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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 14th July 2010

No. 5708-li/1-(B)-6/1995-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd April 2010 in Industrial Dispute Case No. 99 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s Orissa State Co-operative Marketing Federation Ltd., Nayabazar, Cuttack and its Workman Shri Maheswar Panda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 99 OF 2008

Dated the 23rd April 2010

Present :

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

Between :

1. The Managing Director,
Orissa State Co-operative
Marketing Federation Ltd.,
Bhubaneswar - 751006. .. First-Party Management
2. The Area Manager,
Orissa State Co-operative Marketing
Federation Ltd., Area Officer,
Nayabazar, Cuttack.

And

Shri Maheswar Panda,
At/Post Mahanga, Cuttack. .. Second-Party Workman

Appearances :

Shri Ashok Mohanty, Advocate	.. For the First-Party Management
Shri N. K. 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. 17532—li (B)/1-6/1995-L.E., dated the 5th December 1995, 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 :—

“Whether the termination of services of Shri Maheswar Panda, Peon with effect from the 1st June 1993 by the management of M/s Orissa State Co-operative Marketing Federation Ltd., Cuttack, Nayabazar, Cuttack is legal and/or justified ? If not, what relief he is entitled for ?”

2. The case of the workman in brief is that he was engaged as a Peon under M/s Orissa Co-operative Marketing Federation Ltd. (for short ‘Management’) in its Salipur Godown Office on daily wage basis with effect from the 1st February 1988 till May 1993 and during his continuance he had completed more than 240 days of continuous service in each year. It is stated that on the 5th June 1993 when he had come to the office to receive his salary for May, 1993 he was served with an office order, dated the 28th May 1993 wherein it was mentioned that his services were no longer required with effect from the 1st June 1993 owing to joining of one Shri Kamalakanta Rout at Salipur Godown Office at Kulia. He asserted that on and from the 6th June 1993 he was not allowed to work despite the fact that said Kamalakanta Rout did not report for duty. According to the workman, the action of the management amounts to retrenchment of his service and due to non-compliance of the provisions of Section 25-F of the I. D. Act, the same is not sustainable in the eye of law. The workman further alleges that after effecting retrenchment of his service the management has retained some junior peons in its employment, which is also a contravention of the provisions of the I. D. Act. Narrating the above ground the workman has prayed for his reinstatement in service with full back wages.

3. The management entered contest and filed its written statement challenging the maintainability of the reference and further asserting that the engagement of the workman was not as per the Service Rules & Regulations of the management, in as much as, the competent authority having not engaged the workman as a casual peon nor any *post facto* approval was taken from him by the Area Manager, who had engaged him, the management of OSCMF cannot be said to be the employer of the workman. The management has asserted that the workman was engaged on monthly casual basis by the Area Manager against a permanent vacancy till the regular employee is posted and his engagement was renewed from month to month. It is stated that due to posting of the regular Peon, the monthly engagement of the workman was not renewed after May, 1993 and as such, his case is squarely covered under the exception category of (bb) provided in Section 2 (oo) of the I. D. Act. It is pleaded that there having no retrenchment of the services of the

workman, the provisions of Section 25-F of the I. D. Act is not attracted. The management further pleads that no junior to the workman or any outsider is engaged as a Casual Peon/Labourer in Salipur Godown of the management. In the circumstances, 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 termination of services of the second party workman, Peon with effect from the 1st June 1993 by the first party management is legal and/or justified ?

(2) If not, what relief the workman is entitled to ?

5. The workman has examined himself in the case and filed and proved documents which have been marked Exts. 1 to 3. The management also examined one witness on its behalf and got marked Exts. A to E in support of its stand.

6. The facts which are no more in dispute in the present case is that the workman was engaged as a Peon on daily wage basis from the 1st February 1988 till May, 1993 and such engagement of the workman was made by the Area Manager. The post of Peon lying vacant having been filled up by a regular employee, the services of the workman was dispensed with. While the workman alleges the said action of the management to be a termination of his service and contends that the same is illegal and unjustified owing to non-compliance of the provisions of Section 25-F of the I. D. Act, the management challenging the validity of engagement of the workman contends that since the Competent Authority under the Service Rules has not made such engagement, it was not at all a valid appointment and consequently the dispensation thereof in no way makes the management liable to grant any relief to the workman, as claimed. Added to it, it was contended by the management that the engagement of the workman was against leave vacancy and the same was being renewed monthly from time to time and on joining of a regular Peon his engagement was discontinued with effect from the 1st June 1993 and as such the same is squarely coming within the exception category of (bb) provided in Section 2 (oo) of the I. D. Act.

In view of the rival submissions it is to be determined on the basis of the evidence available on record as to whether the engagement of the workman was valid so as to claim protection of Section 25-F of the I. D. Act.

7. The evidence of W. W. No. 1 at Para. 7 of his cross-examination reveals that pursuant to his application the Area Manager had appointed him. Ext. B, the copy of the Staff Service Rules, 1987 discloses that the Managing Director of the Federation is the Appointing Authority in respect of all the category of posts, officers and staff. In this connection, Clause-11 of the Staff Service Rules may be referred to. Further, Ext. A reveals that the workman had made an application to the Area Manager for his engagement as a Peon-*cum*-Night watchman. So, on the face of the documentary evidence i. e., Exts. A and B coupled with the evidence of the workman it can be held that the engagement of the workman under the management was not in accordance with the Rules and as such the same cannot be construed as a valid appointment.

8. Now adverting to the other question as to whether the workman was entitled to the protection of Section 25-F of the I. D. Act, it is again seen from Ext. A that he had requested the Area Manager to allow him to work further after fifteen days of his engagement. In his chief examination the workman has also admitted that he was working as a Peon in leave vacancy. So, basing on his application, Ext. A and his own admission it can be concluded that his engagement was purely casual in nature and against leave vacancy and such fact was known to him on his initial entry into the casual nature of job. The person who was posted in place of the workman at the Godown was a permanent employee of the management as reveals from Ext. D and Ext. C, dated the 1st May 1993 is the copy of the transfer order of the said permanent Peon, Kamalakanta Rout. So, basing on the documentary evidence available on record, it can be held that the nature of job assigned to the workman besides being need-based, was contractual in nature. Hence, the conclusion becomes inevitable that the termination of service of the workman has occurred as a result of non-renewal of the contract and as such, the action of the management does not fall within the meaning of 'retrenchment' as defined under the I. D. Act.

9. In the result, it is held that the action of the management in terminating the services of the workman with effect from the 1st June 1993 is neither illegal nor unjustified and accordingly the workman is entitled to no relief in the present reference.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
23-4-2010
Presiding Officer, Industrial Tribunal
Bhubaneswar

P. C. MISHRA
23-4-2010
Presiding Officer, Industrial Tribunal
Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government