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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th June 2010

No. 5228-li/1-(B)-42/2009-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th March 2010 in Industrial Dispute Case No. 5 of 2009 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of (1) District Fishery Officer-*cum*-CEO, F.F.D.A., Berhampur, Ganjam, (2) Director of Fisheries, Orissa, Dry Duck, Jobra, P.O./Dist. Cuttack and its Workman Shri Bhajaram Swain 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. 5 OF 2009

The 26th March 2010

Present :

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

Between :

- (1) The Director, Fisheries, Orissa, .. First-party Management
At Dry. Duck, Jobra,
Post/Dist. Cuttack.
- (2) The Management of
District Fishery Officer-*cum*-F.F.D.A.,
Berhampur, At/P.O. Berhampur,
Dist. Ganjam.

And

Its Workman,
 Shri Bhajaram Swain,
 S/o Late Ulla Swain,
 At Sana Borasingi,
 P.O. Bada Borasingi,
 Via Gobra,
 P.S. Gangapur,
 Dist. Ganjam.

.. Second-party Workman

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

Appearances :

Shri Anirudha Panigrahi,
 D.F.O.-cum-Chief Executive
 Officer, Fish Farmers,
 Development Agency,
 (FFDA) & Brackish Water,
 Farmer's Development Agency (BFDA),
 Berhampur,
 Ganjam.

.. For Firsty-party Management (1)

For the Management(2).....Self

For the Workman.....Self

Date of Argument.....12-3-2010

Date of Award.....26-3-2010

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the power 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. 3645 (6), dated the 15th April 2009 for adjudication of the following disputes :—

SCHEDULE

“Whether the termination of services of Shri Bhajaram Swain, with effect from 19-8-2002 by the management of the Director of Fisheries, Orissa, Cuttack and District Fishery Officer, Ganjam is legal and/or justified ? If not, what relief Shri Bhajaram Swain is entitled to ?”

2. The case of the second-party workman is that he was engaged as a Sweeper -cum-Night Watcher under the office of the District Fishery Officer-cum-Chief Executive Officer of F.F.D.A., Ganjam, Berhampur since 4-7-1994 and continued in his service till 18-8-2002 but all of sudden the

first party management terminated him from his service without complying the provision of Section 25-F of the Industrial Disputes Act, 1947. Being aggrieved such illegal termination by the management, the workman complained before the A.L.O.-cum-Conciliation Officer, Bhanjanagar and in the joint enquiry due to failure of the conciliation, the Conciliation Officer submitted the failure report before the Government of Orissa and thereafter the Government referred this matter to this Court for adjudication due to illegal termination, the workman press the Court to reinstate him in service with full back wages.

3. The management appeared and filed W.S. stating that the workman Bhajaram Swain was engaged as a contingent Sweeper-cum-Night Watcher in F.F.D.A., Ganjam, on daily wage basis, with effect from 1-7-1994 as per order of the Chairman, F.F.D.A., Ganjam, i.e. Collector, Ganjam as per the pleadings of the first-party management in view of the Government Ban Order in their letter No. 17815/F., dated 12-4-1993, it was strictly mentioned therein not to recruit any such contractual engagement after 12-4-1993 and any such recruitment held after 12-4-1993 would be treated as unauthorised. As per the order of the Government's Ban Order, dated 12-4-1993 it was decided in the Managing Committee Meeting held on 12-8-2002 to disengage the second-party workman, and accordingly the workman Shri Swain was disengaged from his service, with effect from 19-8-2002. The Director of Fisheries, Orissa, Cuttack also directed to make payment of the workman, Shri Swain in accordance with the provisions of the Industrial Disputes Act. Accordingly, the retrenchment benefits amounting to Rs. 14,142 as per provisions of Section 25-F of the Industrial Disputes Act, was drawn and the workman was requested in letter No. 3384, dated 30-7-2004 to receive the same. In spite of several correspondence made to the workman through special messenger through registered post but the workman refused and wilfully avoided to receive the same. Although some other contingent workers are still continuing but they were appointed prior to 12-4-1993. Due to financial hardship of the Government as it was decided by the Government not engage such workers after 12-4-1993, so the Chairman, i.e. Collector, Ganjam who engaged the workman Shri Swain, later on disengaged him. In view of the Ban Order of the Government and due to compliance of Industrial Disputes Act, the management has rightly terminated the service of the workman Shri Bhajaram Swain, with effect from 19-8-2002, and accordingly the claim statement filed by the workman is liable to be dismissed.

