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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th October 2010

No. 8621-li/1(B)-100/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th July 2010 in I. D. Case No. 63 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Bhubaneswar Municipal Corporation, Bhubaneswar and their workmen represented by Shri Banibrata Tripathy and 4 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.63 OF 2005

The 12th July 2010

Present :

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

Between :

The Management of Bhubaneswar Municipal Corporation, Bhubaneswar. . . First party—Management

And

Their workmen represented by Shri Banibrata Tripathy and 4 others. . . Second party—Workmen

Appearances :

Shri S. S. Panda, Advocate . . For the First party—Management

Shri Subrat Mishra, Advocate . . For the Second party—Workmen

Shri S. S. Mohapatra, Advocate

Mrs. M. Parhi, Advocate

A W A R D

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 9271– li/l (B)-100/-2005-LE., Dt. 29-10-2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of Management of Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Banibrata Tripathy, Shri Hemanta Sethi, Shri Chitta Ranjan Mohanty, Shri Susanta Kumar Barik, Shri Pratap Kumar Sahoo, Shri Nrusingha Charan Ojha, Shri Santosh Kumar Biswal, Shri Rajat Kumar Choudhury, Shri Asit Kumar Jena, Shri Ashok Kumar Jena, Shri Girija Sankar Dash, Shri Raghunath Panda and Shri Bijaya Kumar Mallia, all Ward Attendants/Supervisors with effect from 23-5- 2002 is legal and/or justified ? If not, to what relief they are entitled ?”

3. Out of 13 workmen against whom the reference has been received, 11 workmen have appeared in the Court and filed statement of claim and contested the proceeding. Two workmen namely, Shri Hemanta Sethi and Shri Ashok Kumar Jena did not turn up. They neither appeared and filed statement of claim nor participated in the proceeding.

The case of 11 workmen in brief is that is pursuant to the resolution passed by the council of the management on 22-8-1997 total numbers of 60 persons including the present workmen were engaged by the management in the month of August as Ward Attendant/Supervisor on D. L. R. basis on a consolidated salary of Rs.1,200 per month. They performed their duties such as, attending and looking after the job of sanitation, conservancy, sweeping of streets, street lighting and other incidental and developmental works as and when being executed in different wards. In addition to the above duties, the workmen have been assisting the Ward Councilors in preparation of plans and programmes for development work of different wards of the management. They discharged their duties sincerely and diligently and the utmost satisfaction of the management. But on 22-5-2002 the management without any reason intimated the workmen that their services are no more required with effect from 23-5-2002 and accordingly the management did not allow the workmen to resume their duties with effect from 23-5-2002 and terminated their services by way of refusal of employment without assigning any cause, notice, notice pay and retrenchment compensation as per law. The workmen have completed more than 240 days of work without any interruption in each calendar year before the date of their termination from service. But the management has not complied the provisions of Section 25-F of the Industrial Disputes Act before terminating their services. The management has allowed some junior employees to the workmen to continue in their employment which is a clear violation of Section 25-G and 25-H of the Industrial Disputes Act. All the 13 workmen have raised industrial dispute before the labour authority and when the conciliation failed, this Industrial Dispute Case has been initiated. The present 11 workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workmen though the management admitted the workmen to their employee. According to the management, the workmen were working as Ward Supervisor on Casual Labourer basis since 1-8-1997 and were not retrenched from their duties with effect from 23-5-2002, but they voluntarily abandoned

from their casual duties. The workmen remained absent and did not turn up to their duties and also had not intimated anything to the management. According to the Orissa Municipal Act, 1950, the management cannot engage any D. L. R. without prior approval of the Government. The management has no point of time retrenched the services of the workmen and they voluntarily abandoned their services from 23-5-2002. So on this back ground the management has prayed for adjudication of the dispute accordingly.

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

ISSUES

(i) “Whether the action of the management of Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Banibrata Tripathy, Shri Hemanta Sethi, Shri Chitta Ranjan Mohanty, Shri Susanta Kumar Barik, Shri Pratap Kumar Sahoo, Shri Nrusingha Charan Ojha, Shri Santosh Kumar Biswal, Shri Rajat Kumar Choudhury, Shri Asit Kumar Jena, Shri Ashok Kumar Jena, Shri Girija Sankar Dash, Shri Raghunath Panda and Shri Bijaya Kumar Mallia, all Ward Attendants/Supervisors with effect from 23-5-2002 is legal and/or justified ?

