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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th June 2010

No. 4898—li/1(J)-29/2006-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd December 2009 in I. D. Case No. 2 of 2007 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of Regional Director, Regional Directorate of Education, Berhampur, Dist. Ganjam and its Workman Shri Amulya Kumar Moharana was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE No. 2 OF 2007
Dated the 2nd December 2009

Present :

Shri P. K. Jena, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

The Regional Director,
Regional Directorate of Education,
Sidharthnagar, 2nd Lane,
Berhampur. At/P.O. Berhampur,
Dist. Ganjam.

.. First-party Management

And

Its Workman
Shri Amulya Kumar Moharana,
S/o Late Raghunath Moharana,
Kalua Street, Bijipur, Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

.. Second-party Workman

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

Self	.. For the Management
Self	.. For the Workman
Date of Argument	.. 23-11-2009
Date of Award	.. 2-12-2009

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their memo. No. 11350 (4), dated 23-12-2006 for adjudication of the following dispute :-

“Whether the termination of services of Shri Amulya Kumar Moharana, ex Dak Peon by way of refusal of employment with effect from the 1st March 2004 by the Regional Director, Regional Directorate of Education, Berhampur, is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. The case of the second-party workman is that, he had applied for the post of Peon/Messenger in the office of the Regional Directorate of Education, Berhampur and he was appointed on daily wage basis vide its Office Order No. 1876, dated 6-6-2003 for the period of 89 days at the rate of Rs. 40 per day towards his wages. He was entrusted with the duty of distribution of office letters in the locality of Berhampur. He was signing the attendance register and was being paid wages monthly. He was also doing other menial works as and when entrusted by the Higher Authority. On completion of 89 days his engagement was extended for another 89 days vide Office Order No. 3359, dated 20-9-2003. On his request daily wages was enhanced from Rs. 40 to Rs. 60 per day with effect from the 1st September 2003. Though, he was discharging his duty regularly and sincerely to the satisfaction of the authority but surprisingly without any reason he was refused employment with effect from the 1st March 2004 after rendering continuous service for more then 240 days without assigning any reason. Before terminating him from service, the management has not given him one month notice pay or any retrenchment compensation by violating Section 25-F of the I. D. Act, 1947. The said action of the management in terminating his service is illegal and unjustified and he prays the Court for reinstatement in his service with full back wages. As against the illegal action of the management, the workman made a complaint before the then D.L.O., Berhampur addressed to Regional Directorate of Higher Education, Berhampur for his illegal termination with effect from the 1st March 2004 and on receipt of the complaint the then Conciliation Officer-*cum*-A.L.O., Berhampur noticed to both parties for conciliation. But on failure of the conciliation, the matter was referred to Government and thereafter the same was referred to this Court for adjudication.

3. On the other hand the first party-management filed his W.S. stated that the workman was engaged on daily wage basis in his office from 6-6-2003 to 28-2-2004 with certain breaks. It is the contention of the management that the workman was getting his wages from office contingency. Out of four (4) regular class IV posts, three (3) posts were vacant and one Shri Purana Chandra Moharana was working. As one person was not sufficient to attend the officers and staff, the

