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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2011

No. 9610—li/1(B)-21/1993-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd April 2011 in Industrial Dispute Case No. 75 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Asian Paints (India) Ltd. and its workman Shri Basanta Kumar Nayak was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 75 OF 2008

(PREVIOUSLY REGISTERED AS I.D. CASE No. 75 OF 2008 IN THE FILE OF
THE PRESIDING OFFICER, LABOUR COURT, BHUBANESWAR)

Dated the 23rd April 2011

Present :

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

Between :

Shri Sanjay Gupta .. First Party—Management
Depot Executive,
Asian Paints (India) Ltd.,
Gokul Building, Ice Factory Road,
P.O. College Square, Cuttack

And

Shri Basant Kumar Nayak, .. Second Party—Workman
At Thoria Sahi, P.O. Buxi Bazar,
Dist. Cuttack-753 001

Appearances :

For First Party—Management	..	Shri B. P. Tripathy, Advocate
For Second Party—Workman	..	Shri T. Lenka, Advocate

AWARD

This is a reference under Section 10 of the Industrial Dispute Act, 1947 (for short the Act) made by the Government of Odisha in Labour & Employment Department vide their Order No. 8712—li-(B)-21/1993-LE., dated the 18th July 1995 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-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

“Whether the termination of services of Shri B. K. Nayak by the management of M/s Asian Paints (India) Ltd., Cuttack by way of refusal of employment with effect from the 16th November 1991 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of the second party workman as narrated in the claim statement is that he had been working under the first party as a Sweeper since 1985. He was also doing other miscellaneous work in the Depot of the first party. He was discharging duties with satisfaction with a hope that his services would be regularised. After seven years of continuous service when he requested for his regularisation as well as enhancement of wages, the Management got dissatisfied and all on a sudden he was disallowed to work with effect from the 16th November 1991. Before such termination of service the provisions of Section 25-F of the Act were not complied. Thus, the termination being illegal, he be reinstated with back wages.

3. In the written statement it is contended by the first party management that since the second party had taken on contract the job of cleaning the Depot of the first party there was no master servant relationship between the parties. The second party used to clean the Depot once a day in the beginning of the office hours. He used to get the work done sometimes by himself and sometimes by engaging others. He used to receive payment for the work as per the terms of the contract. In 1990 the management entrusted the operation of the Godown to an Agency called “Clearing & Forwarding Agent”. However, the second party continued to take-up the cleaning and sweeping work. But, gradually he started showing apathy in discharging his contractual obligations. At last he stopped attending to his job. As a result, the Clearing & Forwarding Agent got the cleaning work done through its own employees.

4. The following issues have been settled :—

ISSUES

- (i) “Whether the termination of services of Shri B. K. Nayak by the management of M/s. Asian Paints (India) Ltd., Cuttack by way of refusal of employment with effect from the 16th November 1991 is legal and/ or justified ?
- (ii) If not, what relief the workman is entitled to ?”

5. The workman has examined himself as W.W. No.1. Similarly, the Office Assistant of the first party has been examined as M.W. No. 1.

FINDINGS

Issue No. 1

6. In view of the pleadings of the parties, the question to be first decided is as to whether there exists any employer-workman relationship between the parties. It is not in dispute that the second party was employed in the Depot of the first party to do the job of cleaning the Depot for which he used to receive payment on monthly basis. It is also not denied that the second party used to receive Rs. 250 per month though in three instalments. M.W. No. 1 says that the second party had been working as a Sweeper for house keeping and he used to receive the house keeping charges on monthly basis. But the Management's plea is that the workman had taken that job on contract basis and used to get it done either by himself or by sending some other persons. The management does not accept the second party as its employee. However, the second party does not claim to be a regular employee of the first party. Therefore, the evidence adduced by the first party to show that like other regular employees the second party was not getting the benefit of E.S.I. and E.P.F., that he was not issued with any appointment letter, that his name did not find place in the Attendance Register and Salary Register and that he did not get payment through payment advices issued from the first party's Head Office in Bombay does not disprove that the second party was not a workman under the first party as defined in the Act.

7. According to the first party, the second party used to complete the job of cleaning the Depot in the beginning of the working hours. It implies that the second party was not being engaged throughout the day and that within a very short period he used to complete his job. Even if this is accepted to be true it does not make any difference and does not make the second party a contractor. Rather, it proves that the second party was paid by the job and not per day. Perhaps, for that reason the second party was not getting a handsome amount in lieu of the job he used to handle. A person can be a workman even though he is paid not per day but by the job.

In the facts and circumstances, the second party cannot be said to be a contractor of the first party. He was a workman employed by the first party to do manual work for hire or reward. It is not disputed that the first party management does not come within the definition of 'industry' under the Act. Consequently, it is held that the second party was a workman of the first party who had, admittedly, rendered job continuously for about six to seven years. According to the second party, he was refused employment with effect from the 16th November 1991. But, according to the first party it is a case of voluntary abandonment of work. The plea of abandonment of job cannot be accepted without there being some evidence in support of such plea. The first party does not claim that when the workman stopped coming to the Depot to perform his work it had issued any notice to him inviting him to resume duties. Also from the pleadings of the parties there can be an inference that the workman was denied employment. According to the second party, he was refused employment when he repeatedly requested for enhancement of his wages as well as regularisation in service. According to the first party the total operational work conducted in the Depot Godown of the first party was entrusted to one Clearing & Forwarding Agent in the year 1990 and even thereafter the second party was continued for the cleaning and sweeping work. The discontinuation which is in dispute took place on and from the 16th November 1991. It is quite believable that after the introduction of the Clearing & Forwarding Agency to take up the entire operational work of the Godown the Agency did not require the services of the second party as it wanted to get the cleaning

work done through its own employees. Even then the management ought to have followed the provisions of Section 25-F of the Act to bring about a valid termination of service of the second party who had admittedly worked under the first party continuously for more than six years. It is also important to note that alleged retrenchment took place on the 16th November 1991 and the workman wrote a letter to the Depot Executive of the first party on the 22nd November 1991 with a copy to the Labour Machinery on the basis of which the District Labour Officer, Cuttack initiated the conciliation proceeding and on its failure the industrial dispute has been referred to this Tribunal. Thus, soon after the denial of employment the workman has raised the dispute which rules out any possibility of voluntary abandonment of job. It is a case of denial of employment which amounts to retrenchment and the requirements of Section 25-F of the Act having not been complied with the retrenchment is held to be illegal.

Issue No. (i) is answered accordingly.

Issue No. (ii)

8. The workman claims for his reinstatement with back wages. He was not a regular employee of the first party. He was not holding any regular post. Relief by way of reinstatement with back wages is no more automatic and such relief may be wholly inappropriate in a given fact situation even though termination of a workman is in contravention to the prescribed procedure. In the case at hand the workman had rendered more than six years of service. He was a manual worker completing his job in the beginning of the working hours of the Depot. He was aged about 24 by the time his services were terminated. According to the management, the total operational work of the Depot has been handed over to an Agency. Under such circumstances, compensation in lieu of reinstatement and back wages is found to be just and appropriate. Considering the nature of employment the amount of wages paid length of services rendered, the age of the second party at the relevant time and other facts and circumstances this Tribunal awards a compensation of Rs. 25,000 (Rupees twenty-five thousand) only to the second party. The first party to pay the compensation to the second party within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
23-4-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
23-4-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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