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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th December 2010

No. 11012—li/1(J)-56/1998 (Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd May 2009 in Industrial Dispute Case No. 19 /1999 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of M/s Bata Shoe Shop, College Road, Paralakhemundi in the district of Gajapati and its Workman Shri P. Simhachalam 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. 19 OF 1999

Dated the 23rd May 2009

Present :

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

Between :

The Management of
M/s Bata Shoe Shop,
College Road, Paralakhemundi,
At/P.O. Paralakhemundi,
Dist. Gajapati.

.. First Party—Management

Versus

Its Workman,
Shri P. Simhachalam
S/o P. Appa Rao,
B. L. Peta Street,
Paralakhemundi,
At/P.O. Paralakhemundi,
Dist. Gajapati.

.. Second Party—Workman

Appearances :

For the Management.....Self

For the Workman.....Self

Date of Argument.....6-5-2009

Date of Award.....23-5-2009

A W A R D

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. 2011 (5), Dt. 11-2-1999 for adjudication of the following disputes :-

“Whether the termination of services of the workman Shri P. Simhachalam by Shri Y. Veera Raju, employer of M/s Bata Shoe Shop, College Road, Paralakhemundi, with effect from 10-3-1996 is legal and/or justified ? If not, to what relief he is entitled ?”

2. The case of the second party workman is that after continuous service of 16 (sixteen) years as Salesman in the Bata Shoe Shop, College Road, Paralakhemundi, the first party employer i.e. owner of the shop namely Y. Veera Raju illegally without any enquiry and compensation terminated his service with effect from 10-3-1996. As the workman demanded daily wages of Rs. 30 per day which was the minimum wages instead of Rs. 15 per day, so the employer being aggrieved upon the workman terminated him from his service, legal notice was issued to the employer under Ext. 1 by the workman and on the complain of the workman before the District Labour Officer, Paralakhemundi, conciliation was started but the same was failed and the matter was referred to Government. Hence, the second party workman pray for reinstatement with back wages.

3. The first party management though not filed W.S. previously, but subsequently at belated stage filed his W.S. denying the averment of the pleadings of the workman to be true and correct. As per pleadings of the management, the workman has never worked in their Bata Shoe Shop for which he is not entitled for any back wages or reinstatement. Accordingly to the management, the workman has filed this case against the management to harass him, for which the claim petition of the workman is liable to be dismissed.

4. The workman himself and the employer himself have been examined in this case and in support of their case they have filed their respective documents.

5. Previously this case was disposed of on contest and award was passed on 1-8-2001 by my predecessor. As against this award, being aggrieved the management filed writ petition before the Hon'ble Court of Orissa in O.J.C. No. 15136 of 2001 in which the Hon'ble Court has passed an order on Dt. 4-11-2008 with a finding that "the impugned award passed by the Presiding Officer, Labour Court, Jeypore is quashed and the matter is remitted back to the Labour Court, Jeypore for consideration and it is open for the parties to adduce evidence in support of the case and same shall be duly considered by the Labour Court in accordance with the law". As per the order of the Hon'ble Court, sufficient opportunity was given to both parties to adduce evidence, if any and to file documents if any. In response to the order of the Hon'ble Court the management filed some documents in his favour i.e. Muster Roll under Ext. B and the Payment Register under Ext. C and a letter addressed to the Assistant Labour Officer, Paralakhemundi for cancellation certificate under Ext. D, another letter under Ext. E addressed by the A.L.O. to the management regarding issue of registration certificate to display the same in their establishment and other documents under Exts. F, G, H, J, J/1, J/2, J/3, J/4, J/5, J/6, J/7 and document X for identification. Further the employer Y. Veera Raju was re-examined by this Court on 27-4-2009 and cross-examined by the workman. The workman did not adduce further evidence though he was examined and cross-examined by the management previously i.e. on 29-6-2001.

6. As per the issue, it is to be considered whether the termination of service of the workman P. Simhanchalam by Shri Y. Veera Raju, employer M/s Bata Shoe Shop, College Road, Paralakhemundi, with effect from 10-3-1996 is legal and justified and if not, to what relief the workman is entitled ?

