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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th October 2011

No. 9259—li/1 (B)-81/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th April 2011 in I.D. Case No. 66 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Kalamandir Fashion, Bhubaneswar and its workman Shri Pravat Kumar Prusty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 66 OF 2003

Dated the 25th April 2011

Present :

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

Between :

The Management of Kalamandir Fashion, .. First-party—Management
Bhubaneswar.

And

Their workman, .. Second-party—Workman
Shri Pravat Kumar Prusty.

Appearances :

S. T. Ullaha .. For the First-party—Management

Shri P. K. Prusty .. For the Second-party—Workman
himself.

AWARD

The Government of Odisha 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 have referred the matter in dispute to this Court vide Order No. 10621—li/1 (B)-81/2003-LE., Dt. 5-11-2003 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. Kalamandir Fashion, Bhubaneswar in terminating the services of Shri Pravat Kumar Prusty, Salesman with effect from Dt. 3-12-2002 is legal and/or justified ? If not, to what relief Shri Prusty is entitled ?”

3. The case of the workman in brief is that he was working as Salesman under the management since July, 1993. He was declared as a permanent worker by the management in November, 1993. He was performing his duty to the utter satisfaction of the management. On 30-11-2002 he discharged his duty normally and in the second half of the day he went on leave for 2½ days as his father suddenly became ill. On 3-12-2002 when he reached the establishment of the management to perform his duty, the management did not allow him to join in duty and directed him to take up the wages immediately. When he asked about the reasons of his removal from service, the management told that the management was not satisfied with the performance of the workman and removed from the job. His last salary was Rs. 2,500 per month. The workman requested for other dues like gratuity, leave salary, bonus, etc. but the management denied to pay. So 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 the workman has prayed for his 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 the management, the workman was in habit of remaining absent from duty without any leave and prior permission from the management. He remained absent from duty without any prior intimation from second half of 30-11-2002. He never came to the shop of the management on 3-12-2002. He was charge-sheeted on 4-12-2002 for the misconduct committed by him. This fact was intimated to the Conciliation Officer with a request to keep the conciliation proceeding in abeyance as disciplinary proceeding was started but the Conciliation Officer did not respond. However, the workman was not actually terminated from service on 3-12-2002. When the workman deliberately refused to receive the charge-sheet registered letter and it came back undelivered. Thereafter on 17-1-2003 the management sent a registered letter to the workman intimating the decision of the management to hold a domestic enquiry in respect of the charges framed against him. On 16-4-2003 another registered letter was sent to the workman informing about the appointment of the Enquiry Officer to hold the enquiry. The Enquiry Officer sent the enquiry notice Dt. 28-6-2003 by registered post to hold the enquiry on Dt. 30-7-2003. The date of enquiry was fixed to 12-8-2003 under intimation to the workman who received the same but he did not turn up deliberately and was set *ex parte* and the Enquiry Officer hold the enquiry *ex parte* and submitted his report/finding holding the workman guilty of the charges framed against him. Thereafter a second show cause notice was issued to the workman along with a copy of the enquiry report. The workman submitted his reply to the second show

cause notice but not found satisfactory and thereafter he was dismissed from service on 8-4-2004. As the workman was a salesman he is not a workman as per the Industrial Disputes Act. Hence 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 are settled :—

ISSUES

- (i) Whether the action of the management of M/s. Kalamandir Fashion, Bhubaneswar in terminating the services of Shri Pravat Kumar Prusty, Salesman with effect from 3-12-2002 is legal and/or justified ?
- (ii) If not, what relief is Shri Prusty entitled to ?

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved the documents marked as Ext. 1 to 5. The management has not adduced any evidence on his behalf and no document has also been proved on behalf of the management.

FINDINGS

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

The workman has submitted his affidavit evidence corroborating his pleading. According to him, he was working as a Salesman since July, 1993 and his last pay was Rs. 2,500 per month. On 30-11-2002 in the second half he went on leave for 2 1/2 days as his father suddenly became ill and on 3-12-2002 when he reached the establishment of the management to perform his duty, the management did not allow him to join. In the cross-examination he has stated that he has not given any written application for leave to the management. He prayed for leave orally. The workman denied about the domestic enquiry and about the dismissal from service. The management though has taken the plea of conducting of domestic enquiry after framing charges and about the dismissal of the workman from 8-4-2004 no material has been produced in this regard. The management has not taken a little pain to establish his case orally or documentary on his behalf in support of his pleading. So without any material it cannot be said that there was a domestic enquiry and it was fair and proper. On the other hand, the workman has stated that his service was refused with effect from 3-12-2002. The workman has cross-examined at length but nothing has been elicited from his mouth to disbelieve the sworn testimony of W.W. 1. Perused the documents marked as exhibits on behalf of the workman. It is an admitted fact that the workman was working as a Salesman under the management. So in view of the Industrial Disputes Act he is a workman and there was employee and employer relationship between the workman and the management. While terminating the service of the workman by the management, the provisions of Section 25-F of the Industrial Disputes Act has not been followed which is a mandatory and pre-condition one. So on careful consideration of all the materials available in the case record I am inclined to hold that the action of the management in terminating the services of the workman with effect from 3-12-2002 is neither legal nor justified and he is entitled to be reinstated in service.

8. Regarding back wages, admittedly the workman had not worked for the management from the date of his termination. As per 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 according to the authority reported in 2004 (Supp.) OLR 694 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. So on careful consideration of all the materials available in the case record I am of the opinion that the workman is not entitled to get any back wages. Hence both the issues are answered accordingly.

9. Hence Ordered :

That the action of the management M/s. Kalamandir Fashion, Bhubaneswar in terminating the services of Shri Pravat Kumar Prusty, Salesman with effect from 3-12-2002 is illegal and unjustified. The workman Shri Prusty is entitled to be reinstated in service but without any back wages. The management is directed to implement this Award within a period of one month from the date of its publication.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
25-4-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
25-4-2011
Presiding Officer
Labour Court
Bhubaneswar

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