4. The only point for determination is to be considered "whether the termination of services of Shri Bhajaram Swain, with effect from 19-8-2002 by the management of the Director of Fisheries, Orissa, Cuttack and District Fishery Officer-cum-F.F.D.A., Berhampur, Ganjam is legal and/or justified ? If not, what relief Shri Swain is entitled to ?"

5. In this case the workman in support of his case has examined himself as W.W.1 and in support of his case has had filed several xerox copies of documents under Ext.1 to Ext. 4. Similarly, the management in support of their case has examined two (2) witnesses i.e. Fishery Supervisor as M.W.1 and Dist. Fishery Officer, Berhampur as M.W. No.2. The management in support of their case have filed several xerox copies of documents under Ext. A to Ext.J. Before going to discuss the evidence of the both parties it is to be seen that whether there was any Ban Order of the

Government not to engage any worker on daily wages basis after 12-4-1993 and whether the management after termination, had complied Section 25-F of the Industrial Disputes Act, by giving retrenchment compensation to the workman. It is admitted but not disputed that the workman was working as a Night Watcher-cum-Sweeper in the Fishery Department, Berhampur since 1-7-1994 and continued in his service for about 9(nine) years. During his tenure of service he was transferred from different places to different places by the authority. The workman in support of his case files Ext.1 which shows that Collector, Ganjam-cum-Chairman F.F.D.A. engaged the workman in the year 1994 as a Sweeper-cum-Night Watcher with a consolidated amount of Rs.500 per month. Similarly, Ext.2 and Ext.3 shows that he has been transferred from different places to different places to perform his duty. Ext.4 show that in view of the decision of the Managing Committee Meeting and as per the instruction of the Government he has been disengaged from his service, with effect from 19-8-2002. It is admitted by him that during tenure of service he received the termination letter on dated 19-8-2002 from the management. According to him the management discontinued his service from 19-8-2002 without any notice or compensation. He has also not received one month notice pay or any retrenchment compensation from the management. According to him the management has not complied the provision of Section 25-F of the Industrial Disputes Act, at the time of termination. It is his evidence that he had got Rs. 1200 per month on daily wage basis for the last year. In course of his cross-examination he denies to have any knowledge regarding the Ban Order of the Financial Department, dated 12-4-1993. He denied to have received one month notice pay, compensation and gratuity amounting to Rs. 14,141. Further it is to be considered whether management had complied the Industrial Disputes Act during termination of the workman. In this aspect M.W.1 during his examination has stated that as per the direction of the District Fishery Officer he went to house of the workman to handover the letter to him for his arrear pay but he refused to receive the same for which he returned back the same to the District Fishery Officer, Berhampur. He proves Ext. A to be the said letter under Memo. No. 3585, dated 30-7-2004 of D.F.O., Ganjam. He also proves Ext. A/1 to be the report before D.F.O., Berhampur regarding refusal, to receive the notice by the workman. So as per the evidence of the M.W.1 he took the notice but the workman intentionally refused to receive the notice. M.W.2 is the D.F.O., Berhampur has stated that due to financial crisis the Government imposed a Ban Order restriction not to engage of contingent worker and basing on the restriction letter of the Government not to engage any worker after 12-4-1993, the present workman who joined in duty on 1-7-1994 was terminated from his service. They received the Government Ban Order in the year 2000 and since the workman was engaged during 1994, i.e. after 12-4-1993, so he was disengaged from his service. He proves Ext.B to be the appointment letter of the workman given by Collector, Ganjam-cum-Chairman, I.F.D.A. He also proves Ext.C to be the Government Ban Order, dated 25-3-2000. He also proves Ext.D to be the disengagement order of the management on dated, 19-8-2002. Ext.E shows that this is the letter given by the D.F.O., Berhampur addressed to Director of Fisheries, Orissa, Cuttack, regarding permission for payment of the benefits, i.e. one month salary in lieu of one month notice and compensation to the workman. Ext.F shows that it is a letter addressed to Director of Fisheries, Orissa, Cuttack for obtaining permission for payment of Rs.14,142 to the workman, i.e. one month salary notice compensation and amount of gratuity. Ext.G filed by the management shows that this is a letter issued from Director of Fisheries, Orissa, Cuttack directing D.F.O., Berhampur to pay the