7. As per the evidence of the workman he was working in Bata Shoe Shop of Y. Veera Raju from 1980 to 1996. It is also his evidence that, Y. Suriya Lingam was the proprietor of that shop as well as he is the father of Y. Veera Raju and both father and son were looking after the shop. When he demanded enhancement of wages, the first party management removed him without any enquiry or giving him retrenchment benefits. Thereafter he issued legal notice to the management under Ext. 1 and the reply given by the management to him is marked as Ext. 2. During suggestion by the management he denied to have opened any vegetable shop at Paralakhemundi. As per the failure conciliation report of D.L.O.. Paralakhemundi no notice pay and retrenchment compensation have been paid to the workman before the termination of his service. Further as per that conciliation report of D.L.O. the employer admits the workman, as a casual worker but not as a regular employee of their establishment. On the other hand the employer Y. Veera Raju during re-examination in this Court has stated that since 1966 they were giving salary to the employees. As per his evidence from 1981 to 1985 there was no worker in the Bata Shoe Shop for which in the year 1983 he applied before the A.L.O., Paralakhemundi for cancellation of the registration. But it is not proved by the management whether such registration had been cancelled or not by A.L.O. Again during 1st August 1985, the management engaged the present workman to work in their establishment. In this aspect the evidence of M.W. 1 is highly contradictory to his W.S. as because in his W.S he has completely denied the engagement of workman in his establishment, whereas during his examination before the Court he admits the workman to be the employee of his establishment. It is further admitted by

M.W.1 that, they use to maintain the Muster Roll and Salary Register and use to submit the annual return before the A.L.O., Paralakhemundi. As per his evidence from 1992 he started new firm by dissolving the old firm in which he was the managing partner. In that new shop his son Y. Lokanath joined as a new partner. The said new firm was registered during the year 1994 in favour of M/s Y. Veera Raju and Sons. He has taken plea that previously he could not produce the documents at the time of hearing as the said documents were retained by his father. It is admitted by him that the workman was working in his old shoe shop from 1-8-1985 to 31-12-1987 and left his work on 31-12-1987 and again reinstated in his service from 1-1-1989 to 29-2-1992. As per the evidence of the employer the workman has not joined in his new firm which was started from April 1992. Again the said employer has admitted that he paid the salary of the workman while he was working in their new firm. So in this aspect his evidence itself is highly contradictory. Further it is stated by the employer that at to time of leaving of job by the workman in February 1992 they paid him Rs. 7,600 and according to him his father Y. S. Lingam was maintaining the Muster Roll and Payment Register. He proves Ext. B to be Muster Roll and Ext. C to be Payment Register, for the period from 25-1-1981 to 29-2-1992. Ext. D is the letter to cancel registration certificate, Ext. E is the letter of A.L.O., Paralakhemundi, Ext. F is the application of registration of Firm, Ext. G is the deed of partner-ship Dt. 1-4-1992, Ext. H is the certificate of registration marked. Marked X is the affidavit filed by one Vivekanand Choudhury, for identification. But the said Vivekanand Choudhury who sworn the affidavit regarding payment of Rs. 7,600 to the workman during February 1992, has not been examined by the management, nor the said affidavit has been proved by the employer beyond all reasonable doubt. On the above documents under Ext. B and Ext. C filed by the management it clearly establish that the present workman was working under the same management till 1992. Muster Roll under Ext. B clearly shows that the present workman was working in their Bata Shoe Shop by Shri Y. Veera Raju till 1992. Further the Payment Register under Ext. C clearly shows that the workman has been paid salary of Rs. 800 per month till February 1992, by affixing revenue stamps. But the Payment Register shows that on 29-2-1992 during full and final settlement, the workman has been paid Rs. 7,600 and to that aspect one affidavit marked 'X' has been filed by one Vivekananda Choudhury but the said Vivekananda Choudhury has not been examined in this case by the management in order to prove, in token of receipt of Rs. 7,600 if any, by the workman. Due to non-examination of Vivekananda Choudhury by the management and non-proof of the said affidavit by the management it remains doubtful, if the workman had received the Rs. 7,600 from the management during the last month of February 1992. No such separate letter in token of receipt of Rs. 7,600 by the workman has been filed by the management separately. Further the last revenue stamp affixed in the name of the workman does not clearly indicate if he has received Rs. 7,600 towards his full and final settlement towards his service benefits which also remains to be doubtful regarding receipt of Rs. 7,600 by the workman from the management without any sufficient proof. As per the workman the establishment of Bata Shoe Shop situates and running in the same place and both father and son looking after the said establishment jointly under whom he was working as a regular worker till 1996. When he demanded enhancement of pay, the management aggrieved upon him and removed him from service on 10-3-1996. But to that effect the workman has not

