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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st July 2011

No. 6139—li/1(B)-272/1992-(Pt)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th August 2010 in Industrial Dispute Case No. 44 / 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar, to whom the industrial dispute between the Management of M/s. Nabajat Printers, Bhubaneswar and their Workman Shri Chittaranjan Singh was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 44 OF 2008

Dated the 13th August 2010

Present :

Shri Raghubir Dash, OSJS (Sr. Branch)
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
M/s. Nabajat Printers,
Bhubaneswar.

.. First -Party—Management

And

Their Workman
Shri Chittaranjan Singh,
C/o Shri Banamali Muduli,
Qrs. No. H-2, Rajabagicha Labour Colony,
Cuttack.

.. Second -Party—Workman

Appearances :

Shri B. M. Pattnaik & Shri N. N. Satpathy, Advocates.	.. For the First Party–Management
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Shri S. B. Mishra, Advocate	.. For the Second Party–Workman

A W A R D

1. This is a reference of an industrial dispute made by the Government of Orissa in the Labour & Employment Department vide their Order Communicated under Memo No. 17480 (5)-L.E., dated the 30th December 1993 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 Order No.4138-li/21-32/2007-L.E., dated the 4th April 2008. The Schedule of reference runs as follows :—

“Whether the termination of services of Shri Chittaranjan Singh, Composer by the Management of M/s. Nabajat Printers, Industrial Estate, Rasulgarh, Bhubaneswar with effect from 7-2-1992 is legal and/or justified ? If not, what relief Shri Singh is entitled to ?”

2. In his claim statement the workman/second party has taken the plea that he had been working in the establishment of the first party/management as ‘Composer’ from 17-2-1974. He continued as such for a period of about twenty years but all on a sudden on 7-2-1992 the management terminated his services without citing any reason of termination and without complying with the provisions of the Industrial Disputes Act, 1947 (for short ‘the Act’) as well as the working journalist and other newspaper employees’ (Conditions of Service and Miscellaneous Provisions) Act, 1955.

3 The first party /management in its written statement has contended that the workman’s plea that he was working as a ‘Composer’ under the first party with effect from 17-2-1974 and he was terminated with effect from 7-20-1992 without complying with the provisions of the Act are false, fabricated and concocted so as to secure an undue gain.

4. The following issues have been framed :—

I S S U E S

- (i) “Whether the termination of services of the second party workman by the first party management with effect from 7-2-1992 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?”

5. The workman has examined himself as W.W. No. 1 and on behalf of the management its Director, marketing has been examined as M.W. No. 1.

F I N D I N G S

6. *Issue No. (i)* : In his deposition the workman has reiterated his stand taken in the claim statement and has further stated that on 7-2-1992 when he reached his work place the watchman

posted at the gate did not allow him to go inside. He has further stated that after the denial of such entry he had intimated the fact in writing to the manager of the first party by registered post but did not receive any reply from the other side. He has further stated that no written order of retrenchment was served on him nor was he paid the notice pay and other compensation as required under the Act. During cross-examination the management put suggestion to the workman to the effect that in the year 1991 when the management introduced machines for doing composition work he was directed by the management to undergo necessary training to operate the machine and since he was unable to work with the composition machine and was unwilling to undergo training to learn the operation of the machine, he deliberately remained absent from his duties and thus he abandoned his job.

The witness examined by the management has admitted that the second party was working with the management till 6-2-1992. He has further stated that in the year 1991-92 when the management introduced computer system for composition work the workman was advised time and again to undergo training to operate the computer but the workman did not take any interest in that regard. He has further stated that being repeatedly pressurised to undergo training the workman started remaining absent from the Press without obtaining leave and ultimately did not report for duties with effect from 7-2-1992. The witness has further stated that in order not to affect the future career of the second party the management did not take up any disciplinary proceeding against him for his unauthorised absence from duty.

7. Though in its written statement the management has denied that the second party was working under it as a compositor for a period of twenty years till the date of the alleged retrenchment, at the time of trial it has admitted that the second party was working under the first party till 6-2-1992.

While the second party claims that on 7-2-1992 he was refused work under the management, it is stated by M.W. No. 1 that from the said date the second party voluntarily abandoned his services. But, there is no pleading on abandonment of job. In a cunning way the management's witness has stated that the management taking into consideration the future career of the workman did not opt. for a disciplinary proceeding against him for his unauthorised absence from duties with effect from 6-2-1992. That plea can not be acted upon. The management ought to have taken disciplinary action against the workman, if at all he remained unauthorisedly absent from duty. There is no document showing the management having instructed the workman to undergo training on computer operation for composition work. So, the plea of voluntary abandonment of job by the workman is not at all believable. In absence of any disciplinary action for the alleged unauthorised absence it is to be presumed that the management had disengaged the workman from his job with effect from 7-2-1992. This amounts to 'retrenchment'.

The workman's plea that he had been working as a Compositor on monthly salary basis from 17-2-1974 till the date of his retrenchment has not been dislodged by the management. Admittedly, the management has not complied with the provisions laid down under Section 25-F of the Act. Consequently, the retrenchment is found to be illegal.

8. *Issue No. (ii)*—Now I come to the next issue. The workman claims reinstatement with full back salary and other benefits of service. It is now well settled that relief by way of reinstatement with back wages is not automatic. Availability of such relief depends on facts and circumstances of a given case. In this case, the workman was holding a permanent post. According to him, he had been in the employment of the management for about 18 years. The management did not adduce evidence to prove the period of appointment of the workman. From the pleadings of the parties it transpires that job was available when the services of the workman were terminated. Now he is aged about 52/53 years. The management is found to have denied employment to the workman in a whimsical manner. Therefore, it is a fit case where reinstatement with full back salary and other service benefits should be extended to the workman. The workman is, therefore, found entitled to reinstatement with full back salary and other service benefits.

The reference is disposed of accordingly.

Dictated & corrected by me.

RAGHUBIR DASH
13-8-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
13-8-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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