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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th April 2011

No. 4067—li/1(BH)-18/2000-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th December 2010 in Industrial Dispute Case No. 220 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Assistant Soil Conservation Officer, Baripada and its workman Shri Gopal Mahanta was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 220 OF 2008
(Previously registered as I. D. Case No. 87 of 2000 in
the file of the P. O., Labour Court, Bhubaneswar)
Dated the 16th December 2010

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Assistant
Soil Conservation Officer,
Baripada.

.. First Party—Management

And

Shri Gopal Mahanta,
S/o Late Sunaram Mahanta,
At Nuagaon, P.O. Balidiha,
Via Samkhunta,
Dist. Mayurbhanj.

.. Second Party—Workman

Appearances :

Shri R. P. Nanda, . . For the First Party—Management
Advocate

Shri Shri S. Dash, . . For the Second Party—Workman
Advocate

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 9070—li/1(BH)—18/2000-LE., dated the 5th July 2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department Order No. 4138—li-21-32/2007-LE., Dt. 4-4-2008. The schedule of reference runs as follows—

“Whether the termination of services of Shri Gopal Mahanta with effect from Dt. 23-6-1993 by the Assistant Soil Conservation Officer, Baripada is legal and/or justified ? If not, to what relief Shri Mahanta is entitled ?”

2. The stand taken by the second party in his claim statement is that he was employed by the first party as a Watchman in the year 1981 and he was illegally terminated at the end of December 1998. He worked continuously for eight years. Yet, the first party while terminating his services did not comply with the provisions of Section 25-F of the Act. He claims for his reinstatement with full back wages.

3. In the written statement the first party has taken the stand that the second party used to be engaged as a casual worker as and when necessity arose. He had worked with the first party from 7-7-1982 to Dt. 30-9-1986. On 1-10-1986 he left his job on his own accord. Subsequently, on his approach he was again engaged as a casual worker from Dt. 1-6-1995 to 15-7-1995 in different periods. Then, he was engaged between 1-1-1996 and 25-6-1996 and then between Dt. 1-6-1998 and Dt. 13-12-1998. Thereafter he left his job voluntarily.

It is further pleaded that during conciliation the management offered him for his re-engagement as a casual worker as per availability of project but he refused.

4. Following are the issues settled for proper adjudication of the reference :—

ISSUES

1. “Whether the termination of services of Shri Gopal Mahanta with effect from Dt. 23-6-1998 by the Assistant Soil Conservation Officer, Baripada is legal and/or justified ?
2. If not, to what relief Shri Mahanta is entitled ?”

5. The workman has examined himself as W.W. No. 1. He has also exhibited some documents. On behalf of the first party, the present Assistant Soil Conservation Officer, Baripada is examined as M.W. No. 1. Some documents have been exhibited on behalf of the first party.

FINDINGS

6. *Issue No. 1*—In their respective affidavit evidence the witnesses have reiterated the facts stated in their respective pleadings. From the evidence adduced by the parties, it is found that the second party was in continuous employment of the first party from Dt. 7-7-1982 to Dt. 30-9-1986. Thereafter, he was engaged by the first party for about 101 days in between Dt. 1-6-1995 and 31-3-1996. It is further found that in between 1-6-1998 and 18-12-1998 he had worked for 40 days. In this regard, Exts. A, B and Ext. 5 may be referred to. A copy of Ext. A is also exhibited by the workman which is marked Ext. 2. Ext. A reflects that the workman had worked continuously from Dt. 7-7-1982 to Dt. 30-9-1986 without any break. Thus, at one point of time the workman was admittedly in continuous service for little more than four years. The management takes the plea that after rendering continuous service for about four years, the workman left the job and then on his approach he was again engaged with effect from Dt. 1-6-1995 for short periods till Dt. 31-3-1996. Though the workman claims that he was in continuous service from 1982 till December 1998, he is not able to furnish any documentary evidence in support of that claim. The management has produced documents in support of its contention. But, the learned counsel for the workman submits that the management has intentionally suppressed materials by not producing documents such as Measurement Books and Vouchers for the period from Dt. 1-10-1986 to Dt. 31-5-1995. It is found that the workman had made a prayer to direct the first party to produce the Measurement Books and Cash Vouchers for the said period but while producing the Cash Vouchers for the period from August 1982 to September 1986 the management took the stand that other documents were not available. The Cash Vouchers have not been marked as exhibits. However, Ext. A which is also relied on by the second party contains particulars of all the Cash Vouchers which have been produced by the first party. It is not believable that Cash Vouchers for the period from August 1982 to September 1986 were available with the management but Cash Vouchers for the later periods were not available. But, then Exts. A and B are official correspondences made by the Government officials after verification of official records and in the absence of any other material it cannot be presumed that the Government officials submitted incorrect facts and figures on the actual period of engagement of the second party. There is no reason why the Government officials should admit continuous service rendered by the workman from Dt. 7-7-1982 to Dt. 30-9-1986 and suppress the fact of such continuous engagement for the rest of the periods as claimed by the second party.

