

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 919 CUTTACK, THURSDAY, JULY 2, 2009 / ASADHA 11, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th June 2009

No. 5301-li/1(BH)-46/2001(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th May 2009 in I. D. Case No.279 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of the Employer of Shri Balaram Sahu, Contractor M/s. Laxmi Enterprises, C/o Birla Tyres, Chhanpur, Balasore & Shri Rajesh Kumar Marandi, S/o Shri Jasai Marandi, At/P.O. Khandiapada, Via. Jugupur, Dist. Mayurbhanj—757 052 was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 279 OF 2008

Dated the 8th May 2009

Present :

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

Between :

The Employer of .. First Party—Management
Shri Balaram Sahu, Contractor
M/s. Laxmi Enterprises
C/o Birla Tyres
Chhanpur, Balasore.

And

Shri Rajesh Kumar Marandi .. Second Party—Workman
S/o Shri Jasai Marandi
At/P.O. Khandiapada
Via. Jugupur, Dist. Mayurbhanj—757 052.

Appearances :

Shri Balaram Sahu, Proprietor	. . .	First Party—Management himself
Shri Rajesh Kumar Marandi	. . .	Second Party—Workman himself

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. 2529—li/1 (BH)-46/2001-LE., dated the 25th February 2002 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.

“Whether the action of the employer of M/s. Laxmi Enterprises Contractor of M/s. Birla Tyres, Chhanpur, Balasore refusing employment to Shri Rajesh Kumar Marandi, w.e.f. the 15th November 2000 is legal and or justified ? If not, to what relief he is entitled for ?”

2. The case of the workman in short is that being employed by M/s. Laxmi Enterprises, a contractor functioning in M/s. Birla Tyres, Chhanpur, he was entrusted with the work of maintenance of Trolley and Fabrication job since the 15th September 1994 on a wage of Rs. 80 per day, which was being paid to him on monthly basis after deducting the statutory contributions towards Provident Fund and E. S. I. It is asserted that on the 23rd August 2000 the workman proceeded to his village to settle some domestic dispute where he fell ill and could not return to resume duty on the 24th August 2000 and due to deterioration in his health condition he was treated by the Doctor of the nearby Hospital on the 1st September 2000. It is stated that on the advice of the doctor he remained under treatment till the 14th November 2000 and after recovering from illness when he reported before the contractor to resume duties on the 15th November 2000 along with a fitness certificate the contractor did not rely on the certificate and refused him employment. It is averred in the claim statement that despite repeated request when the contractor did not allow the workman to perform his duty, he lodged a complaint before the D.L.O., Balasore and the conciliation taken up on the said complaint having been failed, the present reference was made by the Government . According to the workman the refusal of employment made to him by the management amount to termination of his service and the same is not sustainable due to non-compliance of the statutory provisions of the Industrial Disputes Act. The workman, in the circumstance, has prayed for his reinstatement in service with full back wages.

3. Disputing the averments made in the claim statement, the management has filed its written statement stating therein *inter alia* that the workman was engaged as a fitter under it w.e.f. the 9th August 1999 and while working as such he remained absent voluntarily w.e.f. the 24th August 2000 for an indefinite period without prior written permission and intimation to the management. It is stated that due to the long absence of the workman from duty the normal working process hampered for which it struck off the name of the workman from its Muster Roll on the 1st November 2000 treating the absence of the workman as “voluntary abandonment of Service” as per the provisions laid down under Rule 12(5) of Orissa Contract Labour (Regulation & Abolition) Rules, 1974 and informed the workman accordingly. It is

further stated that during the period of his absence from duty on the 17th September 2000 he approached the management for payment of his unpaid wages for the month of August 2000 and accordingly he was paid his full unpaid wages for the month of August 2000. It is further stated that although the workman was covered under the E. S. I. Scheme but he did not produce any medical certificate issued by the E. S. I. Medical Authorities relating to his illness. In the aforesaid premises the management has prayed to answer the reference in the negative as against the workman.

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

ISSUES

1. Whether the action of the employer M/s. Laxmi Enterprises Contractor of M/s. Birla Tyres, Chhanpur, Balasore refusing employment to Shri Rajesh Kumar Marandi w.e.f. the 15th November 2000 is legal and/or justified ?

2. If not, what relief he is entitled for ?

5. The workman in order to substantiate his case has adduced his evidence on affidavit and has brought on record documents which have been marked as Exts.1 to 6. The management on the other hand examined one witness on its behalf and has got marked Ext.A, the xerox copy of the payment sheet for the month of August 2000 and Ext.A/1, the signature of the workman in Ext. A.

6. As the management disputed the initial date of engagement of the workman, it was contended on behalf of the workman with reference to the order passed by this Tribunal on the 23rd December 2008 and Exts. 1 to 1/e produced and marked by him that the date of initial engagement of the workman was the 15th September 1994 and not the 9th August 1999 as contended by the management. A scrutiny of the orders passed by this Tribunal on the 23rd December 2008 would reveal that despite direction to the management to produce certain relevant documents, which could have shown the exact date of engagement of the workman it did not produce the same for which an inference can be drawn to the effect that had the same been produced the same would have supported the claim of the workman. Further it reveals from Exts.1 to 1/e which are xerox copies of E.P.F. slips for the period from 1994-95 to 1999-2000 that the workman being employed under the management was contributing towards E.P.F. from the year 1994 and onwards. So, on the face of the aforesaid documents, it can be held that the workman entered into the employment of the management in the year 1994.

