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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th December 2010

No. 11007—li/1-(J)-33/2001 (Pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th July 2009 in I.D. Case No. 51 of 2001 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of the Executive Engineer, Jank Canal Division and its Workman Shri Satyanarayan Sahu was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 51 OF 2001

The 15th July 2009

Present :

Shri P. K. Jena, O.S.J.S. (Jr. Branch)
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

The Executive Engineer,
Jank Canal Division,
At/P.O. Nuapada,
Dist. Nuapada

.. First-party—Management

And

Its Workman,
Shri Satyanarayan Sahu,
S/o Shri Nityananda Sahu,
At/P.O. Karangamal,
Dist. Nuapada

.. Second-party—Workman

Under Sections 10 & 12 of the Industrial Dispute Act, 1947

Appearances :

For the Management	.. Self
For the Workman	.. Self
Date of Argument	.. 10-7-2009
Date of Award	.. 15-7-2009

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Memo. No. 17529/L.E., dated the 20th December 2001 for adjudication of the following disputes :-

“Whether the termination of services of Shri Satyanarayan Sahu, N.M.R. Typist with effect from Dt. 25-7-1989 was legal and/or justified ? If not, what relief is he entitled to ?”

2. The short case of the second-party workman Shri Satyanarayan Sahu is that he was working as a N.M.R. Typist from Dt. 1-8-1987 under the Executive Engineer, Jank Canal Division, Nuapada and he was engaged in type writing work in Division Office. But the Employer illegally terminated him from his service with effect from Dt. 25-7-1989 without complying the provisions of the I.D. Act, 1947. As per pleadings of the workman during March, 1989 after formation of Work-charge N.M.R. Union he participated as a treasurer of that Union. Due to taking leading part in that Union, Employer namely Executive Engineer of that Division verbally threatened him not to come to the office. For that reason a conciliation was held on Dt. 2-5-1989 and the Management agreed to withdraw the verbal retrenchment, but instead of re-engaging him, the management finally terminated him from service with effect from Dt. 25-7-1989 vide retrenchment Notice No. 2389, Dt. 24-6-1989. Since the management has illegally terminated him from his service, so he is entitled for reinstatement in service with full back wages. On the complaint of the workman before District Labour Officer, Kalahandi the Conciliation was held by the Conciliation Officer dated 19-5-2001 but due to failure of Conciliation, the matter was referred to this Court for adjudication by the Labour & Employment Department.

3. On the other hand the management appeared and pleaded that the workman Shri Satyanarayan Sahu, N.M.R. Typist was retrenched from his service on Dt. 25-7-1989 as per the order of the Executive Engineer. The workman was engaged as a N.M.R. from Dt. 1-8-1987 and worked up-to-date 24-7-1989. As per the pleadings of the management, the workman was terminated from his service on Dt. 25-7-1989 after giving one month notice on Dt. 24-6-1989. Further the Government had already banned the engagement of N.M.Rs. from 13-9-1990, for which at present under the above circumstances it was not possible to engage the workman in service in contravention to the Government order. As per the pleadings of the management in June 1989 in a review meeting it was found that 97 numbers of N.M.Rs. including the workman Shri Satyanarayan Sahu were found surplus than their requirements, for which those 97 workmen including Satyanarayan Sahu were retrenched from service, after giving one month notice. It is further stated by the management that the retrenchment compensation of Rs. 508 has been paid to the workman vide cash Bank Voucher

No. 15, Dt. 25-7-1989 of Subdivisional Officer, Right Canal Subdivision No. I, Nuapada. It is further contended that as per the instruction issued by the Finance Department of Orissa in their Resolution No. 22754/F, Dt. 15-5-1997 one N.M.R. employee is eligible for regularisation of his service if he has completed ten (10) years of service. But in this case, N.M.R. employees including the present workman Shri Satynarayan Sahu have not completed ten (10) years of service, for which Shri Sahu was informed in this office vide letter No. 748, Dt. 6-3-1998, that he is not eligible to be observed in a regular post due to non-compliance of work for about 10 years. Since the management has complied the provision of the I.D. Act, 1947 before retrenchment, so the termination of the service of Shri Sahu is legal and justified.

4. Previously this case was disposed of on contest by my predecessor and the Award was passed on 2-6-2004 in favour of the workman, in absence of evidence and production of documents by the management. As against that award, the management being prejudiced preferred an appeal before the Hon'ble High Court in W.P.C. No. 5162 of 2005 in which the Hon'ble Court has passed an order dated 17-3-2009 and remitted back this matter to the lower Court for re-consideration after quashing the impugned Award Dt. 2-6-2004 and to give opportunity to both parties for hearing afresh and to dispose the matter as expeditiously as possible. In response to the direction of the Hon'ble High Court this Court issued notice to both parties to appear and to adduce evidence if any in their favour and to produce documents. As per the order of this Court both parties appeared in the Court and the management though not adduced any evidence previously, examined the witness and produced concerned documents in his favour. Simultaneously the workman did not like to adduce any further evidence and relied on his previous evidence and filed certain documents in his favour.

5. In course of hearing the workman in support of his case filed several documents under Ext. 1 to Ext. 13, Ext. 3 to Ext. 13 relates to several xerox copies of Muster Rolles of N.M.Rs. Ext. 2 relates to the xerox copy of the letter of Assistant Labour Officer, Khariar Road and Ext. 1 relates to xerox copy of memorandum of settlement dated 5-8-1989. On the other hand the management filed several documents in his favour Ext. A to Ext. G respectively. Ext. A relates to xerox copy of letter No. 2389, dated 24-6-1989 i.e. one month notice. Ext. B relates to xerox copy of retrenchment compensation bill. Ext. F relates to xerox copy of hand receipt Dt. 25-7-1989 for receipt of unpaid wages by the workman Shri Sahu.

