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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th November 2011

No. 10039—li/1(B)-48/2005-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th April 2011 in Industrial Dispute Case No. 67 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Project Director, Chandrabhaga Prawn Hatchery, Chandrabhaga, Konark, Dist. Puri and their workman Shri Sambhu Palit was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 67 OF 2005

Dated the 19th April 2011

Present :

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

Between :

The management of
Project Director, Chandrabhaga Prawn Hatchery
Chandrabhaga, Konark, Dist. Puri. First Party—Management

And

Their workman
Shri sambhu Palit Second Party—Workman

Appearances :

For the First Party—Management Shri S. K. Das

For the Second Party—Workman himself Shri S. Palit

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 have referred the matter in dispute to this Court vide Order No. 9251—li/1(B)-48/2005-LE., dated the 29th September 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the Project Director, Chandrabhaga Prawn Hatchery, Chandrabhaga, Konark, Dist. Puri in retrenching the service of Shri Sambhu Palit, ex Contingent workman with effect from the 3rd March 2002 is legal and/or justified ? If not, to what relief Shri Palit is entitled to ?”

3. The case of the workman in brief is that he started his service under the management during the construction period in July, 1991 as a D. L. R. Thereafter, after completion of the construction work he was retained in the said Project as D. L. R. During such continuance as D. L. R. he was brought to the N. M. R. category in the project. He was working to the utmost satisfaction of the management. Initially he was getting Rs. 25 per day which was gradually increased and his last pay was Rs. 80 per day. On the 31st March 2002 the management passed the retrenchment order and in fact retrenched the workman with effect from the 31st March 2002 on false ground of acute financial stringency and reduction in work load. But in fact there was no reduction of work load. The work in the project is continuing as earlier without any reduction in the quantity of production and the work has been done by engaging other persons drawn from outside and by juniors. While passing the retrench order the management has given all the benefits as per Section 25-F of the Industrial Disputes Act and gratuity. But his period of service was treated from 1994 but not from July, 1991. His juniors are also working at present which is complete violation of the principle of 'last come first go'. His juniors namely Madhusudan Behera, Kapil Behera, Nirmal Biswal and Madhusudan Moharana were working in the project after retrenchment of the workman and are continuing. The workman made a representation to the management on the 28th November 2002 to withdraw his illegal retrenchment order and when the management remained silent, he approached the labour authority who did not interfere on a plea that a dispute was raised earlier and the same is subjudged in the Court between the management and the number of workman with regard to retrenchment notice dated the 30th September 2001. When the dispute was raised, the management did not give effect to the said notice. However the present notice of retrenchment is no way connected with the earlier notice dated the 30th September 2001. So the workman takes shelter of the Hon'ble Court and in the writ jurisdiction and by the intervention of the Hon'ble Court the concerned District Labour Officer reconciled the case and on the failure of the conciliation, the matter was referred 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. No written statement is filed nor any evidence is adduced from the side of the management

to defy the claim of the workman. Further the management was set *ex parte* vide Order, dated the 1st July 2005.

5. No doubt, the claim of the workman remained unchallenged but at the same time before discussing the evidence of the workman it is pertinent to mention here that the workman was discharged from his job since the 27th February 2002 and he challenged the said order of the management before the Member, Co-operative Tribunal, Orissa, Bhubaneswar bearing Service Dispute Case No. 2/ 2003. The learned Member, Co-operative Tribunal on the 17th June 2005 set aside the order of discharge of the workman dated the 27th February 2002 and directed the management to reinstate the workman in service forthwith with all back wages. Against the order passed by the learned Member, Co-operative Tribunal, the management filed a review petition before the Member, Co-operative Tribunal and the same was also rejected by the said Court. Finding no other way out, the workman filed a writ application under Articles 226 and 227 of Constitution of India before the Hon'ble High Court of Orissa, Cuttack bearing W. P. (C) No. 11044 of 2009 for issuance of a direction to the management to implement the Order passed by the Member, Co-operative Tribunal in Service Dispute No. 2/2003 and accordingly the Hon'ble High Court of Orissa, Cuttack Pleaded to allow the petition of the workman and directed the management to comply the order of the Co-operative Tribunal vide its Order No. 8, dated the 13th May 2010. In view of the direction of the Hon'ble High Court of Orissa, Cuttack and unchallenged testimony of the workman the management has failed to pay the back wages from the 1st November 1998 to the workman but partially complied the order of the Hon'ble High Court of Orissa, Cuttack for reinstatement of the workman.

6. Hence it is ordered :

That the action of the management of Sujapur Service Co-operative Society in suspending Shri Radheshyam Biswal, Additional Secretary with retrospective effect from the 8th June 2000 and again discharging him from service with effect from the 27th February 2002 vide Order No. 24, dated the 27th February 2002 is neither legal nor justified. Since the workman has already been reinstated in service with effect from the 8th September 2010, he is only entitled to get full back wages from the 1st November 1998 to the 7th September 2010. The management is directed to pay the back wages of the workman forthwith from the date of its publication failing which the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHMED

08-09-2011

Presiding Officer

S. A. K.Z. AHMED

08-09-2011

Presiding Officer