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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th January 2011

No. 479—li/1(B)-48/2000-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th October 2010 in I. D. Case No. 222 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s. OM Oil and Flour Mills (P) Ltd., Industrial Estate Cuttack-10 and its Workman Shri Babaji Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 222 OF 2008 (PREVIOUSLY REGISTERED AS
I. D. CASE NO. 93 OF 2000 IN THE FILE OF THE P. O. LABOUR COURT, BHUBANESWAR)

Dated the 6th October 2010

Present :

Shri Raghubir Dash, o.s.j.s. (Sr. Branch)
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of . . . First Party—Management
M/s. Om Oil and Flour Mills (P) Ltd.,
Industrial Estate, Cuttack.

And

Its Workman . . . Second Party—Workman
Shri Babaji Samal,
S/o Late Trilochan Samal, At Balipadia,
P. O. Barada Cuttack, Via Balichandrapur,
P. S. Badachana, Dist. Jajpur.

Appearances :

Shri S. T. Ullah, Authorised representative . . . For the First Party—Management

Shri T. Lenka, Authorised representative . . . For the Second Party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short the Act) made by the Government of Orissa in the Labour & Employment Department vide their Order No. 9306—li-1(B)-48/2000-L.E., dated the 13th July 2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li-21-32/2007-L.E., dated the 4th April 2008. The schedule of reference runs as follows :—

“Whether the termination of services of Shri Babaji Samal, Mali by the management of M/s. Om Oil and Flour Mills Pvt. Ltd., Industrial Estate, Cuttack-10 with effect from the 4th March 1998 is legal and/or justified ? If not, to what relief Shri Samal is entitled ?”

2. As per the averments in the claim statement of the second party/workman he had been working as a “Mali” with the first party/management since 1987 and he was continued as such till the 3rd March 1998. He used to get monthly salary of Rs. 805/-. He was working both in the factory premises and in the residence of the Managing Director (for short ‘M. D.’) of the first party. Suddenly he was asked not to come to duty with effect from the 4th March 1998. Since his services were terminated in contravention of the Statutory provisions for a valid retrenchment he is entitled to reinstatement and back wages.

3. The first party in its written statement has taken the stand that the second party was never engaged by the first party as a “Mali”. He was engaged by the M. D. in his personal capacity and on part time basis. The M. D. used to pay the wages from his own pocket. So, the question of management's terminating his service with effect from the 4th March 1998 does not arise.

4. In terms of the reference, the following issues have been settled :—

ISSUES

- (i) Whether the termination of services of Shri Babaji Samal, Mali by the management of M/s. Om Oil and Flour Mills Pvt. Ltd., Industrial Estate, Cuttack-10 with effect from the 4th March 1998 is legal and/or justified ?
- (ii) If not to what relief Shri Samal is entitled ?

5. Each side has examined one witness. W. W. No. 1 is the workman. M. W. No. 1 is presently the Deputy Manager (Personnel) of the first party. Neither side has exhibited any documents.

FINDINGS

Issue No. 1 :—6. Before going to decide as to whether the services of the second party has been terminated by the first party it is to be decided as to whether there was employer-employee relationship between the two. The second party has not exhibited any documents. His assertion that he was employed by the first party is not corroborated by any evidence. Of course, on his prayer this Tribunal had directed the first party to produce certain registers but the first party could not produce those documents on the ground that after thorough search it could not trace-out any such documents because prior to the second party's prayer for production of the documents the first party had destroyed its old papers. However the first party produced xerox copy of register of wages for the months of December 1994, December, 1996, December, 1997 and December, 1998. Since the entries in the register of wages did not support the second party those have not been marked as exhibits.

7. On behalf of the second party it is argued that for non-production of the documents this Tribunal has to take an adverse inference against the management. On the other hand the representative of the first party argues that drawing of adverse inference is not automatic. It is further submitted that in the fact situation of this case no such adverse inference can be drawn in as much as there is no material to show that the documents called for were in existence and could have been produced by the management. In this regard reliance has been placed on *Surendranagar District Panchayat Vrs. Dahyabhai Amarsinti* reported in 2006 (I) LLJ Page 424 (S.C.). Relying on the same decision it is also argued that the second party having failed to discharge his onus to prove that he was a workman with the first party this Tribunal cannot make an Award in his favour.

In this case the second party has failed to adduce both oral and documentary evidence to corroborate his own averment that he was employed by the first party as a "Mali". Documents like letter of appointment wage slip, documents, if any showing that during the period of his employment he was covered under the Employees State Insurance Act, 1948 and/or Employer Provident Fund Miscellaneous Provisions Act, 1952. It is well settled that the burden of proof is on the workman to show that he had worked for 240 days in a given year and this burden is not discharged only upon the workman's stepping into the witness box. The burden is discharged upon the workman adducing cogent evidence, both oral and documentary. The second party has not discharged the burden by adducing cogent evidence. It is submitted that the documents available with the management have been suppressed and therefore, an adverse inference should be drawn. In *R. M. Yellatti Vrs. Asst. Executive Engineer*, reported in J. T. 2005 (9) S. C. 340 referred to in AIR 2006 (S.C.) 392. It is held that drawing of adverse inference ultimately would depend on facts of each case. Mere affidavit or self-serving statements made by the workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. Mere non-production of Muster roll *per se* without any plea of suppression by the workman will not be the ground for the Tribunal to draw adverse inference against the management.

In the case at hand, the workman does not claim that he was engaged on daily wage basis. He seems to have taken the stand that he was holding a permanent post. So, it cannot be said that he was not issued with any letter of appointment. He claims to have served with the first party for about ten years. It is not believable that there was no piece of paper in his possession in connection with the employment. Therefore, on the inability of the first party to produce different registers such as Payment Register, Bonus Register, Ledger and Gate Attendance Register adverse inference cannot be drawn against the management. It is also rightly submitted on behalf of the first party that the second party could not get support from any of the co-workers who could have been examined in this case to get their oral evidence.

8. The first party admits that the second party was engaged by the M. D. in his personal capacity. On this averment it is submitted by the workman that the M. D. used to stay in the Guest House of the first party and the second party used to work as a "Mali" both in the factory premises and in the Guest House. Again this is based on self-serving statements of the second party and in absence of any other evidence no reliance can be placed on the workman's evidence. Thus, on the basis of the evidence available this Tribunal is not in a position to record a finding that the second party was employed by the first party and there was employer-employee relationship between the two.

In view of the aforesaid, it is not necessary to further discuss on the nature of disengagement and its legality. But this much can be said that if the second party is held to be a workman of the first party and he was employed during the period from 1987 to 1998, then his removal from employment is not in accordance with the provisions laid down under the Act and therefore, it is illegal.

*Issue No. 2 :—*9. The second party has failed to establish that he was ever employed by the first party. Therefore he is not entitled to any relief. Otherwise in the facts and circumstances of the case and considering his plea that he was not gainfully employed during the period, he would have been entitled to reinstatement with 50% back wages.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH

6-10-2010

Presiding Officer

Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH

6-10-2010

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government