

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2466 CUTTACK, WEDNESDAY, NOVEMBER 9, 2011/KARTIKA 18, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th October 2011

No. 9625—li/1(BH)-47/1998-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th August 2011 in Industrial Dispute Case No. 213 of 1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, C.E.D., Balasore Division, Balasore and its workmen Shri Kartikeswar Behera and 37 others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 213 OF 1998

Dated the 17th August 2011

Present :

S.A.K.Z. Ahmed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The management of Executive Engineer, C.E.D., Balasore Division, Balasore. First Party—Management

And

Its Workmen Shri Kartikeswar Behera and 37 others. Second Party—Workmen

Appearances :

For the First Party—Management Shri D. N. Naik, A.M. (Legal)

For the Second Party—Workmen Shri G. K. Mohapatra

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. 14637—li/1(BH)-47/1998-LE., dated the 16th December 1998 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 C.E.D. Balasore in refusing employment to Shri Kartikeswar Behera and 37 others as per Annexure-A from the date mentioned against each is legal and/or justified ? If not, to what relief they are entitled ?”

3. The workmen’s case, in brief, as setout in their statement of claim is that they were working under the management as N.M.R. workers in the electrical construction and maintenance work of the Division in different areas as directed by the concerned Junior Engineer-in-Charge. They were getting at the rate of Rs. 650 per month as wages at the time of refusal of employment by the management. The workmen had neither received any communication nor any notice or notice pay and retrenchment compensation was given at the time of refusal of their employment by the management. The workmen were sincere in their work and had working in nature. The workmen represented several times to the management for their reinstatement of service with full back wages but the management did not pay any heed to it. After refusal of employment of the workmen, the management has regularised the services of junior workers. So in this back ground, the workmen have raised and industrial dispute before the Labour authority through the O.S.E.B. Workers Union and when the conciliation failed the matter was informed to the Government and the Government has referred this reference and this I.D. Case has been initiated wherein the workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management some of the workmen were engaged as N.M.R. under the management against construction works as and when required in short term basing on the scope of work. They were neither engaged continuously for 90 days nor were engaged for 240 days in a financial year. None of the workmen have completed 400 days of continuous engagement as N.M.R. as on the 1st September 1981, the 1st October 1986 and the 1st October 1991 and continuing on the roll of the management. So the question of refusal of employment by the management does not arise. According to the management the workmen have never been refused their employment and as such, the claim of the workmen are not justified. Further according to the management, since the matter relates to a belated period, it is difficult to find out the records in respect of all the workmen without any information. In the above circumstances, the management has prayed for dismissal of the claim of the workmen.

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 C.E.D. Balasore in refusing employment to Shri Kartikeswar Behera and 37 others as per Annexure-A from the date mentioned against each is legal and/ or justified ?
- (ii) If not, to what relief they are entitled ?”

6. In order to substantiate their pleas, the workmen have examined three witnesses altogether as W. Ws. 1, 2 and 3 proved the copy of E.P.F. Slip, copy of certificate, copy of experience certificate, copy of E.P.F. Slip, copy of office Order No. 4912, dated the 27th December 1983, copy of experience certificates and copy of Letter No. 4720, dated the 25th June 1998 under the cover of Exts. 1 to 7 respectively. Similarly the management has examined three witnesses altogether as M.Ws. 1, 2 and 3 and proved the copy of Letter No. 11043, dated the 23rd May 1987, copy of Letter No. 19528, dated the 22nd August 1995, copy of Letter No. 24661, dated the 17th October 1995, copy of Letter No. 5401, dated the 29th November 1994 along with list of N.M.Rs. and copy of office Order No. 6365, dated the 19th September 1995 under the cover of Exts. A to E respectively.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience and for better appreciation and adjudication under reference.