Thus, it is found that the second party was continuously engaged for more than four years from Dt. 7-7-1982 to Dt. 30-9-1986 and thereafter he was occasionally being engaged and in none of the years subsequent to the aforesaid period of continuous service the workman had completed 240 days of work.

7. According to the workman, his services were terminated with effect from Dt. 23-6-1998. If the documentary evidence is to be relied on, then the workman is found to have worked till Dt. 18-12-1998 and he had been engaged for 40 days only during the period from Dt. 1-6-1998 to Dt. 18-12-1998. Similarly, he had worked for 101 days only during the period from Dt. 1-6-1995 to Dt. 31-3-1996. So, virtually his continuous service got disrupted after Dt. 30-9-1986.

As already observed, there is no sufficient material to hold that the management purposefully withheld some material documents from the Tribunal in order to frustrate the claim of the workman. So, relying on the documentary evidence supported by the sworn testimony of M.W. No.1 it is held that the workman was engaged continuously for four years during the period from Dt.7-7-1982 to Dt. 30-9-1986 and thereafter he was seldom engaged by the management. The workman does not appear to have raised any dispute over the disruption of his continuous service even though during the next twelve years he got employment for 141 days only.

8. On behalf of the second party it is submitted that even if it is found that the workman had not completed 240 days of work during the twelve months immediately preceding the date of his disengagement, he having once completed four years of continuous service during the period from Dt.7-7-1982 to Dt.30-9-1986, his services could not have been put to an end without compliance of the mandatory provisions of Section 25-F of the Act. In this regard reliance has been placed on the decision in Chief Engineer, Irrigation *Vrs.* Kamlesh and others, reported in 1996 LLR 218 (Rajasthan High Court and *M/s. U.P. Drugs and Pharmaceuticals Co. Ltd. Vrs. Ramanuj Yadav and others*, reported in 2003 (99) FLR-331 (S.C.). In the cited decisions it has been held to the effect that it is not necessary for the workman to complete 240 days during the twelve months immediately preceding the date of termination of services and if the workman has completed 240 days in earlier calendar years preceding to twelve months on the date of retrenchment, then he should be deemed to be in continuous service. However, the fact situation of the cited cases and the case in hand are different. In the reported cases the workman did not complete 240 days of work during twelve calendar months immediately preceding the date of retrenchment but they had completed 240 days of work in the earlier preceding calendar years. In the case at hand, the workman was in continuous service till September 1986. He claims to have been terminated with effect from Dt.23-6-1998. During the long period of twelve years preceding the date of the alleged retrenchment the workman had completed only 141 days of work. Therefore, in my considered view the workman cannot be deemed to have been in continuous service from 1982 to 1998.

9. On behalf of the workman it is argued that adverse inference against the management for non-production of the Cash Vouchers for the period from Dt.1-10-1986 to Dt.31-5-1995 may be drawn because despite of direction of this Tribunal the management did not produce the same. On verification of the case record it is found that infact there was no direction given by this Tribunal to the management to produce the Cash Vouchers. Order No.52, Dt. 11-11-2009 and Order No.53, Dt. 30-11-2009 reflect that the workman filed a petition calling for certain documents on which the management filed objection stating therein that the Vouchers were not available. Thereafter, no order has been passed by this Tribunal asking the management to produce the Vouchers. I have gone through the written objection, Dt. 30-11-2009 filed by the management. Nowhere the management has taken the plea that the Vouchers for the aforesaid period were not available. Rather, it is stated in the objection that since the workman did not work with the first party during the period from Dt.1-10-1986 to Dt.31-5-1995 the question of calling for the Vouchers and Measurement Books for the said period does not arise. Thus, it appears that since the management took the stand that from Dt.1-10-1986 onwards the workman had not worked with the first party, it did not produce the Cash Vouchers for the said period. Raising of adverse inference depends on facts and circumstances of a particular case. As already stated, in the case at hand the management has

proved Exts. A and B which are official correspondances made by the Government officials after verification of official records and they have ascertained that during the aforesaid period the workman had never worked even for a single day.

10. Having examined the evidence adduced before this Tribunal and taking into consideration the facts and circumstances of the case, this Tribunal comes to a conclusion that the termination of services of the second party with effect from Dt.23-6-1998 neither illegal nor unjustified.

11. *Issue No. 2* —In view of the findings on Issue No.1, the second party cannot be said to be entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
16-12-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
16-12-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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