compensation etc. to the workman as per provisions of the Industrial Disputes Act. Accordingly the letter was issued from D.F.O., Berhampur addressed to the workman to attend the office and to receive his compensation and other amounts for the period from 1-7-1994 to 19-8-2002 amounting to Rs. 14,142 which was drawn and kept in the office. He proves Ext.H to be the said letter addressed to the workman. But after several correspondence through Regd. Post with A/D the said letter returned back with an endorsement of the postman "returned to the sender as addressee is absent." He proves Ext. H/1 and Ext.H/2 are those correspondence letter. As the workman did not receive the said letter a special messenger was sent to serve notice to the workman. But the said letter returned back vide Ext.A and Ext.A/1. He also proves Ext.J is another letter issued to the workman to receive his amount but the same was returned back. Although O.A., Cuttack given a direction to the management to consider the matter if fund is available in the office, but Director of Fisheries refused the representation of the workman as per the Ban Order under Ext.C.

6. No doubt from the evidence on the record and from documentary evidence it is crystal clear that the management has taken several steps to comply the provision of Section 25-F of the Industrial Disputes Act in order to pay the retrenchment benefits to the workman. But the workman intentionally avoided to receive the letters or above amount from the management. No doubt in this case some delay has been occurred by the management for payment of retrenchment benefits to the workman as because the management after obtaining permission from the Higher Authority prepared the bills and issued letters for payment to the workman during 2004, although disengaged the workman from the service during 2002. In course of official transaction some delay has been occurred by the management for payment of retrenchment benefits to the workman and the same has been drawn and kept in the office for payment. Due to non-receipt of the above amount by the workman the same has not been paid to him which he is entitled to get as his legitimate dues from the management. As the management has not timely issued the letters nor paid his legitimate dues and some delay has been occurred [i.e. after two(2) years of his termination], so some compensation should be given to the workman which would meet the ends of justice, as he rendered his service under the management for about nine(9) years. Due to his bad luck, he was disengaged from his service. In view of Ban Order of the Government and as the first party management has tried his best to comply the provision under Section 25-F of the Industrial Disputes Act after termination of the workman, so in that aspect, the disengagement of the service of the workman by the management from 19-8-2002 is legal and justified. Since the second-party workman has not received his legitimate benefits for his termination and in view of some inordinate delay, the management is directed to pay the retrenchment benefits to the workman amounting to Rs. 14,142 along with compensation amount of Rs. 5,000 which would meet the ends of justice, i.e. *in toto* Rs.19,142 to the workman.

ORDER

The reference is answered on contest as per above observation. The termination of the services of the workman by the management is legal and justified. But however in order to comply the Industrial Disputes Act, the management is directed to pay the termination benefits amounting to

Rs. 14,142 alongwith compensation amount of Rs. 5,000, i.e. *in toto* Rs. 19,142 to the workman within two(2) months of the passing of this award failing which the workman is at liberty to claim the same at the rate of 10% per annum towards interest from the first party management. The first-party management if engages any labourer in future then first preference should be given to the workman, Shri Swain as he rendered his service for the establishment for about nine (9) years in order to comply the Section 25-H of the Industrial Disputes Act.

Dictated and corrected by me.

P. K. JENA
26-3-2010
Presiding Officer
Labour Court, Jeypore

P. K. JENA
26-3-2010
Presiding Officer
Labour Court, Jeypore

By order of the Governor

K. C. BASKE

Under-Secretary to Government