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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd January 2009

No. 46—li/1(BH)-55/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th December 2008 in I. D. Case No. 192/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of M/s Utkal Automobiles Ltd., Baripada and its workman Shri Jiban Kumar Das was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.192 OF 2008

Dated the 17th December 2008

Present :

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

Between :

The General Manager,
M/s Utkal Automobiles Ltd.,
Adityapur-Kandra Road,
Jamshedpur, Bihar,

.. First Party—Management

The Branch Manager,
M/s Utkal Automobiles Ltd.,
Station Road, Baripada,
Mayurbhanj

Versus

Shri Jiban Kumar Das,
C/o Jayanta Ku. Mohapatra,
Sai Engineering Works,
K. C. Circle, Baruni Road,
Madhuban, Baripada.

.. Second Party—Workman

Appearances :

Shri R. N. Rath, Legal Advisor
Authorised Representative.

.. For the First Party—
Managements.

Shri S. B. Mishra, Advocate

.. For the Second Party—
Workman.

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. 6485—li/1 (BH)-55/1998-L.E., dated the 14th May 1999 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-L.E., dated the 4th April 2008.

SCHEDULE

“Whether the action of the management of M/s Utkal Automobiles Ltd., Baripada in refusing employment to Shri Jiban Kumar Das, Salesman(Store) with effect from the 17th March 1993 is legal and/or justified ? If not, to what relief he is entitled ?
”

2. Briefly stated, the case of the workman is that initially he joined as a Typist under the management on the 16th June 1981 and w.e.f. July, 1982 he was made permanent in the post of Salesman(Stores) and subsequently he worked as a Stores Assistant from 1989. It is pleaded that while continuing as Stores Assistant under the management at its Baripada Branch, he was transferred to Berhampur and was asked to join there by the 5th February 1993. He alleges that such transfer order was handed over to him on the 17th March 1993 and on enquiry the Branch Manager of Baripada Branch told him that he was trying for cancellation of his transfer order. On receiving the transfer order on the 17th March 1993 the workman made a representation stating therein the illness of his wife but the management neither considered his representation nor communicated anything. Further the management did not pay any heed to his representation which he had made for releasing his unpaid wages, bonus, leave wages, etc. In the circumstance, therefore, the workman has challenged his order of transfer to Berhampur as an act of victimisation and colourable exercise of powers by the management. It is further averred in the claim statement that he was not charge-sheeted for any misconduct nor any disciplinary proceeding was initiated against him during his continuance under the management and with a view to victimise him, such transfer was effected and on and from the 17th March 1993 he was refused employment. The workman in the premises has prayed for his reinstatement in service at Baripada Branch with all legal dues.

3. The management in its written statement has asserted that on administrative ground the workman was transferred from Baripada to Berhampur but without reporting at the transferred place he made a representation without furnishing therewith any supporting document concerning the illness of his wife for which the management did not accept the same. The specific stand of the management is that as the workman remained absent wilfully and did not join at his transferred place, the question of refusal of employment to him does not arise and consequently he is not entitled to any relief in the present dispute.

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

ISSUES

(i) “Whether the action of the management of M/s Utkal Automobiles Ltd., Baripada in refusing employment to Shri Jiban Kumar Das, Salesman(Stores) with effect from the 17th March 1993 is legal and/or justified ?

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

5. To substantiate their respective stand, the workman examined himself as W.W. No. 1 and proved 14 documents which have been marked Exts. 1 to 14 and the management examined one witness on its behalf and proved 8 documents which have been marked Exts. A to H.

6. Since the workman attributes the action of the management to be a refusal of employment to him w.e.f. the 17th March 1993, burden lies on him to prove the same. In this connection, the workman has deposed that although he was transferred vide letter No. URO-815, dated the 25th January 1993 marked Ext. 2, the same was handed over to him on the 17th March 1993 and on 19th March 1993 he made a representation for its cancellation as per Ext. 3 which was not considered by the management. While he has pleaded that he was refused employment w.e.f., the 17th March 1993 but in his evidence in chief at Para. 15 he has admitted to have worked under the management till the 28th May 1993. In his cross-examination the workman has admitted that the management has not refused him employment and that now he is willing to join at Berhamper. Ext. 6 is another document which discloses that for his non-reporting at Berhampur the workman was asked by the Company to intimate the same by tendering resignation so as to settle his claims. In view of the aforesaid evidence, therefore, it is needless to discuss the other evidence available on record and it can be concluded that it is not a case of refusal of employment, as alleged by the workman.

7. As regards the allegation of the workman that with a view to victimise him, the management had effected such transfer, it is seen that Clause 21 of the Certified Standing Orders of the Company, marked Ext. F, deals with the aforesaid aspect which reads as under :—

“21. Transfer—Employees shall be liable to be transferred from one job section or department to another within the office or establishment or to another branches in the exigencies of the Company’s service at the discretion of the Management. Such transfer shall not involve a decrease or increase in the rate of pay or wages or any change in the condition of service, but should it involve an increase in the rate of pay or wages then the employee shall be considered to be on trial in his new department or job for a period of six months during which time he may again be transferred back to his old department and job or to another with reversion to his previous rate of wages.”

Considering the aforesaid stipulation in the Certified Standing Orders, it can be said that the management is well within its domain to effect transfer of its employees and thus no *mala fide* can be attributable to the action of the management which was taken as per the Standing Orders. In the result, therefore it is held that the workman has failed to establish the aspersion against the management that with a view to victimise him the management had effected such transfer.

8. In view of my finding as aforesaid, it is held that there has been no refusal of employment of the workman w.e.f. the 17th March 1993 by the management and as such, it becomes redundant to give a finding on its legality and justifiability.

9. Now coming to the question of relief to which the workman is entitled, it is seen that the post to which the workman was transferred is still vacant at Berhampur and the management has afforded an opportunity to the workman to resume his duty at Berhampur as per Ext. H and so also the workman in his cross-examination has showed his intention to join at Berhampur. In the circumstance, therefore, it is thought prudent to direct the management to accept the joining report, if any, to be submitted by the workman at its Berhampur Branch and to pay the T. A. expenses in advance for such reporting at Berhampur. The management is further directed to pay the salary of the workman for the period from the 1st February 1993 to the 17th March 1993 because of the fact that the management has failed to establish that the transfer order, Ext. 2 was served on the workman prior to the 17th March 1993. It is however, made clear that the workman will not be entitled to any back wages from the 18th March 1993 till he resumes duty at his transferred place as he has not performed any duty under the management during the period and further there is absence of evidence that during the period he was not gainfully employed elsewhere.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
17-12-2008
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
17-12-2008
Presiding Officer
Industrial Tribunal
Bhubaneswar

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