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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th June 2009

No. 5210—li/1(SS)-48/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th April 2009 in Industrial Dispute Case No. 2/2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Baham Service Co-operative Society Ltd., At/P. O. Baham, Dist. Sambalpur and their workman Shri Prafulla Kumar Panda, S/o Santi Charan Panda, At/P.O. Baham, Dist Sambalpur was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 2 OF 2007

Dated the 17th April 2009

Present :

Smt. Suchismita Misra, LL.M.,
Presiding Officer, Labour Court, Sambalpur.

Between :

The Management of . . . First Party—Management
Baham Service Co-operative Society Ltd.,
At/P.O. Baham, Dist. Sambalpur.

And

Their Workman Shri Prafulla Kumar Panda, . . . Second Party—Workman
S/o Santi Charan Panda,
At/P.O. Baham, Dist. Sambalpur.

Appearances :

For the First Party—Management . . . Self
For the Second Party—Workman . . . Self

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) and by their Order No. 35—li/1 (SS)-48/2006-LE., dated the 3rd January 2007 have referred the following disputes for adjudication by this Court :—

“Whether the action of the management of M/s Baham Service Co-operative Society Ltd., Baham in filling up of the vacant post of Assistant Secretary by re-employing Shri Aswini Kumar Nayak, Sanat Kumar Nayak and Sanatan Thela overlooking the case of Prafulla Kumar Panda in conformity with the provisions of Section 25-M of the Industrial Disputes Act, 1947 is legal and/or justified ? If not, what relief Shri P. K. Panda is entitled to ?”

2. Shorn of unnecessary details, the facts leading to the present dispute between the first party namely, the management of M/s Baham Service Co-operative Society Ltd., Baham on the one hand and the workman, Prafulla Kumar Panda on the other are stated below :

The case of the second party-workman as would appear from his statement of claim filed by him in this proceeding runs as below :

The Second party-workman was employed by the first party-management of M/s. Baham Service Co-operative Society Ltd., Baham with effect from the 30th December 1981. After joining the service he was assigned duties in the establishment of the first party-management which he performed to the satisfaction of his authority. There was also no complaint with regard to his performance relating to his duties. Thus the workman had served their continuously without any interruption in his service till the 10th November 1991 being paid his wages by the first party-management on monthly basis. However, in the year 1991, the first party-management all of a sudden asked the second party-workman to take voluntary retirement from his services or else his services would be terminated by way of retrenchment and ultimately the first party-management retrenched him from his job illegally with effect from the 10th November 1991 while assigning the reason for his such retrenchment as reduction of manpower in their establishment. The second party-workman was holding the post of Assistant Secretary in the aforesaid establishment when his services were terminated. After his termination, the first party-management ignoring the provisions of Industrial Disputes Act 1947 and curtailing the right of the second party-workman in gross violation of all legal provisions appointed one Aswini Kumar Nayak, Sanat Kumar Nayak, Sanatan Thela and others successively as the Assistant Secretary in their establishment. The second party-workman therefore, challenged the appointments of the above named persons who were juniors to him in service by the first party-management in the same post which he was holding when his services were terminated as illegal since as per the provisions contained in the Industrial Disputes Act, 1947 he should have been given a chance for his re-employment in the establishment concerned. In the aforesaid circumstances the workman has claimed that the

order of the termination of his employment with effect from the 10th November 1991 by the first party-management be held illegal and void *ab initio* and he be reinstated in his job with immediate effect with full back wages from the date of illegal termination of his services and other service benefits.

3. The first party-management in their written statement contested the pleas advanced by the second party-workman and stated that the second party-workman was working as a Peon in the establishment of the first party-management. On the 27th June 1982 as per the Resolution passed by the Managing Committee of the first party-management, he (the second party-workman) was promoted to the post of Assistant Secretary for attending the public distribution system work of the aforesaid Co-operative Society. Then on the 20th September 1990 another Resolution was passed by the first party-management to revert him again to the post of Peon as the above stated public distribution system of the first party-management's Society was stopped. Then on the 27th March 1991 as per the direction of the Registrar, Co-operative Society, Orissa, Bhubaneswar vide his letter No. 27971/13 to retrench some of the employees as per the necessity, the second party-workman who was then posted as a Clerk-cum-Salesman and another Salesman of the aforesaid establishment namely, Sashibhushan Panda were considered for termination of their services in the Society after being given one month's notice for the same. In the meantime, the second party-workman took voluntary retirement from his services while accepting Rs. 3,045 from the management on the 31st March 1992 towards his dues for taking such voluntary retirement from his services. The first party-management also pleaded that prior to this proceeding the other employee namely Sashibhushan Panda was appointed as the Assistant Secretary in the aforesaid Co-operative Society pursuant to the order of the Labour Court, Sambalpur in Industrial Disputes Case No. 64 of 2003 and order of the Labour Commissioner, Orissa, Bhubaneswar vide his letter No. 6843, dated the 5th May 2005.

4. The second party-workman filed a rejoinder to the written statement of the first party-management denying the pleas advanced by the first party-management.

5. On these pleadings only two issues were framed in this case and those are :

- (i) "Whether the action of the management of M/s Baham Service Co-operative Society Ltd., Baham in filling up of the vacant post of Assistant Secretary by re-employing Shri Aswini Kumar Nayak, Sanat Kumar Nayak and Sanatan Thela overlooking the case of Prafulla Kumar Panda in conformity with the provisions of Section 25-M of the Industrial Disputes, Act, 1947 is legal and/or justified ?
- (ii) If not, what relief Shri P. K. Panda is entitled to ?"

