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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th April 2011

No. 4096-ii/1(B)-57/1998-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th February 2011 in I. D. Case No. 164 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. Ballarpur Industries Ltd., Choudwar Unit, Daulatabad, Choudwar, Dist. Cuttack and its Workman Shri Niranjana Das was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 164 OF 2008

(Previously registered as I. D. Case No. 97 of 1998 in the file of the
Presiding Officer, Labour Court, Bhubaneswar)

The 19th February 2011

Present :

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

Between :

The Management of M/s. Ballarpur Industries Ltd., . . . First-party-Management
Choudwar Unit, Daulatabad, Choudwar,
Dist. Cuttack, Pin-754026.

And

Shri Niranjana Das, . . . Second-party-Workman
At Paikrapur, P.O. Daulatabad,
P.S. Choudwar, Dist. Cuttack.

Appearances :

Shri S. B. Nanda, Advocate . . . For the First-party-Management
Shri S. K. Mishra, Advocate

Shri S. B. Mishra, Advocate . . . For the Second-party-Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') made by the Government of Orissa in Labour & Employment Department vide their Order No. 10827–li/1 (B) 57/1998–LE., dated the 8th October 1998 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138–li/21-32/2007–LE., dated the 4th April 2008. The Schedule of reference runs as follows :–

“Whether the action of the management of M/s. Ballarpur Industries Ltd., Choudwar Unit in terminating the services of Shri Niranjana Das by way of retirement with effect from the 11th June 1996 is legal and/or justified ? If not, what relief Shri Das is entitled to ?”

2. At the outset facts not disputed by the parties may be narrated.

The second party was a Grade III Clerk in the erstwhile management of M/s. Titaghar Paper Mills, Choudwar (for short, 'T.P.M.') which has been acquired by the first party management M/s. Ballarpur Industries Limited (for short, 'BILT') under a Memorandum of Understanding Dt. 20-4-1991 in pursuance of a Scheme sanctioned by the Board for Industrial & Financial Re-construction Dt. 21-12-1990. In terms of the Memorandum of Understanding BILT took into employment all the permanent employees of the T.P.M. on the same terms and conditions which were prevalent while the employees were under the T.P.M. After the takeover one Memorandum of Understanding was signed on 27-4-1991 between BILT and the representatives of the permanent workmen of T.P.M. It was specifically mentioned in the Memorandum of Understanding that all the employees to be taken in by BILT should be given fresh appointment letters on the existing terms and conditions of their employment under the T.P.M. Accordingly, appointment letters were issued in favour of the employees including the second party.

The second party has stated in his claim statement that in his appointment order which was issued by BILT it is stated that he shall retire from service after completion of the age of 58 years on 1st January of the succeeding year. Therefore, his date of birth being 11-6-1938 he should have been retired on 1-1-1997 but he was retired on 10-6-1996 when he completed the age of 58 years which is illegal. It is further contended that because of his premature retirement he has sustained financial loss for which the Labour Court should award appropriate relief.

3. The first party management has taken the stand that as per its Certified Standing Orders the second party was to retire on completion of 58 years of age, i.e. on 10-6-1998 and accordingly he was superannuated. The present dispute arises because of a *bona fide* mistake that has crept into the fresh appointment orders which was issued to the second party after the takeover of the erstwhile management. In the fresh appointment order it is inadvertently mentioned that “the workman shall retire on completion of 58 years of age on 1st January of the succeeding year.” But, then the Certified Standing Orders is to prevail and the second party cannot take any advantage of the said mistake. It is further contended that as there was no separate contract between the parties to this reference to give the second party post-retiral employment he has no right to claim retirement beyond the date of his completion of 58 years of age.

4. The following issues have been settled in this case :–

ISSUES

- (i) “Whether the action of the management of M/s. Ballarpur Industries Ltd., Choudwar Unit in terminating the services of Shri Niranjana Das by way of retirement with effect from Dt. 11-6-1996 is legal and/or justified ?
- (ii) If not, what relief Shri Das is entitled to ?”

5. The second party has examined himself as W.W. No. 1 and has exhibited three documents. On the other hand, the first party has examined its Personnel Officer asd M.W. No. 1 and has exhibited documents marked Exts. A to K.

