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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th April 2011

No. 4120—li/1 (BH)-133/1992-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st March 2011 in Industrial Dispute Case No. 49 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Forest Range Officer (Territorial), At/Post Dukura, Dist. Mayurbhanj and its Workman Shri Chandra Mohan Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 49 OF 2008
(Previously registered as I. D. Case No. 149 of 1994 in the file
of the Presiding Officer,, Labour Court, Bhubaneswar)
The 1st March 2011

Present :

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

Between :

The Management of . . . First-party Management
Forest Range Officer (Territorial),
At/Post Dukura,
Dist. Mayurbhanj.

And

Shri Chandra Mohan Behera, . . . Second-party Workman
At Chunadia,
P. O. Dukura,
Dist. Mayurbhanj.

Appearances :

Shri Laxmidhar Behera, Forest Range Officer	..	For the First-party Management
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Shri Chandra Mohan Behera	..	Second-party Workman himself

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. 13919-li/1(BH)-133/1992-L.E., dated the 1st November 1994 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-L.E., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the action taken by the Forest Range Officer (Territorial), Dukura in terminating the services Shri Chandra Mohan Behera with effect from the 13th January 1992 is legal and/or justified ? If not, what relief he is entitled to ?"

2. In his claim statement the second-party has pleaded that he was working as a Watchman in the Central Nursery under the first-party. While so working his services were terminated on the 30th March 1991 without any reason and in violation of the mandatory provisions of Section 25-F of the Act. It is not specifically mentioned in the claim statement as to from which date he had been so working under the first-party. However, he has claimed his reinstatement with full back wages.

3. The first-party in its written statement has averred that the second-party was never appointed as a Watchman. He was engaged on daily wage basis as and when required in its seasonal nature of work. The workman had never completed one year of continuous service. Therefore, Section 25-F of the Act is not applicable.

4. The following issues have been settled :—

ISSUES

- (i) Whether the action taken by the Forest Range Officer (Territorial), Dukura in terminating the services of Shri Chandra Mohan Behera with effect from the 13th January 1992 is legal and justified ?
- (ii) If not, what relief he is entitled to ?

5. The workman has examined himself as W. W. No. 1. Similarly, the present Forest Range Officer (Territorial), Dukura range is examined as M. W. No. 1. No document has been exhibited on behalf of the workman whereas Ext. A has been marked on behalf of the management.

FINDINGS

6. *Issue Nos. (i) & (ii)*—As already stated, the workman has not specifically mentioned in his claim statement as to from which date he had been working under the first-party. But in his deposition he has stated that in 1986-1987 he was first engaged in the Central Office of the first-party as a Watchman on monthly wages of Rs. 750.00. He has further stated that in the year 1992 he was refused employment. He has further stated that he completed 240 days of work during twelve calendar months immediately preceding the date of his retrenchment. In his cross-examination the suggestion put by the first-party that he had worked for 26 days only during the period from the 1st May 1991 to the 30th September 1991 has been denied by the workman.

M. W. No. 1 in his deposition has state that the second-party was never appointed to work as a Watchman in the Central Nursery under the first-party and there was no order of appointment issued to the workman. There was no such post in existence. However, it is admitted by M. W. No. 1 that the second-party was engaged on daily wage basis as and when required depending on the availability of work. The workman had never worked continuously and there was no continuity of service rendered by the second-party under the first-party so as to complete 240 days of work in any calendar year. It is further specifically stated that the second-party had worked for 96 days from the 1st May 1991 to 30th September 1991. To support this contention the first-party has exhibited copy of the Cash Book for the period from the 12th June 1991 to 20th August 1992.

7. Neither of the parties have clearly pleaded as to when the engagement of the second-party under the first-party commenced. From the statements contained in the affidavit evidence of M. W. No. 1 to the effect that there was no continuity of service of the second-party for a period exceeding 240 days in any calendar year it can be presumed that the second-party was under the employment of the first-party for a period spreading over more than one calendar year. According to M. W. No. 1, Ext. A, copy of entries in the Cash Book for the period from the 12th June 1991 to the 20th August 1992 shows that during that period the second-party had worked for 180 days only. The workman did never make a prayer before this Tribunal to ask the first-party to cause production of the relevant documents to prove that he had worked continuously for one year during the entire period of his engagement under the first-party. He has also not filed any rejoinder to the written statement filed by the first-party. Under such circumstances, it cannot be presumed that the management has suppressed facts that would have gone against it. Therefore, there cannot be any inference that the workman had completed one year of continuous service under the first-party so that compliance of Section 25-F of the Act could have been held mandatory. It is also neither pleaded nor proved by the second-party that though work was available he was refused employment or that after the alleged termination of service of the workman on the 13th January 1992 the management has given employment to any other person to work in his place. Under such circumstances, no relief can be extended to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
1-3-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
1-3-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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

