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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th April 2010

No. 3356-li/1(B)-47/2008-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 31st December 2009 in I.D. Case No. 13 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Arya Central Transport Pvt. Ltd., Dolamundai, Cuttack and their Workman Shri Kartik Chatterjee was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 13 OF 2008

Dated the 31st December 2009

Present :

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

Between :

The Management of M/s. Arya
Central Transport Pvt. Ltd.,
Dolamundai, Cuttack. .. First-party Management

And

Their Workman .. Second-party Workman
Shri Kartik Chatterjee

Appearances :

Shri S. K. Satpathy, Manager .. For First-party Management

Shri Kartik Chatterjee .. Second-party Workman himself

AWARD

1. 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. 7028–li/1 (B)-47/2008-L.E. dated 26-6-2008 of the Labour & Employment Department, Bhubaneswar for adjudication of the dispute.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Kartik Chatterjee with effect from 1st October 2007 by the management of M/s Indo Arya Central Transport Pvt. Ltd., Dolamundai, Cuttack is legal and/or justified ? If not, what relief Shri Chatterjee is entitled to ?”

3. The case of the workman in brief is that on 1-1-2005 he was appointed by the management as a Peon-cum-Xerox Operator under the management having its controlling office at Dolamundai, Cuttack. On being requested for the same he was engaged as Peon-cum-Xerox Operator at Dolamundai, Cuttack, and he continued in such post from 1-1-2005 to 31-12-2006 and his service was regularised by the management from 1-1-2007 with a monthly salary of Rs. 1,500. He was allotted with the Code No. 44-5173 by the E.S.I. authority as an employee of the management. Similarly the management has also allotted a Code No. 3341 in favour of the workman. The Provident Fund Authority has also allotted an Account No. WH/14336/2862 in favour of the workman. But on 1-10-2007 the management did not allow the workman to enter into the office and godown premises and informed that his presence was not required, hence his service was terminated on the ground of refusal of employment. But one person namely Shri Sunil Kumar Prusty has been appointed in his post. The service of the workman was terminated without any reason even if not issued with any show-cause notice on the workman which violates the provisions of the Industrial Disputes Act. After his termination, when on many occasion the workman requested the management to reinstate him in service, the management informed that his service was not terminated by them rather the workman had voluntarily resigned from service with effect from 30-9-2007. At the time of initial joining on 1-1-2005 of the workman, the management took signatures of the workman in a blank paper and voucher to use mischievously in future and further directed him not to disclose such matter otherwise his service will not be regularised. As the workman was in need of service, he had no other option to refuse but to sign on the blank paper and voucher with a hope of regularisation of his service, he did not inform such mischievous thing to anybody. The workman was also not paid any bonus or other claims by the management. The management manufactured the letter dated 30-9-2007 and voucher dated 1-10-2007 by using the blank paper and voucher collected earlier at the time of joining of the workman. So in this background he has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement by partly admitting and partly denying the averments of the claim statement of the workman. The management admitted the workman to be his workman but denied about retrenchment of the workman without any reason and regarding non-payment of dues. According to the management the workman had applied for the post of Office Peon and he joined in service on 1-1-2005 as a Office Peon in the office of the management. He continued as such from 1-1-2005 to 31-12-2006 and his service was regularised with effect from 1-1- 2007 with a monthly salary of Rs. 1,500. He was never continued in the post of Peon-cum-Xerox Operator as other person has been appointed to work as Xerox Operator. On

30-9-2007 the workman voluntarily tendered his resignation which was duly accepted by the head office of the management. His full and final settlement was paid on 1-10-2007. When he voluntarily resigned from the post, no provision of Industrial Disputes Act has been violated as well as the principles of natural justice. The workman has received all the dues outstanding from the management. The management has never obtained any signature of the workman on any blank paper and voucher and utilised the same as his resignation letter and voucher towards payment. So in this background the management has prayed for passing an Award declaring the action of the management as legal and justified.

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

ISSUES

- (i) Whether the termination of Shri Kartik Chatterjee with effect from 1-10-2007 by the management of M/s. Indo Arya Central Transport Pvt. Ltd., Dolamundai, Cuttack is legal and/or justified ?
- (ii) If not, what relief Shri Chatterjee is entitled to ?