Government of Higher Education was moved to accord permission for deployment of a person on daily wage basis to attend the day-to-day works of the office. In view of the urgency and in anticipation of Government approval, the present workman Shri Moharana was engaged on daily wage basis on the condition that such engagement would be for 89 working days, with remuneration of Rs. 40 per day for working days only. In the meanwhile the daily wages of the workman was enhanced to Rs. 60 per day with effect from the 1st September 2003 and his further engagement was extended for another period of 89 days. On the event of enhancement of the daily wages of the workman it was not possible to manage the payment from contingency head. So the Government was requested to place funds for the same. But no extra fund was placed for this purpose nor any approval was received from the Government for engagement of the workman. So it was felt necessary to discontinue the engagement of the workman till additional funds are placed by the Government. Accordingly the service of the workman was discontinued with effect from the 1st March 2004 after rendering his service for 202 working days. Further Government in his letter No. 26464, dated 18-8-2005 categorically instructed not to allow the workman. Shri Amulya Kumar Moharana to work in the office of the Regional Directorate of Education, Berhampur in any manner even on daily wage basis. During visit of Commissioner of Secretary, Department of Higher Education on 11-8-2004 this matter was discussed and it was decided to deploy a watcher from K. K. College, Berhampur to attend the work and consequently one P. Bisoi a regular Choukidar of K. K. College, Berhampur was deputed to the office of the Regional Directorate of Education, Berhampur vide Office Order No. 4165, dated 6-11-2004. So under such circumstances there was no scope to engage the workman Shri Moharana in their establishment. Since the engagement of the second-party workman was on daily wage basis so it cannot be said that there was violation of natural justice by the management. In view of the above submission, the re-engagement of the workman on daily wage basis has got no merit and it is liable to be dismissed.

4. The workman in support of his case has examined himself as W.W. No.1 whereas the management in support of his case has examined its Regional Director as M.W. No. 1. The workman in support of his case has filed several xerox copies of documents under Ext. 1 to Ext. 11. Similarly the management in support of his case has filed xerox copy of the document under Ext. A along with other documents available in the record.

5. The first point is to be considered whether the termination of service of Shri Amulya Kumar Moharana, ex Dak Peon by way of refusal of employment with effect from the 1st March 2004 by the Regional Director, Regional Directorate of Education, Berhampur is legal and/or justified ? If not, to what relief the workman is entitled ?

6. Previously in absence of the appearance of the management, *ex parte* award was passed in favour of the workman dated 25-7-2007 basing on the non-compliance of Section 25-F of the I. D. Act. But later on after appearance of the management the *ex parte* award was set aside and the case was restored to file and hearing was made on contest. After appearance of the management and filing of W.S. by the management certain new materials has come to the knowledge of this Court. Before deciding this case it is first to be considered whether the present workman was in continuance in service for a period of 240 days in a calendar year and if it was proved that he was in continuance of service for not less then 240 days in a year as laid down in Section 25 (B) of the I. D. Act, then no doubt he will come under purview of the Section 25-F of the I. D. Act. It is the bounden duty of the workman to prove that he was in continuance of service for a period of 240 days and before terminating from service Section 25-F of the I. D. Act, will be applicable to him. If

