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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd August 2011

No. 7634—li/1-(B)-41/2009-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th May 2011 in Industrial Dispute Case No. 14 of 2009 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Cuttack Wholesale Co-operative Store (NAMUNA), Cuttack and its Workman Shri Kapila Chandra Das, Peon was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 14 OF 2009

Dated the 30th May 2011

Present :

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

Between :

The Management of M/s Cuttack
Wholesale Co-operative Store,
(NAMUNA), Cuttack.

.. First Party—Management

And

Its Workman
Shri Kapila Chandra Das, Peon

.. Second Party—Workman

Appearances :

Shri G. K. Mishra . . . For the First Party—Management

Shri K. C. Das . . . For the Second Party—Workman himself

AWARD

The Government of Orissa in exercise of the 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 have referred the matter in dispute to this Court vide Order No. 6000-li/1-B-41/2009-LE. Dt. 7-7-2009 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the termination of services of Shri Kapila Chandra Das, Peon with effect from 4th July 1998 by the management of M/s. Cuttack Wholesale Co-operative Store (NAMUNA), Cuttack is legal and/or justified ? If not, what relief the workman is entitled to ?”

3. The case of the workman in brief is that he was working as a Peon under the management and rendered service for the period from 1965 to 29-6-1988 uninterruptedly to the best satisfaction of the authorities. On 29-6-1988 the management terminated the service of the workman without any fault and without following the provisions of the Industrial Disputes Act and without following the principle of natural justice. The management had given re-employment to some of his co-employees and paid dues to some other workers against whom recoveries were outstanding as per the audit. Though the workman did not have any recovery he was not provided with retrenchment benefits along with re-employment. So in this background he raised an industrial dispute before the Labour Authority and when the conciliation failed, the matter was informed to the Government and this reference has been received and this I.D. Case has been initiated wherein he has prayed for to pass an appropriate order to enable him to receive his legal dues along with unpaid wages and the interest thereon.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to him, due to default condition of the Store of the management since 1982-83, the store was finally put under liquidation on 4-7-1988. The workman came up with certain monetary claim. But as the Society was under liquidation and the accounts of the Society has not been yet audited by the Assistant Auditor General, Co-operative Societies, Cuttack Circle-II, the claim of the workman cannot be stated as legitimate claim. Presently there is no fund and the liquidation proceeding has not been finalised. So in this background the management has prayed for answering the reference in negative.

5. In view of the above pleadings of the parties, the following issues are settled :

ISSUES

- (i) Whether the termination of services of Shri Kapila Chandra Das, Peon with effect from 4th July 1998 by the management of M/s Cuttack Wholesale Co-operative Store (NAMUNA) Cuttack is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved document marked as Ext. 1. Similarly the management has examined the Sub-Assistant Registrar, Co-operative Societies, Cuttack City Circle as M.W.1, but management has not proved any document on his behalf.

FINDINGS

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

W.W.1 deposes that he was working as a Peon under the management and rendered service from 1965 to 28-6-1988 and he was terminated from service with effect from 29-6-1988 by written order vide Ext. 1. He has not received any compensation or notice or notice pay from the management in compliance with the provisions of Section 25-F of the Industrial Disputes Act. He has rendered continuous service for more than 240 days in every year and in twelve calendar months preceding to the date of termination. M.W.1 files affidavit evidence stating that the Society placed under liquidation on 4-7-1988 and a liquidator was appointed. Due to non-functioning and wretched financial condition the cessation took place against the employees including the present workman. In the cross-examination he has admitted that the workman has served under the management for 23 years as a peon and at the time of termination of his service, the provisions of Section 25-F of the Industrial Disputes Act has not been complied with. According to the settled principle of law, Section 25-F of the Industrial Disputes Act is a mandatory and precondition one while terminating the service of a workman. But in the instant case it has not been complied with as admitted. The reference has been received mentioning the date of termination is 4-7-1998. But both the parties have admitted that the termination is of dated, 29-6-1988 as per Ext.1. So on careful consideration of all the materials available in the case record as discussed above I came to the finding that the termination of service of the workman with effect from 29-6-1988 and not from 4-7-1998 by the management is neither legal nor justified.

8. The workman has already crossed the age of superannuation. Now he is aged about 83 years. So the question of reinstatement in service does not arise. Admittedly he has not worked for the management for the relevant period. According to the 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 as per settled principle of law 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 as discussed above, I am of the opinion that instead of reinstatement and back wages a lump sum amount of Rs. 50,000 will meet the ends of justice in this case.

9. Hence ordered :

That the termination of services of Shri Kapila Chandra Das, Peon with effect from 29-6-1988 and from 4-7-1998 by the management of M/s Cuttack Wholesale Co-Wholesale Co-operative Store (NAMUNA), Cuttack is illegal and unjustified. The workman Shri Das entitled to get lump sum amount of Rs. 50,000 (Rupees fifty thousand) only in lieu of reinstatement and back wages. The management is directed to implement this Award within one month from the date of its publication failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
30-5-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
30-5-2011
Presiding Officer
Labour Court
Bhubaneswar

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