6. In order to substantiate his plea the workman has examined himself as W.W. 1 and proved the documents marked as Exts. 1 to 3. Similarly the management has examined three witnesses out of which M.W. 1 is the Manager of the management, M.W. 2 is the Chief Executive of the management and M.W. 3 is the Clerk of the management. The management has also proved documents marked as Exts. A to D.

Findings

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

It is an admitted fact by both the parties that the workman was working under the management for the period from 1-1-2005 to 30-9-2007. It has been admitted by the workman that he was working as Peon-cum-Xerox Operator under the management whereas the management denied to it, and submitted that the workman was working as a Peon in the establishment of the management. As he has applied for the post of Peon and accordingly he was posted as Peon. In support of it the management has relied upon on Ext. B which clearly mentioned that the post applied for was Office Peon and it was filled up by giving appointment to the workman himself. During cross-examination of W.W.1 he has admitted this fact and Ext. B was confronted to him during cross-examination. So from the documentary evidence and from the admitted fact it can safely be concluded that the workman was working as Office Peon and not as a Peon-cum-Xerox Operator under the management. Further W.W. 1 has deposed that on 1-10-2007 he was not allowed to enter into the office and the management was informed that the workman had voluntarily resigned from service. Further in his affidavit evidence he has stated that the management took his signatures in blank papers and utilised the same against him showing that he had voluntarily resigned from service but he has not resigned from the service. Now I have to see the relevant document basing on which the entire case depends. Ext. C is the xerox copy of such resignation letter of the workman. From the document it shows that it was prepared and tendered on 30-9-2007 and it was accepted by the management. Ext. A is the xerox copy of debit voucher wherein a sum of Rs. 3,000

has been paid to the workman on 1-10-2007. As shown in both the documents the workman has admitted his signature but denied about its contents. In the cross-examination the workman has stated that some office staff were present while he signed on his resignation letter but he does not remember the name of such office staff. Ext. 2 is the xerox copy of the salary sheet, and Ext. 2/a is the relevant entry in respect of the workman which shows payment of his salary and the gross amount was Rs. 1,500 and after deduction the net amount was Rs. 866. It was printed on 6-9-2007. A similar document has been marked as Ext. D on behalf of the management which discloses that such document is the pay sheet for the month of August, 2007 but Ext. 2 is not clear in this respect as no such endorsement or printing is available thereon. M.W. 1 deposes that on 30-9-2007 the workman tendered his resignation and was accepted and his full and final settlement was made on 1-10-2007. To his knowledge the workman has never signed on any blank paper and voucher. M.W. 2 and M.W. 3 deposed by corroborating the evidence of M.W. 1. So now the sole question is to be considered whether the resignation letter marked as Ext. C is a voluntary one or a manufactured one. The workman has joined in the establishment of the management on 1-1-2005 and served up to 30-9-2007 which is about 2 years 9 months. During that period the workman has never disclosed to any one that the management has taken his signature on a blank paper and voucher and at a belated stage he was taking such plea but has not proved by clear and cogent evidence that the management has actually done the same. In the cross-examination, W.W. 1 has admitted that prior to joining in the management he was working under an Advocate for the Hon'ble High Court as an Advocate's Clerk with due license. He has further deposed that he has not obtained any signature of any client on a plain paper. On careful perusal of the documents marked as exhibits on behalf of both the parties specially Ext. C shows that Ext. C was duly signed by the workman and it is a resignation letter and the management has duly accepted the same and the workman has accepted his dues from the management on 1-10-2007, vide Ext. A.

8. Section 25-F of the Industrial Disputes Act deals with the condition precedent to the retrenchment of the workman. The retrenchment has been defined in Section 2 (oo) of the Industrial Disputes Act which reads as follows :

- “2 (oo) “Retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –
- (a) voluntary retirement of the workman ; or
 - (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf ; or
 - (bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein ; or
 - (c) termination of the service of a workman on the ground of continued ill-health.”

So basing on the materials available in the case record, the case of the workman does not come under the category of retrenchment. He has voluntarily resigned from the service. So on

careful consideration of the entire materials available in the case record both oral and documentary evidence, I came to the finding that the management has not terminated the services of the workman, but the workman has voluntarily resigned from the service for which 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
31-12-2009
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
31-12-2009
Presiding Officer
Labour Court, Bhubaneswar

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