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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th April 2010

No.3167-li/1(BH)-162/98(P)--L.E.--In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd November 2009 in I. D. Case No.177 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of Orissa Mining Corporation Ltd., Bhubaneswar and their workmen Smt. Kanta Patra, W/o. Debaraj Patra, At Jharana Sahi, Sishubhawan Chhack, Bhubaneswar was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE COURT OF INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTES CASE No.177 OF 2008

Dated the 3rd November, 2009

Present :

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

Between :

The Managing Director,
Orissa Mining Corporation Ltd.,
Bhubaneswar.

... First-party Management

And

Smt. Kanta Patra,
W/o. Debaraj Patra,
At Jharana Sahi,
Sisubhawan Chhack,
Bhubaneswar, Orissa.

... Second-party Workmen

Appearances :

None	..	For First-party Management
Smt. Kanta Patra	..	For the Second-party Workman herself

AWARD

Originally, the Government of Orissa in the Labour and Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar, vide its Order No.li/1 (B)–162/98–13697-L.E., dated 1-12-1998, 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 4-4-2008

“Whether the action of the Management of Orissa Mining Corporation Ltd., Bhubaneswar in terminating the services of Smt. Kanta Patra, Sweepress with effect from 11-5-1994 is legal or justified ? If not, what relief she is entitled to ?”

2. The case of the second-party in brief is that being employed as a Sweepress on 1-10-1992 she worked in the residence of the Managing Director of M/s Orissa Mining Corporation Ltd. It is stated that she was performing her duties from 7 A.M. to 12 Noon and again from 3 P.M. to 7 P.M. and was drawing a salary of Rs.950 per month by signing in the Muster Roll Register. It is stated that while continuing so the management paid her bonus and enrolled her name under the E. P. F. It is alleged that on 10-5-1994 the Managing Director verbally told her that her services were no longer required and thereby terminated her service with effect from 11-5-1994. According to her, since she has rendered uninterrupted service under the management for more than 240 days prior to her termination, the action amounts to retrenchment and the same is illegal in view of non-compliance of the provisions of Section 25–F of the Industrial Disputes Act. It is further alleged that after terminating her service, the management has employed fresh lady candidated as Sweepress violating the provisions of law. In the premises, the second party has prayed for her reinstatement in service with full back wages and stated that after his illegal termination she is facing much financial hardship due to her unemployment.

3. The first-party in its written statement has stated that the second-party was engaged on contract basis for a period of 44 days for conservancy work only in the residence of the Chairman-*cum*-Managing Director which was extended from time to time on her request and as per the requirement. It is stated in the written statement that such engagement of the second-party was from 1-10-1992 till 11-5-1994 and as the second-party neither turned-up nor submitted any application for the job her contract was not renewed for any further period. It is averred in the written statement that non-renewal of contract of employment on its expiry does not come within the definition of ‘retrenchment’ and as such, no notice or notice pay and compensation was required to be given to the second-party. The management has denied the fact of engaging any fresh employee in place of the second-party. With the aforesaid averments the management has prayed to answer the reference in the negative as against the second party.

4. On the basis of the pleadings of the parties the following issues have been framed :–

ISSUES

- (1) Whether the action of the management of Orissa Mining Corporation Ltd., Bhubaneswar in terminating the services of Smt. Kanta Patra, Sweepress with effect from 11-5-1994 is legal or justified ?
- (2) If not, what relief she is entitled to ?

5. In course of hearing, the management did not participate and vide Order No.60, dated 11-9-2009 it was set *ex parte*. In the *ex parte* hearing the workman examined herself and tendered her evidence on affidavit besides producing two documents which have been marked as Exts.1 and 2.

6. In her unchallenged evidence the workman has fully corroborated her stand taken in the claim statement. She has deposed categorically that she had worked continuously for more than 240 days under the Management, but despite that the management refusal her employment with effect from 11-5-1994 without complying with the Statutory requirements. It is true that no documentary evidence has been produced by the workman in support of the fact that she had rendered continuous service for more than 240 days under the management but at the same time the record discloses that as back as on 11-10-2004 the workman had made a petition praying therein a direction to the management to produce documents such as Muster Roll Register, Attendance Register and Payment Vouchers relating to the period from 1992 to 1994 and inspite of direction issued to the management vide order No. 33, dated 1-7-2005 to produce all such documents called for by the workman the management remained content and did not comply the orders. In such state of affair there is every reason to believe that had the documents been produced it would have substantiated the plea of the workman and negated the assertions of the management. Therefore, as held by their Lordships in the case of Sita Ram and others *Vrs.* Motilal Nehru Farmers Training Institute, reported in 2008 (117) FLR-1191, an adverse infarence can be drawn against the management for withholding the records under its exclusive custody.

7. It being the admitted fact that no notice or notice pay and compensation was given to the workmen while doing away with her job, which was statutorily required to be complied with by the employer, the action of the management in disengaging the workmen with effect from 11-5-1994 can be said to be a 'retrenchment' and for non-compliance of the provisions of Section 25-F of the Industrial Disputes Act the same is held to be not sustainable.

8. In the result, the workmen is held entitled to reinstatement in service with 25% back wages.

The reference is answered accordingly.

Dictated & corrected by me.

P. C. MISHRA
3-11-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
3-11-2009
Presiding Officer
Industrial Tribunal
Bhubaneswar

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