6. The workman during his examination already stated that he was working as a Typist in the Jank Canal Division since Dt. 1-8-1987 to Dt. 25-7-1989. But on Dt. 25-7-1989 he was removed from his service. According to him no prior notice was served upon him nor any retrenchment benefits was paid to him prior to his termination. According to him the management paid him salary up to Dt. 8-4-1989. As he participated in the Union, the management removed him from his service. During cross-examination he has stated that he has not received the compensation amount of Rs. 508 from the management. But the said amount of Rs. 508 which was paid to him relates to his salary. On the other hand on behalf of the management, the Executive Engineer himself has been examined as M.W. 1 who during his examination has stated that at the time of termination of the workman they have already complied the provision of the I.D. Act, 1947 by giving one month notice and retrenchment compensation to the workman. It is to be first considered whether the termination of the workman from service by the management is legal or justified and before terminating the service of the workman, if the management had complied the provision of Section 25-F of the I.D. Act. In that aspect M.W. 1 has clearly stated that the workman was retrenched from duty on

Dt. 25-7-1989, and by that time he was working as a N.M.R. Typist in Jank Canal Division from Dt. 1-8-1987 to Dt.27-4-1989. As per evidence of the management during review it was found that 97 N.M.Rs. employees including the present workman of that Division were found to be surplus, for which their service was no more required. It was also decided in that review to retrench 97 surplus N.M.Rs. employees including present workman Shri Satyanarayan Sahu from the duties. Accordingly one month notice was served to Shri Sahu along with other surplus employees vide letter No. 2389, Dt. 24-6-1989 of Executive Engineer, Jank Canal Division, Nuapada. M.W. 1 proves Ext. A to be the said one month notice communicated to the workman along with other employees. It is also evident that as per order of the Administrative Tribunal, Cuttack, the management after examination of the representation of the workman, found that he was not eligible as per Resolution No. 22754/F, Dt. 15-5-1997, Financial Department of Orissa. In which it has been reflected that the workman is not entitled to claim regular service unless he completes ten (10) years of service. As per evidence of the management the workman has not completed ten (10) years of service and discharging his duties from Dt. 1-8-1987 to Dt. 27-4-1989, so his case was not considered to absorb him in regular service. According to M.W. 1 on the date of retrenchment of Shri Sahu, an amount of Rs. 508.95 ps. was paid to him as retrenchment compensation and the same was received by him on Dt. 25-7-1989. The management proves Ext. B to be the said acknowledgement paper in token of receipt of money by the workman. In course of his cross-examination he has stated that the copy of retrenchment notice was displayed in the notice board as well as sent to the concerned S.D.O. under whom the workman was working. It has been specifically stated by M.W. 1 during his cross-examination that due to surplus staff and ensuing rainy season, such retrenchment notice was given to the workmen for closure of work during rain season. During his cross-examination he has specifically stated that the retrenchment compensation of Rs. 508.95 ps. has been paid to the workman from Dt. 1-8-1987 to Dt. 27-4-1989 i.e. wages of 30 days. During suggestion to the management M.W. 1 stated that review was taken not for seniority but to retrench the surplus of N.M.Rs. During cross examination he has categorically stated that the workman was not senior in his service from Pradeep Kumar Satpathy as available in the official record. He has clarified that Mr. Satpathy was joined in the service on Dt. 1-4-1987 whereas the present workman Shri Sahu joined in the service on Dt. 1-8-1987. On perusal of Ext. A it clearly shows that due to ensuing rainy season, one month notice was given to the workman along with other surplus N.M.Rs. employees sufficiently ahead vide letter No. 2389, Dt. 24-6-1989 of the Executive Engineer, Jank Canal Division, Nuapada. Similarly Ext. B clearly shows that retrenchment compensation of 30 days wages i.e. from Dt. 1-8-1987 to Dt. 27-4-1989 amounting to Rs. 508.55 ps. has already been paid to the workman Shri Sahu. Ext. F filed by the management clearly shows that the unpaid wages for the period from Dt. 21-4-1989 to Dt. 27-4-1989 amounting to Rs. 129.97 ps. at the rate of Rs. 18.50 ps. per day has already been paid to the workman Shri Satyanarayan Sahu vide hand receipt. So from the evidence of the management coupled with the documentary evidence under Ext. A, B and Ext. F, it is crystal clear that the management at the time of termination of the service of the present workman has duly complied the provisions of U/s 25-F of the I.D. Act, by giving one month notice as well as retrenchment compensation to the workman. Further the management has rightly terminated the service of the surplus N.M.Rs. employees including the present workman due to ensuing rainy season and as their services were no more required due to closure of the work in the Jank Canal Division.

7. In view of the oral as well as documentary evidence adduced by both the parties it is concluded that the documentary evidence filed by the management clearly goes against the second party workman. Since the management has already complied the provision of the I.D. Act, so the termination

of service of Shri Sahu N.M.R. Typist w.e.f. Dt. 25-9-1989 is legal and justified. The workman is not entitled to get any relief. Hence order.

O R D E R

In the result the previous award passed on Dt. 2-6-2004 is set aside and after adducing evidence and production of documents by the management certain change of circumstance has been happend in this case as against the previous award. Hence the termination of Shri Sahu by the management is legal and justified.

Dictated and corrected by me.

P. K. JENA
15-7-2009
Presiding Officer
Labour Court, Jeypore

P. K. JENA
15-7-2009
Presiding Officer
Labour Court, Jeypore

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