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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th December 2010

No. 10832–li/1(B)-45/1994–LE.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th September 2010 in I. D. Case No. 87 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Orissa State Road Transport Corporation, Cuttack and its workman Mallik Ahisan was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 87 OF 2008
(Previously registered as I. D. Case No. 335/95 in the
file of P. O. Labour Court, Bhubaneswar)
The 20th September 2010

Present :

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

Between :

The Management of the Orissa State Road Transport Corporation, Cuttack. . . First party–Management

And

Its workman Mallik Ahisan, . . Second party–Workman
Village Garapur,
P.O. Kapaleswar,
Dist. Kendrapara.

Appearances :

Shri G. Tudu, L. W. O . . For the first party–Management

Shri T. Lenka, Advocate . . For the second party–Workman

A W A R D

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. 13210-li/1 (B)-45/1994-LE., dated the 22nd September 1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Order No. 4138-li/21-32/2007/LE. dated the 4th April 2008 of the Labour & Employment Department. The Schedule of reference runs as follows :-

“Whether the termination of services of Mallik Ahisan, Driver by the District Transport Manager (Admn.), Orissa State Road Transport Corporation, Cuttack with effect from 16th June 1992 is legal and/or justified ? If not, to what relief Ahisan is entitled ?”

2. In his claim statement the second party-workman has made averments to the effect that in the year 1985 he was appointed as a Substitute Driver under the first party-management with consolidated salary of Rs. 825 per month which was subsequently increased to Rs. 940 per month besides daily allowance on duty. He was continued as such up-to 18th June 1992. During this period he had also worked for certain period as temporary driver against regular vacancy. On 18th June 1992 when he returned to the headquarters after his last trip as a driver to Calcutta he suddenly received order of his termination from service with effect from 16th June 1992. Though he was in continuous service for about eight years, the first party-management did not give him any notice or notice pay along with compensation for termination of his service in the manner as provided under the Act. Though he was selected for regular appointment by the Selection Board of O. S. R. T. C., he was not given regular appointment as a Driver. His juniors were appointed as regular drivers who are still continuing.

3. In the written statement the first party-management has taken the stand that the second party-workman had never worked continuously for the period from 1987 to 1992. He had never completed 240 days of work in any calendar year. Since his engagement was for specific periods against short term vacancies he was disengaged after expiry of his term. The second party was never selected for regular appointment and persons junior to him were not allowed to continue after his termination. It is further contended that due to bad financial condition of the first party the employees on regular roll are not getting their salary and there is also no need of any more driver due to reduction of its fleet strength.

4. Basing on the pleadings, the following issues have been settled :-

ISSUES

1. Whether the termination of services of Mallik Ahisan, Driver by the District Transport Manager (Admn.), Orissa State Road Transport Corporation, Cuttack with effect from 16th June 1992 is legal and/or justified ?
2. If not, to what relief Ahisan is entitled ?

5. In order to prove their respective case, parties have adduced oral evidence by examining one witness each. The workman is examined as W. W. No. 1 and one Junior Clerk has been examined as M. W. No. 1 on behalf of the management. The workman has exhibited some documents but the management has not exhibited any document.

FINDINGS

6. *Issue No. 1* :—The fact that the second party was under the employment of the first party during the period from 1985 till 18th June 1992 is not totally denied by the management. It is specifically pleaded by the first party that the engagement of the second party was never continuous and the second party did not complete 240 days of work in any calendar year. According to the management, the workman used to be engaged from time to time for specific period against short term vacancies. This assertion is supported by a series of documents exhibited on behalf of the workman vide Exts. 1 to 24. These exhibits are some of the office orders issued to the workman extending the period of his engagement from time to time. The management has not exhibited registers like duty register, payment register etc., wherefrom it could have been ascertained as to whether the workman had completed 240 days of work during the twelve months preceeding the termination under reference. In the facts and circumstances, the management ought to have discharged the burden of proof of the fact that the workman though was engaged by the management against temporary vacancies, he was not so engaged continuously and had not completed the prescribed period of continuous service. In the absence of such evidence, adverse inference has to be taken against the management. Consequently, it is to be presumed that the second party had completed the period of continuous service which makes him entitled to be retrenched in accordance with the provisions contained in the Act.

