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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd August 2011

No. 7644—li/1-(B)-293/1991-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th December 2010 in I.D. Case No. 164 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Shrikrushna Weaving Factory, Khurda and its workman Smt.Kuntala Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 164 OF 1993

The 28th December 2010

Present :

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

Between :

The Management of M/s Shrikrushna
Weaving Factory, Khurda.

.. First party—Management

And

Its workman,
Smt. Kuntala Nayak,
C/o Sarat Rayaguru,
At/P.O. Khurda (Uparsahi),
Dist. Khurda.

.. Second party—Workman

Appearances :

Shri A. K. Ghadei, Advocate	.. For First party—Management
Shri J. K. Mishra, Advocate	
Shri S. K. Jena, Advocate	
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Shri T. Lenka, Advocate	.. For Second party—Workman

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 12 of the Industrial Disputes Act have referred the matter in dispute to this Court vide their Order No. 14220—li/1 (B)-293/1991-LE., Dt. 19-10-1993 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the termination of services of Smt. Kuntala Nayak by the employer i.e. M/s Shrikrushna Weaving Factory, Khurda with effect from 25-7-1991 is legal and/or justified ? If not, what relief Smt. Nayak is entitled to ?”

3. The case of the workman in brief is that she was engaged as a Weaver under the management since 1988 and continue as such up to July 1991. She was discharging her duties to the satisfaction of the management and was in continuous service for the period of her employment. The minimum rate of wage prescribed by the Government with effect from 1-1-1991 was not given to the workman and also to many other workers for which the workman during the inspection of the District Labour Officer, Khurda on 17-7-1991, she putforth her said grievance. The management became annoyed and bore a grudge against her. Thereafter all on a sudden on 25-7-1991 refused employment to the workman and told that her service has been terminated. No written order of termination was given by the management so also the provisions of Section 25-F of the Industrial Disputes Act has been violated by the management while terminating her service. The management has neither framed any charge sheet nor conducted any enquiry while terminating the services of the workman. So being aggrieved about the action of the management which is illegal, unjustified, *mala fide* and inoperative in law, the workman raised a complaint before the labour authority and then the conciliation failed, the matter was referred to the Government and a reference has been received from the Government and this I.D. Case has been initiated wherein the workman has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to him, there was no relation of employee and employer between the workman and the management, for which the present dispute is not maintainable. The establishment of the management is neither of factory no and establishment where ten or more workers are employed casually or intermittantly. The establishment of the management is a shop duly registered under the Orissa Shops and Commercial Establishments Act, 1956. The management deals with the yarn and handloom cloths and its usual practice is to supply yarn to the weavers and in return get back the cloths on payment of labour charges on piece-rate basis. The husband of the workman used to receive the yarn and delivered the cloths at times, but the workman had never deals with the management in any manner. The establishment of the management is a cottage industry and there is no such regular employment casually or intermittantly.

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

ISSUES

- (i) Whether the termination of services of Smt. Kuntala Nayak by the employer i.e. M/s Shrikrushna Weaving Factory, Khurda with effect from 25-7-1991 is legal and/or justified ?
- (ii) To what relief, if any, the second party workman is entitled ?

6. In order to substantiate her plea, the workman has examined herself as W.W. 1 and proved documents marked as Exts. 1 to 5. Similarly the management has examined his proprietor as M.W. 1 and proved document marked as Ext. A.

FINDINGS

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

According to W.W. 1, she was working under the management in Shrikrushna Weaving Factory, Khurda since 1988 and continued as such up to July 1991. During the period of about 4 years she was discharging her duties to the satisfaction of the management and she was in continuous service during the period of her employment under the management. As she and other workers were not getting the minimum wages declared by the Government, at the time of inspection of the Assistant Labour Officer, Khurda when she protested, the management became vindictive and all on a sudden refused employment with effect from 25-7-1991 and told that her service has been terminated. The provisions of Section 25-F of the Industrial Disputes Act has not been complied with at the time of termination of service. On the other hand, M.W. 1 deposes that he is the proprietor of Shrikrushna Weaving Factory which is a shop registered under Shops and Commercial Establishment Act, and the workman without any basis has filed this case with false allegation only to harass the management. Shrikrushna Weaving Factory used to sale the weaving cloths after purchasing the same from different weavers. The workman was never working under the management at any point of time. However one to two person used to employ in Shrikrushna Weaving Factory in different time. He has proved the xerox copy of the registration Certificate of shop under Shops and Commercial Establishments Act regarding carrying on business of Commercial Establishment and was issued by the Inspector of Shops and Commercial Establishments and Assistant Labour Officer, Khurda. Perused the documents filed by both the parties. Ext. 5 discloses about registration of M/s Shrikrushna Weaving Factory, At Radhaballav Sahi, Dist. Khurda as factory under Factories Act and this document has been obtained under Right to Information Act, 2005 from the concerned authority. In the written statement the management has admitted that it is a cottage industry. In the pleading the management has taken the plea that there was no relation of employee and employer between the workman and the management. But he has not specifically stated that howmany workers were working under the management. On the other hand, he has taken the plea that as per usual practice he is to supply the yarn to the weavers and in return get back the cloths in payment of labour charges on piece-rate basis. But while submitting the affidavit evidence the management is silent in this regard and by going beyond the pleading he has stated that one to two persons used to employ under the management in different times. But no such document has been filed in support of it. According to the settled principle of law as reported in AIR 2010 SC 1236 the workman would has difficulty in having access to all official documents, muster rolls, etc. in connection with his service which the workman claimed and deposed that he had worked for 240 days which is 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. According to the workman she was working continuously for about 4 years under the management but the management without complying the mandatory

provisions of Section 25-F of the Industrial Disputes Act she was terminated from service with a grudge when she complained before the Assistant Labour Officer, Khurda regarding non-payment of minimum wages prescribed by the Government. Though the workman has not filed any document in support of her employment, the management is also silent and has not produced any document to show that one to two persons were engaging as admitted by him under the management. So on careful consideration of the evidences of both the parties as discussed above, it clearly shows that there was employee and employer relationship between the workman and the management and her service has been terminated without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act which is also a precondition while terminating the services of the workman. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the termination service of the workman by the management with effect from 25-7-1991 is neither legal nor justified and she is entitled for reinstatement in service.

8. Regarding back wages, it is settled principle of law that 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 when the workman had not worked for the management during the period in question and he has 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 granting any back wages, a lump sum amount of Rs. 25,000 as compensation which will meet the ends of justice in this case. Both the issues are answered accordingly.

9. Hence Ordered :

That the termination of services of Smt. Kuntala Nayak by the employer i.e. M/s Shrikrushna Weaving Factory, Khurda with effect from 25-7-1991 is illegal and unjustified. The workman Smt. Nayak is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only as compensation in lieu of back wages. The management is 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
28-12-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
28-12-2010
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

T. K. PANDA
Under-Secretary to Government