proved his service from March 1992 till removed from his service in the year March 1996. Since the Payment Register and Muster Roll are to be maintained by the employer so, no doubt, the said documents are under of the care and custody of the management. Unless otherwise the said register are not produced before the Court it is quite dark on the part of the employee to prove his service till March, 2006 from which date he removed from his service. So also it may not be possible on the part of the Court to arrive at conclusion whether the workman was continued in service till March, 1996 under the same establishment. The documents filed by the management under Exts. B and C rather goes in favour of the employee regarding his continuance of service in Bata Shoe Shop till 1992. The said documents had not produced before the Court by the management during previous award of this Court on 1-8-2001. No doubt compensation etc. are conditions precedent to retrenchment under Section 25-F of the I.D. Act. Admittedly in this case that has not been complied by the management. As per the conciliation report of D.L.O., Paralakhemundi, no notice pay and retrenchment compensation has been paid to the workman before his termination from his service. Mere filing the Payment Register under Ext. C, showing full and final settlement of Rs. 7,600 towards service benefits is not accepted without any sufficient proof by issuing letters separately. In such a controversy position the continuance of service till 1996 claimed by the workman appears to be correct, as because management is the custodian of the Muster Roll and the Payment Register. To his own willing he may produce or may not produce the said documents. Ext. H filed by the management clearly shows that the said registration firm was running during 1994 in the name of M/s Y. Veera Raju and Sons. In course of argument the management claims the closure of the Bata Shoe Shop, whereas the workman denied the same, and in token of running of the Bata Shoe Shop which is still in existence, he has filed the Photograph of the said Bata Shoe Shop taken by him on 9-5-2009. Further as per Ext. 2 filed by the workman it shows that the Advocate of the management in his reply to the workman has stated that the workman served in Bata Shoe Shop during the year 1983 and resigned from his service by giving resignation letter on 22-7-1983 and he has never served after 1983. But the documents filed by the management under Ext. B and Ext. C goes against the advocate notice (Ext. 2) and clearly establish the continuance service of the workman in Bata Shoe Shop till 1992. Although the management suppressed the documents to file earlier but the said documents filed later by him at this stage, goes in favour of the workman regarding his continuance of service in the same establishment. Moreover the plea taken by the management in his W.S. regarding non-employment of the workman in Bata Shoe Shop appears to be incorrect, on the strength of documentary evidence filed by the management. In view of admission in Ext. 2 it is clearly ascertained that the second party workman was engaged as a worker in shoe shop some time in the year 1983 or prior to that. When the workman himself has given his date of joining in the shop on 1-4-1980 and the same has not been disputed, it is believable that the version of the workman is correct. Though the first party management has introduced the theory of voluntary resignation by the workman, neither concerned letter is produced nor any documents supporting same has been filed by the management.

8. Casual engagement as vegetable dealer in the daily market or now and then cultural activities would not deprive the workman of getting back wages. Further in this case the retrenchment compensation under Section 25-F of the I.D. Act has not been complied by the management, for which the termination of service of the workman by the management is illegal and unjustified. Due to above observation as the workman has been illegally removed from his service he should take back to his former post with some consequential benefits.

ORDER

9. Accordingly the reference is answered on contest in favour of the workman. In the result, the termination of the workman from 10-3-1996 is held illegal and unjustified. The workman is entitled to be reinstated in his former post by the management but however with 50% back wages from the year 1992 March till 10-3-1996, and after reinstatement from the date of passing of award he will get as usual as per the present scale of wages.

Dictated and corrected by me.

P. K. JENA
23-5-2009
Presiding Officer
Labour Court
Jeypore, Koraput

P. K. JENA
23-5-2009
Presiding Officer
Labour Court
Jeypore, Koraput

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