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EXTRAORDINARY

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th September 2010

No. 8409—Ii/1(BH)-17/1994-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st August 2010 in Industrial Dispute Case No. 279 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Utkal Synthetics Private Limited, Charampa, Bhadrak and its workman Shri Madhusudan Jew was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 279 OF 1995

The 21st August 2010

Present :

Shri S. K. Dash,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of . . First Party—Management
M/s. Utkal Synthetics (P) Limited
Charampa, Bhadrak.

And

Their Workman . . Second Party—Workman
Shri Madhusudan Jew

Appearances :

For the First Party–Management	. .	Shri S. S. Ali, Advocate
For the Second Party–Workman	. .	Shri S. B. Mohanty, Advocate Shri S. K. Das. Advocate Shri S. S. Mohapatra, Advocate

AWARD

The Government of Orissa in exercise of powers conferred under sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 11315—Ii/1(BH)-1-17/ 1994-L.E., dated the 25th August 1995 of the Labour & Employment Department, Orissa, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

> "Whether the termination of services of Shri Madhusudan Jew, Electrician by the management of Utkal Synthetics (P) Limited, charampa, Bhadrak with effect from the 1st September 1993 is legal and/or justified ? If not, what relief Shri Jew is entitled to ?"

3. The case of the workman in brief is that he was appointed as a Helper on the 1st January 1985 under the management after due test and subsequently promoted to the post of Electrician with enhanced wage with effect from the 5th October 1986 and continued as regular workman as Electrician and discharged his duty accordingly with full satisfaction of the authority. The workman was admitted to E.P.F. Scheme and was also issued E.S.I. Corporation Identity Card and E.P.F. Account number was 3527/42. The workman was involved in Union activity and at his initiation alongwith other Union offices bearers a memorandum of settlement was made on the 6th September 1991 between the management and the workers of the Factory in which the workman has signed as semi-skilled labourer as Electrician. On the 25th February 1993 the management had issued notice to the workman disclosing that his attitude is harmful to the interest of the management and threatened for action against him but the workman requested to resolve the dispute by discussion. Besides the said day to day harassment the management issued order on the 6th July 1993 that the workman would not be given any work and he will sit idle. The management arbitrarily and illegally deducted Rs. 250 from the wage of the workman from July, 1993 and has not paid till yet. On the 1st September 1993 the management finally terminated the service of the workman who was originally appointed as Electrical Helper and designated as Assistant to Electrician in electric Section and promoted and utilised as Electrician in view of the knowledge, experience and workmanship. The said termination is illegal, unjust, unfair and against the principles of natural justice. So he raised an industrial dispute before the labour authority and when the conciliation failed a reference has been received from the Government and an Industrial Dispute Case has been initiated and the workman has prayed for reinstatement in service with full back wages.

4. The Management appeared and filed written statement denying the plea of the workman. According to him the workman was engaged during the year 1986 on casual and temporary basis on trial basis with a condition that his continuance in service will be considered on the basis of his performance. He was some time engaged to assist the Project Engineer

in Electrical Works but he was not an Electrician. After resignation of one Mr. Rao, the workman was simply managing the work but was unable to do the important and major elctrical works independently. The workman was given opportunity to satisfy the authority about his qualification and experience as an Electrician and was directed to produce the certificate in his support but he failed to produce the same. The work and experience gathered by the workman was not required for safety of the management and such experience was not according to the observation of the Inspector of Factories for the safety of the employees. In view of the instruction of the Inspector of Factories and considering to the experience and qualification, it was established that the workman was not found fit to work in the factory and accordingly due notice was given to him to collect his all dues and compensation from the office. And the workman left the factory, due notice and advertisement was given to fill up the post and after conducting the interview, the post has been filled up in the mean time. The statutory provision of termination has been duly followed and his termination is legal and justified. The workman has lost confidence of the managment as he produced the false and fabricated certificate in support of his experience. However the factory of the management has been permanently closed with effect from the 1st June 2000. So in this back ground the management has prayed for answering the reference in his favour.

5. In view of the above pleadings of the parties, the following issues have been settled :

ISSUES

(*i*) Whether the termination of services of Shri Madhusudan Jew, Electrician by the management of Utkal Synthetics (P) Limited, Charampa, Bhadrak with effect from the 1st September 1993 is legal and/or justified ?

