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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th November 2011

No. 10582—li/1(B)-94/2004 (Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th August 2011 in Industrial Dispute Case No. 16 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Chief Executive, Cuttack Municipal Corporation, Cuttack and their workman Shri Kartik Ch. Samal, Ex-D.L.R. Mate was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 16 OF 2005

Dated the 11th August 2011

Present :

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

Between :

The Management of M/s Chief Executive, Cuttack Municipal Corporation, Cuttack. First Party—Management

And

Their Workman Second Party—Workman
Shri Kartik Ch. Samal, Ex-D.L.R. Mate.

Appearances :

For the First Party—Management Shri S. K. Das, Junior Assistant

For the Second Party—Workman Shri T. Lenka, Advocate

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 have referred the matter in dispute to this Court vide Order No. 2981—II/1(B)-94/2004-LE., dated the 19th March 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of service of Shri Kartik Ch. Samal, D.L.R. Mate with effect from the 1st June 2002 by the Chief Executive, Cuttack Municipal Corporation, Cuttack by way of refusal of employment is legal and/or justified ? If not, to what relief Shri Samal is entitled ?”

3. The workman’s case, in brief, as set out in his statement of claim is that he was working as D.L.R. Mate with effect from the 1st August 1998 on a monthly wage of Rs. 1,500 till the date of termination by way of refusal of employment i.e., on the 1st June 2002, continuously without any break. He was performing his duty sincerely, efficiently and to the best satisfaction of the management. There was no allegation against him. Though he was engaged as D.L.R. Mate, but his nature of work assigned to him by the management was regular and continuous. So he represented and approached to the management several times to increase his wages and to regularise his service but to no avail. Rather the management bore grudge against him and terminated his service by way of refusal of employment with effect from the 1st June 2002. Before termination of service of the workman the management has not followed the due procedure of law. Therefore according to the workman, the termination of his service is illegal, unjustified, motivated and *mala fide* intention. So the workman has raised an industrial dispute before the labour authority 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 workman has prayer for his reinstatement in service with full back wages.

4. The management appeared and filed written statement admitting that the workman was engaged as D.L.R. Mate with effect from the 1st August 1998. But according to the management, the Government in Housing & Urban Development Department vide their Order No. 36051, dated the 15th December 2000 directed to disengage all D.L.Rs./N.M.Rs. engaged after the 19th May 1997. So by virtue of that order the workman along with other D.L.Rs./N.M.Rs. were disengaged. So in this background the workman is not entitled to get any relief as prayed for.

5. In view of the above pleadings of the parties, the following issues are settled:—

ISSUES

- (i) “Whether the termination of services of Shri Kartik Ch. Samal, D.L.R. Mate with effect from the 1st June 2002 by the Chief Executive, Cuttack Municipal Corporation, Cuttack by way of refusal of employment is legal and/or justified ?
- (ii) If not, to what relief Shri Samal is entitled ?”

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents such as copy of office order, dated the 16th April 2001, copy of nominal muster rolls, copy of pay orders, copy of Office Order No. 1473, dated the 12th July 2001 and copy of Office Order No. 1447, dated the 11th July 2001 under cover of Exts. 1, 2, 2/a, 3, 4 and 5, respectively.

7. It is pertinent to mention here that the management has appeared and filed written statement and issues were settled. But thereafter the management remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

8. *Issue Nos. (i) and (ii)* — Both the issues are taken up together for discussion for convenience.

The W.W. 1 (workman) filed his affidavit evidence wherein he has stated that he was working under the management with effect from the 1st August 1998 to the 1st June 2002 continuously without any break, but the management terminated his service without complying the provisions of Section 25-F of the Industrial Disputes Act. He was getting his wages at the rate of Rs. 1,500 per month. Further according to W.W. 1 neither any charge was framed against him nor any domestic enquiry was conducted against him prior to his termination of service.

9. The management has taken the plea in the written statement that as per the order of the Government, the workman was terminated from his service. But the said fact has not been substantiated by the management in any manner by adducing evidence or proving the documents to that effect. Therefore, the evidence adduced by the workman remained unchallenged. On perusal of the documents as available in the case record, it clearly shows that the workman has worked for more than 240 days in twelve calendar months preceding to the date of his termination and at the time of termination the management has not followed the provisions of Section 25-F of the Industrial Disputes Act which is a mandatory and precondition one. So on careful consideration of all the materials available in the case record, I came to the finding that the termination of service of the workman with effect from the 1st June 2002 by the management by way of refusal of employment is neither legal nor justified. So the workman is entitled to be reinstated in service with full back wages. Hence, both the issues are answered accordingly.

10. Hence, ordered :

That the termination of service of Shri Kartik Ch. Samal, D.L.R. Mate with effect from the 1st June 2002 by the Chief Executive, Cuttack Municipal Corporation, Cuttack by way of refusal of

employment is illegal and unjustified. The workman Shri Samal 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% (ten per cent) per annum till its realisation.

The reference is thus answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
11-8-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
11-8-2011
Presiding Officer
Labour Court, Bhubaneswar

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