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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th July 2011

No. 6285—li/1(B)-39/2004(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th February 2011 in Industrial Disputes Case No. 68 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s “X” Security Services (P) Ltd., Bhubaneswar and its workman Mr. B. N. Nayak and five others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 68 OF 2004

Dated the 17th February 2011

Present :

Shri S. K. Dash,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s “X” Security Services (P) Ltd.,
At Ruchika Market, Baramunda,
Bhubaneswar.

And

Their Workmen .. Second Party—Workmen
Mr. B. N. Nayak and five others.

Appearances :

Shri A. Nayak, Office Assistant .. For the First Party—Management
Shri A. K. Subudhi .. For the Second Party—Workmen

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 9637—li/1(B)-39/2004-LE., dated the 28th October 2004 of the Labour & Employment Department, for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Brahmananda Nayak, Jayant Prasad Das, Pranaya Kumar Subudhi, Narayan Swain, Bidyadhar Panda & Bira Kishore Das, Security Guards with effect from 1-11-2002, 7-11-2002, 23-3-2003, 26-12-2002, 2-11-2002 & 15-1-2003 respectively by the management of “X” Security Services (P) Ltd., A-16, 1st Floor, Ruchika Market, Baramunda, Bhubaneswar–751 003 are legal and/or justified ? If not, what are the reliefs they are entitled to ?”

3. The case of the workmen in brief are that they were working under the management as Security Guards at the rate of Rs. 1,560.00 per month for a specific period details of which has been mentioned in their statement of claim. They have completed 240 days of service continuously within 12 calendar months, but their services were terminated without compliance of Section 25-F of the Industrial Disputes Act on the specific date as mentioned in the Schedule of Reference as well as their statement of claim. The management has engaged new workers in their place. The principle of ‘last come first go’ has also not been followed by the management at the time of termination of their services. So in this background the workmen have raised an industrial disputes before the Labour authority and when the conciliation failed, the matter was informed to the Government and a reference has been received from the Government and this I. D. Case has been initiated wherein the workmen have prayed for their reinstatement in service with full back wages.

4. The management though appeared has not filed any written statement but took part in the hearing of the case.

5. in order to substantiate their pleas, the workmen have examined themselves as W. Ws. 1 to 6 and proved documents marked as Exts. 1 to 11 series. The management has neither examined any witness nor proved any document in support of their case.

6. So in view of the above pleading of the workman, the following issues have been settled :

ISSUES

- (i) “Whether the termination of services of Shri Brahmananda Nayak, Jayant Prasad Das, Pranaya Kumar Subudhi, Narayan Swain, Bidyadhar Panda and Bira Kishore Das, Security Guards with effect from 1-11-2002, 7-11-2002, 23-3-2003, 26-12-2002, 2-11-2002 and 15-1-2003, respectively by the management of “X” Security Services (P) Ltd., A-16, 1st Floor, Ruchika Market, Baramunda, Bhubaneswar–751 003 are legal and/or justified ?
- (ii) If not, what are the reliefs they are entitled to ?”

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion for convenience.

W. W. 1 deposes that he joined in the service of the management in the year 1994 as Security Guard. Initially he was getting Rs. 750.00 per month. But his service was terminated with effect from the 13th June 2003 and he was getting Rs. 1,250.00 per month as wages at the time of termination of his service. He was working continuously without any break from the year 1994 to 2003. All other workmen have been examined as W.Ws. 2 to W. W. 6 and submitted their affidavit evidence corroborating the statement of claim. The reference discloses that the workmen Shri Brahmananda Nayak, Jayant Prasad Das, Pranaya Kumar Subudhi, Narayan Swain, Bidyadhar Panda and Bira Kishore Das, Security Guards were terminated with effect from 1-11-2002, 7-11-2002, 23-3-2003, 26-12-2002, 2-11-2002 & 15-1-2003, respectively. W. Ws. 2 to 6 have deposed that they were getting Rs. 1,560.00 per month at the time of their termination from service and the detailed date of the termination has been correctly mentioned in their affidavit evidence with reference to the Schedule of Reference. W. W. 1 has not correctly stated about his date of termination and salary. But without any contrary materials available in the case record, his date of termination is to be treated as per the Schedule of Reference and failure report. They have deposed that they have completed 240 days of service in 12 calendar months preceding to the date of their termination. Perused the documents marked as exhibits on behalf of the workmen. The management has not proved any document to show that the workmen were not working under the management and the mandatory provisions of Section 25-F of the Industrial Disputes Act has been duly followed while terminating their services. According to the settled principle of law as reported in AIR 2010 SC 1236 the workmen would have difficulty in having access to all official documents, muster rolls, etc. in connection with his service which the workmen claimed and deposed that he had worked for 240 days which the statutory requirement, burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service. But in the instant case no such document has been filed by the management. The management has put only one denial suggestion to the witnesses. So the evidence of the workmen are remained as if unchallenged. So on careful consideration of all the materials available in the case record, I came to the finding that the services of the workmen were terminated from the specific date as mentioned in the Schedule of Reference without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act which is also a precondition one. So the said termination of the services of the workmen are neither legal nor justified and they are entitled to be reinstated in service.

8. Regarding back wages, as per settled principle of law the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Further according to the authority reported in 2004 (Supp.) OLR 694 that when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting any back wages, a lump sum amount of Rs. 50,000.00 each as compensation will meet the ends of justice in this case. Hence both the issues are answered accordingly.

9. Hence Ordered :

That the termination of services of Shir Brahmananda Nayak, Jayant Prasad Das, Pranaya Kumar Subudhi, Narayan Swain, Bidyadhar Panda and Bira Kishore Das, Security Guards with effect from 1-11-2002, 7-11-2002, 23-3-2003, 26-12-2002, 2-11-2002 & 15-1-2003, respectively by the management of "X" Security Services (P) Ltd., A-16, 1st Floor, Ruchika Market, Baramunda, Bhubaneswar-751 003 are illegal and unjustified. All the above named workmen are entitled to be reinstated in service with a lump sum amount of Rs. 50,000.00 (Rupees fifty thousand) only each as compensation in lieu of back wages. The management directed to implement this Award within a period of one month from the date of its publication in the official Gazette, failing which the amount shall carry interest at the rate of 9 % (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
17-2-2011
Presiding Officer, Labour Court
Bhubaneswar

S. K. DASH
17-2-2011
Presiding Officer, Labour Court
Bhubaneswar

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