7. Now coming to the merit of the case, it is seen that while the workman challenged the action of the management to be a termination of his service w.e.f. the 15th November 2000 the management disputing the same asserts that the workman having left the job voluntarily, it can not be held that his services were terminated by the management. It is specifically asserted by the management that it is a clear case of voluntary abandonment of job by the workman and therefore, it was not at all necessary for it to comply with the required provisions of the Industrial Disputes Act while striking off of the name of the workman from the Roll.

8. The workman in his pleadings as well as in his evidence has stated that being assigned with the work of maintenance of Trolley and Fabrication job he was discharging his duty under the management since the 15th September 1994 on a wage of Rs 80 per day, which was being paid to him on monthly basis. In that connection he has proved Ext.2, the xerox copy of the E.S.I. card, Ext.3, the xerox copy of the employment card, Ext.4, the xerox copy of the wage slip for the month of July, 2000 and Ext.5 the xerox copy of his attendance card for the month of August, 2000. He deposed that on the 23rd August 2000 which was a weekly off day for him, he proceeded to his village where he fell ill and could not join his duty on the 24th August 2000. It is his evidence that since his health condition deteriorated he remained under treatment of Dr. Gopinath Mohanty of the nearby Hospital and after being declared fit when he approached the management to resume his duty on the 15th November 2000 the management after receiving the medical fitness certificate from him refused him employment. He has proved the original prescription Ext.6 wherein his treating physician had prescribed medicines for his illness and advised him for rest. In cross-examination though it was elicited from the workman that he had not intimated the management in writing about his illness, but he gave out that he informed about his illness to the employer over telephone. Flatly he denied the suggestion of the management that he ever approached the management regarding his dues and expressed his desire not to continue in service for any longer period.

M. W. No. 1, the employer himself has filed his evidence on affidavit and stated therein that on the workman's remaining absent from duty for indefinite period without prior written permission/intimation, his name was struck off from the Muster Roll on the 1st November 2000 treating it to be a voluntary abandonment of job by the workman as per the provisions laid down under Rule 12(5) of Orissa Contract Labour (Regulation & Abolition) Rules, 1975 and he was informed accordingly. He further stated that on the 17th September 2000 the workman voluntarily came to him and expressed that he was no more interested to serve any longer and requested him to make payment of his unpaid wages for the month of August 2000, and accordingly the workman was paid his full unpaid wages for the month of August 2000, which he acknowledged as per Ext.A/1, in the Register of wages marked Ext. A. In cross-examination he has admitted that the management has not filed the attendance register in this case and further that neither any enquiry was conducted for the workman's remaining absent from duty nor any notice was sent to him. He has also admitted in his cross-examination that no compensation was paid to the workman.

9. From the evidence, as above, it is found that the management has admitted about the employment of the workman but contends that the workman voluntarily left the services. In this connection, it is appropriate to refer to the law laid down by the Hon'ble Apex Court in the case of *D. K. Jadav Vrs. JMA Industries*, reported in 1993 (67) FLR-111, wherein their Lordships have held that "abandonment or relinquishment of service is always a question of intention and normally such an intention cannot be attributed to the workman without adequate evidence under law and holding of an inquiry is imperative to ascertain the intention of the workman." To the same effect there is yet another decision of the Hon'ble Apex Court, reported in 2004 (103) FLR (S.C.) - 102 [(M/s.Nicks(India) Tolls Vrs. Ram Surat and another)], wherein their Lordships have held that "the burden of proving that the workman has voluntarily left the services is upon the management". Further, our own Hon'ble High Court in the case of

Divisional Manager OFDC Ltd. *Vrs.* Kanista Bisoi & another reported in 2004 (Supp.) OLR-694 have clearly observed that "to constitute abandonment of service' there must be total or complete giving up duties and/or expression of the intention not to serve any further. This being a question of fact, onus lies on the Management which took such a plea to prove with cogent evidence that in fact the workman had abandoned his service. "In the instant case, admittedly no such enquiry was conducted by the employer to ascertain the intention of the workman and therefore, it can be held that the management has totally failed to discharge its onus and adduce any evidence to prove abandonment of employment by the workman.

10. Undisputably , it can be said that the workman had rendered continuous service for more than 240 days preceding the date of his refusal of employment and such refusal of employment/striking off of the name of the workman from the Roll, in the circumstances narrated above, can be held to be a termination of service of the workman as per the provisions of Section 2(00) of the Industrial Disputes Act and for non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, such termination cannot be held to be valid one. Hence, it is held that the action of the management in refusing employment to the workman w.e.f..the 15th November 2000 is neither legal nor justified.

11. In the result, therefore the workman is held entitled to reinstatement in service forthwith. Since the workman has stated in his evidence that after his termination of service he is still unemployed and sustaining his livelihood with much difficulty and no such rebuttal evidence is adduced by the management showing his gainful employment elsewhere during the period of his termination he is entitled to a compensation amount of Rs.25,000 (Rupees twenty-five thousand only) towards back wages. The management is directed to employment the Award within a period of two months from the date of its publication in the Official Gazette.

The reference is answered accordingly .

Dictated and corrected by me.

P. C. MISHRA
8-5-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
8-5-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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