(*ii*) If not, to what relief Shri Jew is entitled to ?

6. In order to substantiate his plea the workman has examined two witnesses altogether out of which W. W. 1 is the workman himself and W. W. 2 is a co-worker of the workman working under the management. Similarly the management has examined his Administrative Officer as M. W. 1. The workman proved documents marked as Exts. 1 to 8. similarly the management has proved documents marked as Exts. A to Q.

FINDINGS

7. *Issue Nos. (i)* and *(ii)*—Both the issues are taken up together for discussion for convenience.

It has been argued by the advocate for the workman that the workman was working under the management initially as Electrical Helper and subsequently promoted to the post of Electrician. But all of a sudden without following the mandatory provisions of Section 25-F of the Industrial disputes Act, the management terminated the service of the workman with effect from the 1st Janaury 1993 for which the action of the management is totally illegal and unjustified and he should be reinstated in service with full back wages. On the other hand, it has been argued by the advocate for the management that the workman was never working as an Electrician in the establishment of the management. He was working as a casual worker but he was allotted duty to assist the Electrician as he has no qualification for a competent Electrician it was noticed by the Inspector of Factories during his inspection of the factory of the management and when the workman was directed to produce certificate, he failed to do so. So for the betterment of the factory, the service of the workman was terminated and he is not entitled to get any relief as prayed for.

8. In view of the above contradictory argument from both the sides, I have to see the evidence available in the case record in this regard.

W. W. 1 deposes that he was initially joined as a Electrical Helper on the 1st January 1985 and subsequently promoted to the post of Electrician with effect from the 5th October 1986 and discharged his duty regularly and uninterruptedly. The facility of E. S. I. and E.P.F. has been allotted to him. The management had issued an experience certificate to the workman which is marked as Ext. 2. The management admitted the said certificate to be correct. M. W. 1 in his cross-examination has deposed that it is a fact that Ext. 2 was issued by the management. Ext. 2 is a certificate which discloses that the workman was working as an Assistant to Electrician in Elctrical Section from the 1st Janaury 1985 to the 31st December 1988. The W. W. 1 has also deposes that in a settlement with the management in Form 'K' marked as Ext. 3 it has been mentioned that the workman was working as an Electrician under the category of semi-skilled. In relying upon the authority reported in 2001 Lab. I. C. 649 it has been argued by the advocate for the workman that long experience of the workman equitable with sufficient qualification. In that authority it has been held that workers working in post for long number of years without complaint, by itself sufficient qualification and long experience is equitable with such qualification and eligibility clause need to be modified and eligibility condition relaxed in favour of such worker. The W. W. 1 deposes that on the 6th July 1993 the management issued a letter stating that the workman should not be given any work in the factory of the management. He will sit idle till further order. The xerox copy of such document has been marked as Ext. 6. So the workman was not allotted any duty to discharge for which he submitted an application to the management but the management did not pay any need to it and lastly the management terminated the service of the workman by way of refusal of employment on the 1st September 1993 without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act, W. W. 2 has also filed the affidavit evidence in support of the plea of the workman. On the other hand, M. W. 1 deposes that the workman was working as a casual worker under the management and he was attached to the Project Manager to assist him in the Electrical Work in the factory. During the period of inspection by the Inspector of Factories, Balasore, he directed to appoint qualified and competent Electrician as required under law for maintenance and functioning of the machineries. The management issued notice to appoint qualified, competent and experienced Electrician in the factory. The workman approached the management to appoint him as an Electrician as he has gathered experience and obtained the required qualification for appointment of Electrician and prayed to give some time to submit required certificate. The workman had been an opportunity to work as Electrician for some time and to submit required certificate, but the workman failed to submit any certificate subsequently. After giving several opportunities the workman failed to submit said certificate. So it was not safe and desirable on the part of the management to allow him to continue in the post of Electrician for which it was left with no other option than to terminate the service of the workman with effect from the 1st September 1993. Furthr the management has challenged that the workman has not completed the required period of 240 days in 12 calendar months preceding to the date of termination to get the benefit of Section 25-F of the Industrial Disputes Act. In the cross-examination of M. W. 1 he has admitted that he was not filed any document in support of the days of engagement under the management. The payment register in respect of payment to the employees are available with the management and also the attendance register, but strangously enough such documents were not filed by the management in support of their plea to show that the workman has not