The management does not claim to have retrenched the workman in accordance with the provisions laid down under the Act. It is not explained as to why the services of the workman were terminated. It is simply stated that he was disengaged after expiry of the term for which he was appointed against the temporary vacancy. In absence of satisfactory evidence on this assertion, this plea is found unacceptable.

The workman has specifically pleaded that while his services were terminated his juniors namely U. K. Tripathy, B. B. Das, B. N. Ray and K. C. Sahoo were allowed to continue as either substitute drivers or temporary drivers. He has also taken the plea that though he was selected to be appointed as a regular driver, he was not given appointment as a regular driver though his juniors like Abdul Nin, Asghar Khan, Ashok Goswami, Babaji Ch. Patra and Sk. Kepjouddin were appointed as regular drivers. The fact that the workman was selected by the Selection Board for being appointed as a driver is not disputed by the management. M. W. No. 1 also admits that fact, Ext. 10 also reflects that the workman was selected by the Divisional Selection Committee. However, in this proceeding it is not to be decided as whether the workman ought to have been appointed as a regular driver. But there can be a presumption that the workman was found fit to be appointed as a regular driver. The management has not furnished the seniority list of drivers for the relevant period in order to disprove the workman's claim that his juniors were either appointed as regular drivers or were allowed to continue after the retrenchment of the second party. M. W. No. 1 is unable to say whether after the workman's retrenchment any new drivers were recruited by the management ignoring the entitlement of the workman. He is also unable to say as to how many substitute drivers and regular drivers were there under the management at the time of the retrenchment of the second party, and thereafter. He is also unable to say as to whether B. M. Rao, K. C. Sahoo, U. K. Tripathy, B. B. Das and B. N. Ray were junior to the second party and whether they were still continued even after the termination of services of the second party. The management should have adduced evidence to show that the disengagement of the workman was in accordance with the provisions laid down under the Act. On the other hand, the materials available on record makes-out a case of arbitrary termination of services of the workman without due compliance of

the Statutory provisions to effect a valid retrenchment. Consequently, the termination of service of the workman with effect from 16th June 1992 is neither legal nor justified.

7. *Issue No. 2* :—The workman claims reinstatement with full back wages and other benefits of service. The management, on the other hand, pleads that due to poor financial condition the Corporation is not able to pay salary to its regular employees and that there is no need of more drivers due to reduction of its fleet strength. There is no evidence to know whether the management is in need of temporary/substitute driver. The workman was terminated while he was still being engaged as a temporary/substitute driver. It is beyond the scope of this reference to give a finding as to whether the workman having been selected by the Selection Board for being appointed as a regular driver should have been appointed as such. Admittedly, he was a temporary workman and he was not on regular roll of the management. However, he was in continuous employment for a period of about eight years before his services were terminated illegally. In the meanwhile eighteen years have expired. In the year 2008 the workman was aged about 47. At the time of retrenchment he was about 31 years old. He had about eight years experience as a driver of passenger vehicle by the time he was terminated. Had he been a regular employee of the management he should have been directed to be reinstated. Though he has taken the plea that he has no gainful employment since the termination of his services it is not to be believed that an experienced driver would have sat idle during the long intervening period. He was in a position to get another employment. Even in the case of a regular workman payment of full back wages is not automatic for the reason that when work is not done remuneration is not to be paid and accordingly there should be no direction for past salary. Taking into consideration the factors that weigh with the Tribunal while granting relief to a workman as discussed in *General Manager, Haryana Roadways Vrs. Rudhan Singh*, reported in 2005 S. C. C. (L & S) 716, this Tribunal is of the considered view that the workman should be awarded compensation in lieu of reinstatement and back wages. Taking into consideration the period of employment, the nature of appointment, the amount of salary which was being paid to the workman and the period during which the workman has fought for his entitlement, this Tribunal is of the considered view that the workman be paid compensation of Rs. 1,00,000. Accordingly, the management is to pay a compensation of Rs. 1,00,000 (Rupees one lakh) only to the workman.

The reference is answered accordingly.

Dictated and corrected by me.

R. DASH
20-9-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar.

R. DASH
20-9-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar.

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