

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1852 CUTTACK, WEDNESDAY, NOVEMBER 10, 2010 / KARTIKA 19, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st October 2010

No. 8892-ii/1(B)-87/2008-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th June 2010 in I. D. Case No. 27 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Sambalpuri Handloom, New Marine Drive Road, Swargadwar, Puri and its workman Shri Krushna Chandra Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 27 OF 2008

The 19th June 2010

Present :

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

Between :

The Management of M/s Sambalpuri Handloom, New Marine Drive Road, Swargadwar, Puri. . . . First party—Management

And

Its workman Shri Krushna Chandra Das . . . Second party—Workman

Appearances :

Shri S. Das . . . For the First party—Management

Shri K. C. Das . . . Second party—Workman himself

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, 1947 have referred the matter in dispute to this Court vide Order No. 10594–li/I (B)-87/2008-LE., Dt. 3-10-2008 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the employer of M/s. Sambalpuri Handloom, New Marine Drive Road (Swargadwar), Puri has terminated the services of Shri Krushna Chandra Das by way of refusal of employment ? If so, to what relief Shri Das is entitled ?”

3. The case of the workman in brief is that he has been working as Salesman under the management situated at Swargadwar, New Marine Drive Road, near Chaitanya Square, Puri for last seven years. During his employment all of a sudden he suffered from ocular disease and was ill. So he took leave for 15 days for medical treatment. After returning from leave when he went to join in his duty, the management denied his access to the shop of the management and scolded with slang language. He was also not paid salary of early months. The management had deducted some money from his salary of each month. When he asked about it, the management told that the same has been deposited in his Provident Fund Account. When the workman asked to return his dues, the management told that he has nothing to receive from the management and his service was retrenched without any reason. So he raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred and this Industrial Dispute case was instituted.

4. The management appeared and filed written statement denying the plea of the workman. According to the management, it has a cloth shop at Swargadwar, Puri, but no permanent employee is engaged in his shop. But at the winter season i.e. during the months of November, December and January the management temporarily engaged persons as and when required by him and such engagement was purely temporary basis on daily wage basis. The workman was engaged on daily wage basis for a period of 15 to 20 days in a year and was paid his wages on daily wage basis. The workman was earning his livelihood by doing ferry service at Swargadwar, Puri. On his approach, the workman was temporarily engaged by the management on daily wages basis for a short period. All the daily wages due to the workman has already been paid to him. The question of retrenchment or termination from service of the workman by the management does not arise at all. So on the above 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 framed :—

ISSUES

- (i) “Whether the employer of M/s Sambalpuri Handlooms, New Marine Drive Road (Swargadwar), Puri has terminated the services of Shri Krushna Chandra Das by way of refusal of employment ?
- (ii) If so, to what relief Shri Das is entitled ?”

6. In order to substantiate his plea, the workman has examined himself as W. W. 1. Similarly the management himself has been examined as M. W. 1. Neither the workman nor the the management has proved the documents in order to substantiate their claims.

FINDINGS

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

W. W. 1 deposes that he was working as a workman in the shop of the management situated as New Marine Drive Road, Swargadwar, Puri. He joined in the service in March, 2001 and he was refused employment on 20-1-2007 without any cause. He was absent from duty prior to 15 days of his retrenchment on medical ground. He was getting monthly salary of Rs. 3000. In support of his engagement, he has not proved any document. No document has also been filed or proved regarding getting of his salary or wages. The M. W. 1 deposes that there was no permanent employee working in his establishment. During the business season persons are engaging temporarily when required. He used to come to the shop of the management for 7 to 8 days per month and get his wages daily. He has never refused employment to the workman, but during business season he remained absent and engaged in his C. D. business. Thereafter he raised dispute demanding Rs. 50,000 to settle the dispute.

8. Basing on these evidences the workman has claimed that he was working under the management and his service was terminated without any ground. On the other hand, the management denied the plea of the workman. According to the settled principle of law, it is the duty of the workman to prove that he was working under the management for a period of 240 days during last 12 calendar months. But in the instant case as mentioned earlier no document has been proved by the workman to show that he was working under the management for the stipulated period to claim reinstatement as per the provisions of the Industrial Disputes Act. So without any basis it cannot be said that the workman is entitled for reinstatement in his service as per law. So on careful consideration of the materials available in the case record as discussed above, I inclined to hold that the workman is miserably failed to establish his claim. Therefore, I came to the finding that the retrenchment of the service of the workman by way of refusal of employment is legal and justified. The workman is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
19-6-2010
Presiding Officer
Labour Court
Bhubaneswar

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19-6-2010
Presiding Officer
Labour Court
Bhubaneswar

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