Road, Bhubaneswar is legal and/ or justified ?

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

6. In order to prove his case, the workman examined himself as W.W.1 and the management also examined a witness as M.W.1 who is working as Head Clerk in the office of the management.

F I N D I N G S

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

According to the workman the retrenchment compensation as provided in Section 25-F(a) and (b) of the Industrial Disputes Act, 1947 was not paid to him at the time of retrenchment. So also Section 25-G of the Industrial Disputes Act, 1947 was not complied because some juniors were retained in service when he was retrenched. This fact is denied by the management and according to the management Section 25-F of the Industrial Disputes Act, 1947 was duly complied. Also Section 25-G of the Industrial Disputes Act, 1947 was kept in view while retrenching the workman of the present case.

8. So let us now first examine as to if Section 25-F of the Industrial Disputes Act, 1947 was duly complied by the management at the time of retrenchment of the workman or not.

9. M.W.1 in his deposition has stated that in view of letter No.22490, dated the 10th December 2001 of the Government of Orissa, Fisheries & A. R. D. Department, the management decided to retrench 26 numbers of D.L.R. employees. Accordingly an order was passed on the 18th February 2002 and the workman as well as others were retrenched after payment of one month's pay in lieu of one month notice and compensation at the rate of 15 day's wage for every completed year of service. He filed the copy of letter No. 22490, dated the 10th December 2001 marked as Ext. A and letter No.380, dated the 18th February 2002 of the management marked as Ext. B. He also filed the copy of the payment register in respect of all the 26 retrenched employees marked as Ext. E and a copy of the Bank Draft for Rs.8,737, dated the 20th February 2002 marked as Ext. F. During cross-examination he has specifically stated that the payment required to be made in view of Section 25-F of the Industrial Disputes Act, 1947 was complied on the 20th February 2002. He has denied the fact that the Demand Draft of Rs.8,737 was not handed over to the workman on the 20th February 2002. A perusal of the copy of the Demand Draft marked as Ext. F reveals that the same was prepared on the 20th February 2002. In the copy of the payment register the date of payment is also noted as the 20th February 2002. Since it is stated by the workman that the Demand Draft for Rs.8,737 was not handed over to him on the 20th February 2002 and because the management has filed certain documents, so it was necessary for the workman to file some materials to prove that the version of the management is not true. But the workman has not filed any document or paper to establish the contrary. In the statement of claim the workman in Para. 6 has clearly stated that the management has paid retrenchment compensation on the 20th February 2002. Again in Para. 2 of the prayer portion he has stated that at the time of retrenchment on the 20th February 2002, the management had not paid monthly wages for the period from June, 1998 to December, 1998 and paid retrenchment compensation to him. Only at the time of filing rejoinder he changed his version and stated that the management issued retrenchment order without paying retrenchment compensation on the 20th February 2002. The statement of claim was filed by him on the 14th October 2003 and the rejoinder was filed by him on the 8th April 2004. After filing of rejoinder he has never applied to the Court to amend the relevant portion of the statement of claim. Under the above circumstance it cannot be said that the one month's pay in lieu of one month notice and retrenchment compensation was not paid to him at the time of retrenchment i.e. on the

20th February 2002. Payment of arrear wages is not covered under Section 25-F of the Industrial Disputes Act, 1947. According to M.W. 1 the arrear wages for the period from June, 1998 to December, 1998 was paid in the month of April, 2002 i.e. about two months after the date of retrenchment. But since payment of arrear wages is not covered under Section 25-F of the Industrial Disputes Act, 1947 and there is no law that payment of arrear wages is a condition precedent to the retrenchment, so even though the same has been paid two months after the date of retrenchment, a favourable order cannot be passed in favour of the workman.

10. The second point raised by the workman is that the management retained two employees who were junior to him in service while retrenching him and they are Shri Surendra Budek and Shri M. R. Patnaik. This fact is denied by the management and to prove that Shri S. Budek and Shri M. R. Patnaik are senior to the workman, the management has filed a copy of the note sheet marked as Ext. C. As per Ext. C Shri Surendra Budek was engaged from the 1st October 1996 and Shri M. R. Patnaik was engaged from the 1st July 1996. Admittedly the workman was engaged on the 29th December 1996 and therefore, it cannot be said that Shri Surendra Budek and Shri M. R. Patnaik are junior to the workman. Thus the workman has also failed to prove that the management had not followed the principle of 'last come first go' while retrenching him from service. There is absolutely no reason to say that Section 25-G of the Industrial Disputes Act, 1947 was violated by the management at the time of retrenchment of the workman from service.

11. Hence ordered:

The termination of services of Shri Krushna Chandra Swain, N. M. R. worker with effect from the 20th February 2002 by the management of M/s. Orissa State Fishermen's Co-operative Federation Ltd. (A Govt. of Orissa Undertaking), Matsya Sadan, Cuttack Road, Bhubaneswar is legal and justified. The workman Shri Swain is not entitled to get any relief in this case.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
30-03-2009
Presiding Officer, Labour Court
Bhubaneswar

M. R. TRIPATHY
30-03-2009
Presiding Officer, Labour Court
Bhubaneswar

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