8. On perusal of the evidence of the workmen it reveals that they joined in the establishment of the management with effect from the 21st January 1985 to the 28th February 1993 as N.M.R. and continued to work such period till the date of their termination. It is stated by the W.Ws. (workmen witnesses) that the management without any rhyme and reason illegally terminated their services without giving any prior notice or notice pay and retrenchment compensation. The management had neither issued any charge nor any charge-sheet nor conducted any enquiry against them for any misconduct before such termination. The W.Ws. further stated that they have obtained certificates from the concerned officers of the management under cover of Exts. 2, 3, 6 and 6 series. W.W. 3 has also proved his E.P.F. Slip under cover of Ext. 4 and also the office order bearing No. 4912, dated the 27th December 1983 under cover of Ext. 5. Nothing has been elicited from their mouth during cross-examination to impeach their testimony by the management. On the other hand, none of the witnesses examined on behalf of the management have uttered a single word that the above stated workmen were never entrusted any work under their establishment rather they have admitted that some of the N.M. R. workers were made regular in the year 1995 and also admitted that all the workmen under the present reference were working in different sections under C.E.D., Balasore (as per the evidence reveals from the mouth of M.W. 2 under paragraph 4). M.W. 2 also admits that the above named workmen were receiving their wages monthly. On the above score it is clearly evident that the workmen as per the reference were working in the establishment of the management and continued till the date of their termination. According to the workmen, although they have rendered service continuously for the above period but the management without any rhyme and reason terminated their services without giving any prior notice or notice pay and retrenchment compensation. According to the workmen they are entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Industrial Disputes Act (hereinafter referred to as the Act) were not complied within the case of their termination. The fact with regard to the continuous service of the workmen having been rendered by them in the establishment of the management has not been disputed by the management. The stand taken by the management before this Court is that the management had not terminated the services of the workmen rather they voluntarily abandoned the job as reveals from the evidence of some of the witnesses examined on behalf of the management. But there is no material on record to suggest that the workmen had voluntarily abandoned the job.

9. Law is well settled that the provisions under Section 25-F of the Act being a beneficial legislation it has to be strictly complied with and is a mandatory precondition. The compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. There is also no dispute that under Section 25-F of the Act a workmen is entitled to one month's notice before retrenchment or one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting the retrenchment. The Hon'ble Apex Court in several decisions has consistently taken a view that the provisions of Section 25-F of the Act is a mandatory and any violation thereof will render the retrenchment void *ab initio*. Further law is well settled that even if the case set up by the management is taken to be true and corrected that the workmen had abandoned, then also his service cannot be terminated in the manner as it has done without complying the provisions of Section 25-F of the Act. In the present case the condition precedent has not at all been followed by the management while terminating the services of the workmen. In view of the legal position the management having been made in violation of the mandatory provisions of Section 25-F of the Act, in my view his void *ab initio*.

10. During course of argument, the management has contended that the present case is barred by principle of Limitation for the reason that the statement of claim as well as the reference of the Government goes to show that the present workmen were working since 1985, 1984, 1979, 1986, 1978, 1982, etc. and admittedly the present case has been filed in the year 1998 therefore, the workmen have slept over since long and raised their case at a belated stage. Hence the present case is barred by Limitation. On the above score, on perusal of the case record and connecting papers attached to it, it appears that the workmen had approached

the Conciliation Officer for a conciliation and it is only when the conciliation failed that matter was referred to this Court for final adjudication. Further from the factual conciliation failure report under Section 12 (4) of the Act pertaining to the Industrial Disputes Act. Since there is a frequent correspondences between the Working President of the Union and the management, I am of the view that the contentions piloted by the management with regard to the Limitation is rejected being devoid of any merit. In such view of the matter, I am of the opinion that the workmen are entitled to the relief as prayed for.

11. The schedule of reference reveals that the termination of the workmen has been effected on different dates. Admittedly the management has not availed the services of the workmen with effect from the date of their termination. In such premises, the workmen are entitled to be reinstated in service but on the facts and circumstances of this case, as the workmen have not worked from the date of their termination of service, they are not entitled to get any back wages. Both the above issues are answered accordingly.

12. Hence it is ordered :

That the action of the management of M/s C.E.D., Balasore in refusing employment to Shri Kartikeswar Behera and 37 others as per Annexure-A from the date mentioned against each is illegal and unjustified. All the workmen under the present reference are entitled to be reinstated in service 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. A. K.Z. AHMED
17-8-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHMED
17-8-2011
Presiding Officer
Labour Court, Bhubaneswar

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