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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th January 2011

No. 400—li/1(B)-112/2001-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th October 2010 in Industrial Dispute Case No. 04 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Regional Coconut Research Centre, Sakhigopal and its workmen represented through the Secretary, Maa Chandi Shramik Sangha, Sakhigopal was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 4 OF 2002

The 11th October 2010

Present :

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

Between :

The Management of M/s Regional
Coconut Research Centre, Sakhigopal . . . First Party—Management

And

Its workmen represented through
the Secretary, Maa Chandi Shramik
Sangha, Sakhigopal. Second Party—Workmen

Appearances :

For the First Party—Management . . . Shri B. C. Barik

For the Second Party—Workmen . . . Shri Bhajaman Bhoi

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. 875—li/1 (B)-112/2001-LE., dated the 21st January 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Regional Coconut Research Centre, Sakhigopal in retrenching Shri Bhajaman Bhoi and 15 others as per list enclosed is legal and/or justified ? If not, to what relief these workmen are entitled ?”

3. The case of the workmen in brief is that the workmen as per list Annexure-B attached to the reference having 16 in numbers were working under the management from the period as mentioned therein. Earlier an industrial dispute was raised vide I.D. Case No. 134/1994 by some of the workmen and an Award was passed for reinstatement in service with 50% of back wages. But after reinstatement of the present 16 workmen, the management all of a sudden gave notice for retrenchment dated the 14th March 2001 which has been given effect from the 15th April 2001 and from their services have been terminated though junior workers were working under the management. The action of the management is illegal for which the workmen have raised an industrial dispute before the labour authority and when the conciliation failed, the matter has been referred from the Government and the present I.D. Case has been initiated wherein the workmen have prayed for their reinstatement in service with back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management all the operations taken up by the management are completely seasonal in nature and the labourers are engaged as and when required as per requirement. The Maa Chandi Sramika Sangha with mutual consultation with the management is engaging labourers on the basis of seniority list from the gradation list. Labourers were disengaged with one month notice regularly and when there is requirement again the Sangha intimated accordingly. No labourer is being engaged from outside the Sangha in any circumstances. The gradation list of Casual Labourers engaged in the management has already been prepared and their permanent absorption in the establishment of the management may be considered in due process in future. At present the labourers engaged in the management are getting their dues regularly as per the approved rate without any inconvenience put to them. So in this background, the management has prayed to answer the reference in favour of the management.

5. In view of the above pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) “Whether the action of the management of M/s Regional Coconut Research Centre, Sakhigopal in retrenching Shri Bhajaman Bhoi and 15 others as per list enclosed is legal and/or justified ?
- (ii) If not, what relief these workmen are entitled to ?”

6. In order to substantiate their plea, the workmen have only examined witness namely Bhajaman Bhoi as W.W. 1. Similarly the management has examined the Horticulturist-In-charge as M.W. 1. Neither the workmen nor the management has proved any document on their behalf.

FINDINGS

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

According to W.W. 1, he joined in the management on the 3rd December 1973. He was terminated from service by the management on the 14th January 2001 without following the mandatory provisions of the Industrial Disputes Act. On the 31st October 2001 he was reinstated in service by the management. All other workmen have also been reinstated in service on the same day. The management has not given any benefit to them for which they have filed the present case. In the cross-examination he has admitted that at present eight workmen are working under the management and the rest are not working, but he cannot say the details of the workmen who are working and who are not working. M.W. 1 also deposes that he knows all the workmen of this case. Out of the workmen, eight workmen have already been re-engaged by the management, but he cannot say their names. The management is engaging labourers as and when required by intimating the requirement to the Labour Union (Sangha). The workmen were not retrenched from service but they were disengaged from their duties by the management. The duty allotted to the workmen were seasonal in nature.

8. It is admitted by the management that the workmen were working under the management. The date of first engagement has been mentioned in Annexure-B attached to the reference. Their services were terminated with effect from the 15th April 2001 following one month notice only. The fact of continuing 240 days by the workmen is to be presumed when the management has not specifically denied about it and no evidence has been adduced in this regard either orally or documentary. So the terminating the services of the workmen only by giving one month notice is not sufficient and is violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act. The W.W. 1 deposes that he has already been reinstated in service so also other workmen. But in the cross-examination he deposes contrary thing by stating that eight workmen are working at present. It is also corroborated by M.W. 1. So on careful consideration of all the materials available in the case record, I came to the finding that the termination of services of the workmen by the management is neither legal nor justified, and the workmen are entitled for reinstatement in service if not reinstated in service in the meantime.

9. 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 according to the settled principle of law as reported in 2004 (Supp.) OLR-694 that the principle of no work no pay is to be followed when the workmen 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. In the instant case there is no evidence in this support. So I am not inclined to allow any back wages to the workmen. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the action of the management of M/s Regional Coconut Research Centre, Sakhigopal in retrenching Shri Bhajaman Bhoi and 15 others as per list enclosed with effect from the 15th April 2001 is illegal and unjustified. All the workmen are entitled to be reinstated in service if not reinstated in service in the meantime, but without any back wages. The management is directed to implement this Award within one month from the date of its publication in the official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
11-10-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
11-10-2010
Presiding Officer
Labour Court, Bhubaneswar

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