(ii) If not, to what relief they are entitled ?”

6. In order to substantiate their plea, the workmen have examined one Banibrata Tripathy, one of the workman as W. W. 1 and proved the documents marked as Exts. 1 to 3. Similarly the management has examined one Junior Assistant of the management as M. W. 1 but has not proved any document on behalf of the management.

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 workmen that the workmen were duly appointed and performed their duties satisfactorily but all of a sudden without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act the management has terminated their services for which they are entitled to be reinstated in service with full back wages. On the other hand, it has been argued by the Advocate for the management that the workmen have voluntarily abandoned their services for which they are not entitled to get any relief as claimed for.

8. W. W. 1 has filed the affidavit evidence corroborating the statement of claim filed by them. According to him, they were duly engaged on consolidated salary of Rs. 1,200 per month as Ward Attendants/Supervisors on D. L. R. basis with effect from 20-8-1997. But from 23-5-2002 they were not allowed to resume their duties and their services were terminated without assigning any reason and without complying the provisions of Section 25-F of the Industrial Disputes Act. W. W. 1 has also stated that the provisions of Section 25-G and 25-H of the Industrial Disputes Act have also not been followed by the management. According to him the management has allowed some junior employees to continue in service, but no specific instance has been given in this regard. So it cannot be believed to be true. In the cross-examination this witness admitted that he has been authorised to depose on behalf of other workmen. The management has taken the plea that after performing their duties for few days, the workmen voluntarily abandoned their duties to which the W. W. 1 answered in negative. Perused the documents marked as Exts. 1 to 3 proved on behalf of the workmen. In his cross-examination, M. W. 1 has deposed that he has not gone through the written statement filed by the management. He had not handle any file related to daily labourer register. He has no knowledge as to the year up to which the workmen had worked under the management. He has no idea that the workmen were disengaged by the management from 23-5-2002. He has no idea that the workmen were not absented voluntarily from 23-5-2002. He has no idea if the workmen were working continuously from 1-8-1997 to 22-5-2002. So from this evidence,

it shows that M. W. 1 has absolutely no idea about the facts of this case. However, accordingly to the settled principle of law as reported in A. I. R. 2010 SC. 1236, when the workmen claimed and deposed that he worked for 240 days, burden of proof shifted to the employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. In the instant case the workmen have claimed to have completed 240 days continuously in 12 calendar months preceding to the date of termination. Though the management took such denial plea, no substantial evidence has been brought out in the case record to believe the plea of the management. On the other hand, the plea of the workmen is to be accepted in absence of contrary evidence. Regarding voluntary abandonment of service nothing has been proved by the management in this regard. So on careful consideration of all the materials as discussed I came to the finding that the 11 workmen who are contesting the proceeding are entitled to be reinstated in service. But when the other two workmen namely Shri Hemanta Sethi and Shri Ashok Kumar Jena neither filed any statement of claim nor participated in the hearing, they are not entitled to get any relief and no Award possible is to be passed against them.

9. Regarding payment of back wages when the workmen have not worked for the management during the period in question and they had not proved by cogent evidence that they were not gainfully employed elsewhere, payment of back wages is not justified. Similarly the Hon'ble Supreme Court in catena of decisions that the 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 into consideration. But on careful consideration of all the materials as discussed above instead of granting back wages a consolidated amount of Rs.5,000 per head in lieu of back wages will meet the ends of justice in this case.

10. Hence Ordered :

That the action of management of Bhubaneswar Municipal Corporation, Bhubaneswar in terminating the services of Shri Banibrata Tripathy, Shri Chitta Ranjan Mohanty, Shri Susanta Kumar Barik, Shri Pratap Kumar Sahoo, Shri Nrusingha Charan Ojha, Shri Santosh Kumar Biswal, Shri Rajat Kumar Choudhury, Shri Asit Kumar Jena, Shri Girija Sankar Dash, Shri Raghunath Panda and Shri Bijay Kumar Mallia, all Ward Attendants/Supervisors with effect from 23-5-2002 is neither legal nor justified. The above named 11 workmen are entitled to be reinstated in service with a lump sum amount of Rs.5,000 (Rupees five thousand) only each towards back wages. No Award is possible in respect of the workmen Shri Hemanta Sethi and Shri Ashok Kumar Jena who have not filed statement of claim and did not participate in the hearing. The management is directed to implement the Award forthwith.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
12-7-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
12-7-2010
Presiding Officer
Labour Court
Bhubaneswar

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