FINDINGS

6. *Issue Nos. (i) & (ii)*—In his cross-examination the second party admits that previously the age of superannuation as prescribed in the Certified Standing Orders was 55 years but subsequently it was raised to 58 years. Regarding the age of superannuation the management has given a detailed description in the written statement which has not been controverted by the second party by way of filing a rejoinder. Thus, it is not disputed that the Certified Standing Orders of the erstwhile management marked Ext. F contains in Clause 24 that a permanent workman's contract of employment shall be deemed to have terminated automatically on his attaining the age of 55 years. It is further stated by the first party but not disputed by the second party that the said stipulation in the Standing Orders was subsequently modified in terms of a Memorandum of Settlement Dt. 6-5-1987 between the erstwhile management and its Workers' Union to the extent that the contract of employment of the permanent workmen should be deemed to have terminated automatically on completion of the age of 58 years. The said Memorandum of Settlement Dt. 6-5-1987 is marked as Ext. J. Thus, the management has substantiated its stand that as per the terms and conditions of their services the workmen of the erstwhile management were to retire on their completing the age of 58 years. There is no dispute that the workman has been superannuated on his completion of the age of 58 years.

7. Now it is to be considered as to whether the terms contained in the fresh appointment order marked Ext. 1 with regard to the date of retirement are binding on the management. It is not shown by the second party that any other workmen belonging to the category to which he belonged have been superannuated on the 1st day of January of the succeeding year in which the concerned workman has completed the age of 58 years. It is also not shown that the second party had entered into any special agreement with the first party to retire him on the 1st January of the year succeeding the year in which he completed the age of 58 years. Ext. B is an advance notice served on the workman giving him intimation that he should retire from the services of the Company with effect from 11-6-1996. In the said notice the workman was advised, *inter alia*, to apply for payment of gratuity. Ext. C is the application for payment of gratuity which was submitted by the second party on 27-5-1996. Therefore, it can be presumed that Ext. B was served on the workman prior to 27-5-1996. It is stated by M.W. No. 1 that pursuant to the said advance notice the second party did not raise any protest that in terms of the fresh appointment order he could not be retire on 11-6-1996. There is no other evidence on record showing that the management while issuing the fresh appointment order vide Ext. 1 had the intention to retire the second party on the 1st January of the year succeeding the year in which the second party was to complete the age of 58 years. The management has taken the plea that in the fresh appointment order it had been inadvertently mentioned that the second party should retire from service on completion of the age of 58 years on the 1st January of the succeeding year. In the facts and circumstances this plea seems to be correct.

8. Apart from all this, it is rightly submitted on behalf of the management that the terms with regard to the retirement of the second party as contained in the fresh appointment order, Ext. 1, being inconsistent with the terms of employment specified in the Standing Orders read with the Memorandum of Settlement Dt. 6-5-1987 marked Ext. J, cannot survive and the second party cannot claim any relief basing on the terms contained in the fresh appointment order. In support of

this contention, reliance has been placed on a decision of the Hon'ble Supreme Court reported in AIR 1973 (S.C.) 2650 (Western India Match Company Ltd. Vrs. Workmen) wherein it has been observed that while the Standing Orders are in force it is not permissible to the employer to seek statutory modification of the so that there may be one set of Standing Orders for some employees and another set for the rest of the employees. It is further observed that as the employer cannot enforce two sets of Standing Orders governing the classification of workmen it is also not open to him to enforce simultaneously the Standing Orders regulating the classification of workmen and a special agreement between him and an individual workman settling his categorisation. In the reported case the Standing Orders provided that a workman should not be kept on probation for more than two months and that if he worked during the said two months to the satisfaction of the Company he would become permanent. But, in the letter of appointment of the concerned workman which was under consideration in the reported case it was mentioned that the workman would be on probation for a period of six months. Hon'ble Supreme Court held that the special agreement in so far as it provided for additional four months of probation was an act in contravention of the Standing Orders. The same principle can be made applicable to the case in hand. Since the terms contained in the Standing Orders is to prevail the termination of service of the second party on the date of his completing 58 years of age cannot be said to be illegal or unjustified.

9. In the result, the workman is not entitled to any such service benefits that he would have otherwise got had he continued in service till 1-1-1997. However, since this dispute has surfaced because of a mistake committed by the management while issuing the fresh appointment order, the first party must pay litigation expenses to the workman which is fixed at Rs.10,000 (Rupees ten thousand) only in lump sum.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
19-2-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
19-2-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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