completed the requsite period of 240 days of continuous service to attract the provisions of Section 25-F of the Industrial Disputes Act. In relying upon the authority reported tin 2002 Lab. I. C. 987 Supreme Court it has been argued that it is the duty of the workman to establish that he had completed 240 days of work in a year. In such authority it has been held that when the workman claimed that he has worked for 240 days in a year preceding his termination and the said claim is denied by the management onus lies upon the workman to show that he had in fact worked for 240 days in a year. In absence of proof of receipt of salary or wages or record of appointment, filling of an affidavit by workman is not sufficient evidence to prove that he had worked for 240 days in a year preceding his termination. But on the other hand, it has been argued by the advocate for the workman in relying upon the authority reported in AIR 2010 Supreme Court 1236 that the burden of proof of 240 days of work by the workman is on the management and not on the workman. In such authority it has been held that continuous service of 240 days in case of retrenchment the workman would have difficulty in having access to all official documents, muster rolls etc. in connection with his service. When the workman claimed and deposed that he worked for 240 days, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. However in view of the argument of both the sides and basing on the above authorities and basing on the materials available in the case record, it clearly shows that the workman has completed the requisite period of 240 days preceding 12 calendar months from the date of his termination to get benefit under Section 25-F of the Industrial Disputes Act.In the instant case admittedly such provision has not been followed at all though the settled position of law is that Section 25-F of the Industrial disputes Act being a beneficial legislation it has to be strictly complied with and is a mandatory pre-condition. So non-compliance of such provision amounts to illegal and arbitrary retrenchment and against the principle of natural justice. In the instant case the management has terminated the service of the workman on the ground that he failed to produce the required certificate regarding his qualification as Electrician and such plea is not acceptable in the eye of law. So on careful consideration of all the materials as discussed above now I came to the finding that the termination of service of the workman by the management with effect from the 1st September 1993 is illegal and unjustified.

9. It has been argued by the advocate for the workman that the workman should be reinstated in service with full back wages but it is now well settled by reasons of catena of decisions of the Hon'ble Suprerme Court that relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose several factors are required to be taken in consideration. According to the management, the factory of the management has already been closed since the 1st June 2000. So it has been argued that the workman is not entitiled for reinstatement in service. He has relied upon the authority reported in 2008 Lab. I. C. 4155 wherein it has been held that when employer unit is sick and suffering losses, compensation is directed to be paid to the employee instead of reinstatement with full back wages. In the instant case the factory of the management has been closed as stated earlier. But the workman has denied to such plea and submitted denial answer to the suggestion given by the mangement to the workman during cross-examination, but his co-worker W. W. 2 in the cross-examination clearly admitted that the establishment of the management has been closed since the 1st June 2000. Exts. M to Q disclose about closure of the factory with effect from the 1st June 2000. Ext. Q the xerox copy of the Award in I. D. Case No. 10/2001 passed by the Presiding Officer, Industrial Tribunal,

Bhubaneswar. From such Award it clearly shows about the closure of the factory of the management with effect from the 1st June 2000. Further according to the settled principle of law as reported in 2004(Supp.) OLR 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere payment of back wages is not justified. So in this back ground on careful consideration of the entire materials available in the case record, I am of the opinion that it is not a fit case to reinstate the workman in service with full back wages. Hence on careful consideration of all the materials as discussed above I am of the opinion that a lump sum compensation of Rs. 40,000 in lieu of reinstatement in service with back wages will meet the ends of justice in this case. Both the issues are answered accordingly.

10. Hence ordered :

That the termination of services of Shri Madhusudan Jew, Electrician by the management of Utkal Synthetics (P) Limited, Charampa, Bhadrak with effect from the 1st September 1993 is neither legal nor justified. The workman Shri Jew is entitled to get a lump sum of Rs. 40,000 (Rupees Forty Thousand) only as compensation in lieu of reinstatement in service with back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is thus answered accordingly.

Dictated and corrected by me.

S. K. DASH
21-08-2010
Presiding Officer
Labour Court, Bhubaneswar

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21-08-2010
Presiding Officer
Labour Court, Bhubaneswar

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

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