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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th November 2011

No. 10050—li/1(B)-47/2003-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th September 2011 in Industrial Dispute Case No. 30 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Surya Udyog Ltd., Paradeep and their workman Shri Narahari Behera, Supervisor was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 30 OF 2004

Dated the 20th September 2011

Present :

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

Between :

The management of .. First Party—Management
M/s Surya Udyog Ltd., Paradeep.

And

Their workman .. Second Party—Workman
Shri Narahari Behera, Supervisor.

Appearances :

For the First Party—Management .. None

For the Second Party—Workman himself .. Shri N. Behera

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, 1947 have referred the matter in dispute to this Court vide Order No. 3180—li/1(B)-47/2003-LE., dated the 31st May 2004 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 Surya Udyog Ltd., Paradeep in refusing employment to Shri Narahari Behera, ex Supervisor with effect from the 16th August 2002 and subsequently terminating his service vide Order, dated the 19th September 2002 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?”

3. The workman's case, in brief, as set out in his statement of claim is that he was working as a Supervisor under the management with effect from the 22nd April 1982. While the workman was working as such, he availed leave from the 30th July 2002 to the 12th August 2002 on account of death of his father with due permission of the management. After returning from the leave, he joined on the 13th August 2002. But all of a sudden, on the 15th August 2002 the management called upon him after the duty and forced him to resign from his service voluntarily and work under the management as a temporary worker on a contract or casual basis. As the workman did not agree with the proposal of the management, the workman was not allowed to enter inside the factory premises by the Security Guards of the management with effect from the 16th August 2002. Although the workman was going to the gate of the management every day but he was not allowed to discharge his normal duty. Thereafter the management issued a letter on the 31st August 2002 to call upon the workman to show cause for his unauthorised absence within 24 hours which was received by the workman in later and immediately he submitted his reply to the show cause. The management had issued another letter, dated the 12th September 2002 stating therein to make alternative arrangement or engage another person in his place. But without considering his reply, the management passed an order of termination vide letter, dated the 19th September 2002 violating the principle of natural justice and the rules contemplated in the Industrial Disputes Act, 1947. At the time of termination, the management has not complied the provisions of Section 25-F of the Industrial Disputes Act. Hence, according to the workman the order of termination passed by the management is illegal, unjustified and improper and also amounts to unfair labour practice. On these backgrounds, the workman has prayed for his reinstatement in service with full back wages.

4. The management was set *ex parte*.

5. In order to substantiate his plea, the workman has examined himself as W. W. 1. In his affidavit evidence the workman has stated that he was working as a Supervisor under the management since 1982 and accordingly E. P. F. has been deducted from his monthly salary and also he was a member of E.S. I. having an E. S. I. Card. Due to death of his father, he was on leave from the 30th July 2002 to the 12th August 2002 with due permission of the management. He joined

on the 13th August 2002. But all of a sudden from the 16th August 2002 the management did not allow him to enter inside the factory premises with the help of Security Guards. The management vide its letter, dated the 31st August 2002 served a show cause notice and the workman gave his reply on the 13th September 2002. But the management without considering his reply and without any enquiry, had terminated his service illegally with effect from the 19th September 2002. The management has also not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 while terminating his service. Since the management has not been cross-examined the workman and also did not adduce any evidence, the evidence adduced by the workman has remained unchallenged.

6. It is stated by the workman that no prior notice was served on him before he was terminated. Also notice pay and retrenchment compensation was not paid to him before refusal of employment by the management. Thus the management has violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and precondition one. So in view of the unchallenged testimony of the workman, I came to the finding that the action of the management in refusing employment to the workman with effect from the 16th August 2002 and subsequently terminating his service vide Order, dated the 19th September 2002 is neither legal nor justified. The workman is entitled to be reinstated in service with full back wages.

7. Hence ordered :

That the action of the management of M/s Surya Udyog Ltd., Paradeep in refusing employment to Shri Narahari Behera, ex Supervisor with effect from the 16th August 2002 and subsequently terminating his service vide Order, dated the 19th September 2002 is illegal and unjustified. The workman Shri Behera is entitled to be reinstated in service with full back wages. The management is directed to implement this Award within a period of one month 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 *ex parte*.

Dictated and corrected by me.

S. A. K.Z. AHAMED
20-09-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
20-09-2011
Presiding Officer
Labour Court, Bhubaneswar

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