6. In this proceeding the workman submitted his evidence on affidavit on the 16th March 2009 which was received as his examination in-chief and he was cross-examined on behalf of the first party-management on the 19th March 2009. The workman also filed and proved four documents on his behalf which are marked as Exts. W. 1 to W. 4. Similarly on behalf of the management one Ashok Kumar Purohit, President, Baham Service Co-operative Society Ltd., also filed his evidence on affidavit on the 20th March 2009 and he was cross-examined on behalf of the workman on the 8th April 2009. Six documents were exhibited on behalf of the management in this proceeding which were marked as Exts. M. 1 to M. 4/1.

7. As revealed from the pleadings of the parties and their evidence on record, the employment of the workman as a Peon in the establishment of the first party-management at the first instance from the 30th December 1981 and then his posting as the Assistant Secretary of Baham Service Co-operative Society Ltd. with effect from the 28th June 1982 till the termination of his services with effect from the 10th October 1991 are found to be not in dispute. In fact the documents which were marked as exhibits on behalf of the workman vide Exts. W. 1 to W. 4 and the documents exhibited on behalf of the management vide Exts. M. 1, M. 3, M. 3/1, M. 4 and M. 4/1 amply proved the appointment of the workman in the aforesaid Service Co-operative Society and also termination of his services by the first party-management for certain specific reasons as described in the documents vide Ext. W. 3 and Ext. 4. The workman also admitted to have received his retrenchment benefit, i.e. a sum of Rs. 3,045 from the management shortly after the termination of his services and obviously he had never questioned the legality and justifiability of the termination of his services by the first party-management at that time. Rather from the pleadings in his claim statement and the evidence deposed by him in this proceeding it could be gathered that he raised the dispute relating to his termination only after the appointment of some other persons successively in the same post, i.e. Assistant Secretary of Baham Service Co-operative Society Ltd. by the management without affording him the opportunity of his re-employment in the said post which according to him was a gross violation of the provisions of the Industrial Disputes Act, 1947.

8. The workman though categorically alleged that after terminating his services, the management employed Shri Aswini Kumar Nayak, Sanat Kumar Nayak and Sanatan Thela who were juniors to him in service in the same post which he had held has not filed a single scrap of paper to substantiate his such allegation. He also did not make any effort to call upon the management to produce the service records of the abovenamed persons to prove before the Court that indeed those three persons were juniors to him in service and there had been a violation of Sections 25-G and 25-H of the Act by the first party-management in giving them appointment in the post of Assistant Secretary as stated above ignoring the chance of the second party-workman for his re-employment. On the otherhand the second party-workman clearly stated in his evidence that all those appointees were new and fresh hands. Therefore, the question of their re-employment in the post of Assistant Secretary does not arise at all and further the rule of 'last come first go' could not have been made applicable in the instant case.

It is further revealed from the evidence on record that the second party-workman was initially appointed as a Peon in the establishment of the first party-management and subsequently he was promoted to the post of Assistant Secretary as a measure taken by the management for smooth functioning of the aforesaid Service Co-operative Society in course of their internal business management. It is also revealed from the evidence on record that the second party-workman continued to hold that post only by default till his termination since he was found holding the said post even without complying the necessary requisites for holding the post of Assistant Secretary as revealed from the documents vide Exts. W. 2. The second party-workman has admitted during his cross-examination that he was in charge of the sub-godown of their Society from the year 1983 to 1991 for which he was required to deposit a sum of Rs. 1,000 as security but he had neither deposited the security deposit amount of Rs. 1,000 nor mortgaged five acres of land with the society in compliance to the order vide Ext. W. 2 even after receiving the letter/order (Ext. W. 2).

Apart from the aforesaid factors as discussed in the foregoing paragraphs it is also noticed that there has already been inordinate delay on the part of the second party-workman in seeking the aforesaid relief because in the instant proceeding it is found that the services of the second party-workman was terminated since the 10th October 1991. Thereafter not only one but three persons were successively appointed by the management in the post of Assistant Secretary in Baham Service Co-operative Society Ltd. and as per the evidence on record at present the fourth incumbent is continuing in the said post since the 30th May 2005 as he was taken into employment by the first party-management pursuant to the order of the Labour Court, Sambalpur in Industrial Disputes Case No. 64 of 2003 and order of the Labour Commissioner, Orissa, Bhubaneswar vide his letter No. 6843, dated the 5th May 2005.

In the aforesaid circumstances the dispute raised by the second party-workman with regard to his termination and re-employment after a lapse of nearly 15 years (as revealed from the failure report submitted by the Conciliation Officer-*cum*-Assistant Labour Officer, Sambalpur which is available in the record) can justifiably be treated as a belated claim since by efflux of time much changes have already taken place in the entire set up which in the interest of justice should not normally be disturbed to make the situation more complicated and cumbersome for all concerned.

Thus for the reasons discussed here in before I hold that Shri Prafulla Kumar Panda is not entitled to any relief in this case. Hence the following Award :—

AWARD

The reference is answered on contest but in the circumstances without cost. Since it is held that there had been no illegality in filling up of the vacant post of Assistant Secretary by employing Shri Aswini Kumar Nayak, Sanat Kumar Nayak and Sanatan Thela respectively by the first party-management, the second party-workman is found to be not entitled to any relief as sought for by him in the instant case.

The reference is answered accordingly.

Dictated and corrected by me.

Smt. SUCHISMITA MISRA
17-4-2009
Presiding Officer
Labour Court, Sambalpur

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17-4-2009
Presiding Officer
Labour Court, Sambalpur

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