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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th March 2010

No. 2548—li/1(B)-106/2006-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th November 2009 in Industrial Dispute Case No. 4 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Executive Engineer, P. H. Division, Puri/ Assistant Engineer, P. H. Subdivision, Nayagarh and their workman Shri Sudarsan Sahoo, H.R. Khalasi (Pump Driver) was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 4 OF 2007

Dated the 27th November 2009

Present :

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

Between :

The Management of .. First Party—Management
Executive Engineer, P. H. Division, Puri/
Assistant Engineer, P. H. Subdivision,
Nayagarh.

And

Their Workman .. Second Party—Workman
Shri Sudarsan Sahoo
H.R. Khalasi (Pump Driver).

Appearances :

For the First Party—Management	..	Shri A. K. Nanda Asst. Engineer.
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For the Second Party—Workman himself	..	Shri S. Sahoo

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. 242—li/1(B)-106/2006-L.E., dated the 8th January 2007 of the Labour & Employment Department, Orissa, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Sudarsan Sahoo, H. R. Khalasi (Pump Driver) by the Management of Executive Engineer, P. H. Division, Puri/Assistant Engineer, P. H. Subdivision, Nayagarh with effect from the 16th February 2002 is legal and/or justified ? If not, what relief Shri Sahoo is entitled ?”

3. The case of the workman in brief is that he was appointed as H. R. Khalasi (Pump Driver) under the Assistant Engineer, P. H. Subdivision, Nayagarh from November, 1997. He was terminated from the service with effect from December, 1998 in one occasion and in the intervention of the District Labour Officer, Nayagarh he was reinstated in service and thereafter he was working in the same post from the 1st November 2000 to the 15th February 2000 at the rate of Rs. 500 per month, but the management became vindictive and searched plea to terminate his service. On the 16th February 2000 when he reported for his duty as usual manner, the authority did not allow him to resume duty and terminated his service without following the mandatory provision of law under Section 25-F of the Industrial Disputes Act, 1947 and without paying any retrenchment compensation. He was also not paid the wages from the 1st November 2000 to the 15th February 2002 in the revised scale according to the provisions of Minimum Wages Act. After termination of his service the management has employed one Shri Laxmidhar Senapati and Shri Kelu Charan Dalai on the 16th February 2002 in his place. So in this back ground he has prayed for reinstatement in service with full back wages.

4. The Management No. 1 has appeared and filed written statement denying the plea of the workman. The management No. 2 subsequently appeared and filed a memo accepting the written statement filed by the management No. 1. According to the management the workman was never appointed as H.R. Khalasi (Pump Driver) under the management No. 2 from November, 1997 and from the 1st November 2000 to the 15th February 2002. Infact the workman was working temporarily to watch the materials of A.U.W.S.P. Scheme on a consolidated amount of Rs. 500 per month from the 1st November 1990 to the 30th September 1998 and since then he was never engaged in the said work as the said scheme (A.U.W.S.P.) completed in the year 1998 and has not been further extended. He was terminated from the work with effect from the 1st October 1998. He was never reinstated in service from the 1st November 2000 to the 15th February 2002. In the minutes of discussion the District Labour Officer, Nayagarh on the 15th September 1999 has advised the S.D.O., P.H. Subdivision,

Nayagarh to provide work to the workman on the priority basis when work is available under his Subdivision but there is no new work or scheme since the said date. Therefore, there is no occasion on the part of the Assistant Engineer, P.H. Subdivision, Nayagarh to provide further work to the workman. The management has not employed Shri Laxmidhar Senapati and Shri Kelu Charan Dalai on the 16th February 2002 or thereafter. The workman filed Misc. Case vide No. 169/2003 against the management which was dismissed for default on the 2nd January 2007. So in this back ground the workman is not entitled to get any relief as prayed for.

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

ISSUES

- (i) Whether the termination of services of Shri Sudarsan Sahoo, H. R. Khalasi (Pump Driver) by the management of Executive Engineer, P.H. Division, Puri/Assistant Engineer, P. H. Subdivision, Nayagarh with effect from the 16th February 2002 is legal and/or justified ?
- (ii) If not, to what relief Shri Sahoo is entitled ?

6. In order to substantiate his plea the workman has examined two witnesses altogether on his behalf out of which W. W. 1 is the workman himself and W. W. 2 is a Cultivator of Village Routarapur of Nayagarh District. Similarly the management has examined two witnesses altogether on their behalf out of the M. W. 1 is the Khalasi and M. W. 2 is the Junior Engineer of the P. H. Section. The workman has proved documents marked as Exts. 1 and 1/a. The management has not proved any document on their behalf.

FINDINGS

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

The workman claimed that he was working as H. R. Khalasi (Pump Driver) in the office of the Assistant Engineer, P. H. Subdivision, Nayagarh with a pay of Rs. 500 per month. He joined the duty on the 1st January 2000. On the 16th February 2002 he was refused employment without any notice and payment of retrenchment compensation. He worked continuously from the 1st January 2000 to the 15th February 2002. In support of his employment and working he has filed only xerox copy of Pump Log Book (four sheets) marked as Ext. 1 and another xerox copies of Pump Log Book for the period from the 6th February 2001 to January 2002 containing 44 sheets marked as Ext. 1/a. The W. W. 2 deposes that the workman was working as Pump Driver at Barabati Pump House from 2000 to 2002 and he was retrenched from the service by the management and in his place two other persons were appointed namely Shri Kelu Charan Dalai and Shri Laxmidhar Senapati. The management has clearly denied about the appointment of the workman as H. R. Khalasi (Pump Driver) for the relevant period. The M. W. 1 deposes that he has seen the workman near the Pump House and heard that he was working as Watchman. M. W. 2 has also denied about the appointment of the workman as H. R. Khalasi (Pump Driver) during his incumbency. Exts. 1 and 1/a though bears the signature of the workman but nowhere there is signature of the management or any other staff of the management on behalf of the management to show that such Log Books are maintained for the purpose of the official use. Except such Log Book the workman has not filed and proved any other document in support of his claim that he was actually working under the management

for the relevant period. The management has admitted in the written statement that the workman was working as Watchman at the rate of Rs. 500 per month much prior to the 1st November 2000 and as the scheme was stopped no further employment was given to him. Further there is no documentary evidence to show that any such person in the name of Shri Laxmidhar Senapati and Shri Kelu Charan Dalai were appointed in place of the workman after his retrenchment. From the materials available on record as discussed above, I came to the finding that there is no sufficient material to show that the workman was working under the management for the period from the 1st January 2000 to the 15th February 2002 as H. R. Khalasi (Pump Driver) and therefore the question of termination of the workman from service by the management does not arise, and he is not entitled to get any relief as prayed for.

Hence the reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
27-11-2009
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
27-11-2009
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
K. C. BASKE
Under-Secretary to Government