the workman fails to prove that he continued in service for 240 days then 25-F of the I. D. Act will not be applicable to him. In this aspect the workman during his examination has stated that he was appointed as a Dak Peon on daily wages basis on 6-6-2003 for a period of 89 days with remuneration of Rs. 40 per day. According to him due to enhancement of wages he was getting wages Rs. 60 per day instead of Rs. 40 per day. It is the evident of the workman that he served for a period of more than 240 days in the establishment of the first-party management and before his termination no notice was issued to him. As per his evidence during his engagement there were four (4) posts lying vacant. But he was not regularised in the said vacant post. It is admitted by him during his cross-examination that the management extended another 89 days to him. He denied to have worked for 202 days under the management. But he claimed to have worked for more than 240 days under the management. During his cross-examination he admits, the then Director to be his distance relation who appointed him on daily wage basis. He also denied any break during the gap period of those 89 days. But he admits to have received salary for the total period of 202 days. According to him the management illegally terminated him from service. Except saying working period for more than 240 days, there is no scrap of paper filed by the workman or proved by him to calculate the total number of days worked by him. Rather the management during filing of counter has reflected the total period of engagement on daily wage basis by the workman as 202 days from June 2003 to February 2004. The management during his cross-examination has categorically stated that the workman worked 20 days during the month of June 2003, 24 days in the month of July 2003, 23 days in the month of August 2003, 23 days in the month of September 2003, 19 days in the month of October 2003, 23 days in the month of November 2003, 25 days in the month of December 2003, 24 days in the month of January 2004 and 21 days in the month of February, 2004, i.e. in toto 202 days. The said version of M.W. 1 sufficiently corroborates to his W.S. regarding total period of engagement on daily wage basis by the workman from June 2003 to February 2004 with certain breaks. As per the evidence of the management the workman was getting the wages from office contingency. It is also the evidence of the M.W. No. 1 that Government in letter No. 26464, dated 18-8-2005 has instructed not to allow the workman Shri Amulya Kumar Moharana to work in the office of the management in any manner even on daily wage basis. In support of his case he has filed xerox copy of the said order of the Government under Ext. A. The Ext. A clearly shows that, it is a letter issued by the Government to Regional Director, Regional Directorate of Education, Berhampur, not to allow the workman Shri Moharana to work in the said establishment of the management. According to M.W. No. 1 due to scarcity of fund, it is not possible to engage the workman Shri Amulya Kumar Moharana in their office on daily wage basis and the management verbally told the workman to leave the service. As per evidence of the M.W. No. 1, the previous Regional Director who had appointed to the workman his own brother. In order to establish the relationship between the workman and the then Regional Director, namely Kishore Chandra Moharana M.W. 1 has filed a photo copy of voter list of the year 2009 which is available in the case record. The photo copy of voter list of 133 Berhampur Assembly Constituency at Sl. No. 481 and Sl. No 476 goes to show that one Raghunath Moharana is the father of the workman Shri Amulya Kumar Moharana as well as father of K. Ch. Moharana the then Regional Director of Higher Education. From the photo copy of the said voter list of the year 2009, it clearly reveals that the then Regional Director Kishore Chandra Moharana is the own brother of the present workman. Further on persual of the total days of engagement of second-party workman, it is found that in all the months, i.e. from June 2003 to February 2004, the workman has never completed the full month of engagement and there are breaks in his engagement in every week. As per oral testimony adduced by both parties, it is crystal clear that the workman completely fails to prove that he worked in the establishment of

the management for more than 240 days. Rather management during his evidence couple with his W.S. has categorically in detail proved that the workman has worked for 202 days only with all breaks. Since the workman was not in continuance of service for a period of 240 days, so 25-F of the I. D. Act will not attract to him. It is also admitted by the management during cross-examination that they have not given one month notice pay or any retrenchment compensation to the workman at the time of termination. In this case certain change of circumstance has been occurred after filing of W.S. by the management as well as hearing from the side of the management. In this case the engagement to the workman was made by the then Regional Director, only to show favour to his brother by using official authority. At no point of time permission was sought from received or allowed by the Government for such engagement. It shows that the workman being the brother of the then Regional Director Shri Kishore Chandra Moharana was illegally engaged to show him some favour. In this case there is no provision of funds or allotment from the Government to meet the expenditure towards payment of wages to the workman. Since the then Regional Director being the brother of the workman, paying wages to the workman out of office contingency, under such situation and circumstances, the decision of the Government vide letter No. 26464, dated 18-8-2005 is binding on the first party. So in view of the scarcity of the funds by the management and in view of Ext. A filed by the management and total number of days worked by the workman proved by the management clearly goes to show that the management has rightly terminated the service of Shri Amulya Kumar Moharana from their establishment. Showing favour to the workman by the then Director, who happens to be his own brother (as reveals from the photo copy of the voter list available in the record), clearly shows that the then Regional Director without any approval from the Government has engaged the workman in his establishment illegally.

ORDER

In view of the above observation, the termination of service of Shri Amulya Kumar Moharana, Ex Dak Peon by way of refusal of employment with effect from 1-3-2004 by the Regional Director, Regional Directorate of Education, Berhampur is legal and justified.

Dictated and corrected by me.

P. K. JENA
2-12-2009
Presiding Officer
Labour Court
Jeypore, Koraput.

P. K. JENA
2-12-2009
Presiding Officer
Labour Court
Jeypore, Koraput.

By order of the Governor

K. C. BASKE
Under-Secretary to Government