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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th November 2011

No. 10568—li/1(B)-1/2005(Pt)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st March 2011 in Industrial Dispute Case No. 09 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Chief Executive, Cuttack Municipal Corporation, Cuttack and their workman Shri Lokanath Satapathy, 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. 9 OF 2005

Dated the 31st March 2011

Present :

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

Between :

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

And

Their Workman .. Second Party—Workman
Shri Lokanath Satapathy,
D.L.R. (Mate).

Appearances :

For the First Party—Management .. 1. Shri R.K. Samal, Advocate
2. Shri S. Pattnaik, Advocate
3. Shri K. K. Mohanty, Advocate
4. Shri R.C. Satapathy, Advocate

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, 1947 have referred the matter in dispute to this Court vide Order No. 1757—li/1(B)-1/2005-LE., dated the 19th February 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Lokanath Satapathy, 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 Satapathy is entitled ?”

3. The case of the workman in brief is that he was working under the management as D.L.R. (Mate) and joined in service on the 1st March 1999. He was working at the rate of Rs. 1,500 per month and rendered continuous service under the management for about 4 years for the period from the 1st March 1999 to the 1st June 2002 to the best satisfaction of the authorities. The nature of work assigned to him was a regular and continuous in nature. As the workman was working continuously for more than the stipulated period, he represented and approached several times to the management for increasing his wages like other regular employees in the category of Mate but the management did not pay any heed to it. On the other hand, the management by grudge terminated his service by refusing employment on the 1st June 2002 without following the mandatory provisions of Section 25-F of the Industrial Disputes Act. Therefore, the workman raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received from the Government and this I.D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workman though he admits that the workman was working as D.L.R. (Mate) under the management. According to the management, the workman was engaged on the 1st March 1999 illegally under the management without Government approval as well as without following proper procedure of law. The Government in Housing & Urban Development Department vide Order No. 36051, dated the 15th December 2000 directed to disengage the N.M.Rs./D.L.Rs. engaged after the 19th May 1997. So in view of the Government order and provisions of Section 73(B) of Odisha Municipal Act, 1950 the workman was disengaged from service. Hence 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 Lokanath Satapathy, 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 Satapathy is entitled ?”

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved the documents marked as Exts. 1 to 9. Similarly the management has examined his Junior Assistant as M.W. 1 and proved documents marked as Exts. A to C.

FINDINGS

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

The workman filed his affidavit evidence in support of his pleading. According to him, he was working as D.L.R. (Mate) under the management at the rate of Rs. 1,500 per month as his wages. He joined in duty on the 1st March 1999 and served under the management from the 1st March 1999 to the 1st June 2002 but the management terminated his service without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act regarding prior notice or notice pay and retrenchment compensation, etc. The workman has not filed his appointment order but the management has admitted that the workman was working as Mate. M.W. 1 deposes that the workman has been engaged as Mate on daily part-time basis as per the need of job in Ward No. 32 but never in continuity. But this plea has not been taken initially at the time of filing of written statement. As per the policy decision of the Government in Housing & Urban Development Department communicated in Order No. 36051, dated the 15th December 2000 vide Ext. A, the workman was disengaged from service along with others who were engaged in service after the 19th May 1997. Perused the documents filed by both the parties.

8. From the evidence it shows that the management has admitted that the workman was working as Mate with effect from the 1st March 1999 but his service was terminated by way of refusal of employment basing on the ban order of the Government. According to the pleading of the management vide amendment provision contained in Section 73(B) of Odisha Municipal Act the workman was disengaged and the workman was illegally engaged after the cut-off date i.e. after the 19th May 1997 without following the proper procedure and without permission of the Government. Further according to the management the procedure for retrenchment prescribed in the Industrial Disputes Act is not relevant. But after amendment of Odisha Municipal Act in view of the proviso in Section 73(B) of Odisha Municipal Act the Section 25-F of the Industrial Disputes Act is applicable to a workman in case of termination of service. The said proviso reads as follows :—

“73-B. Bar for regularisation of services—No person who is appointed on a temporary basis under sub-section (2) of Section 73 and is continuing as such at the commencement of the Odisha Municipal (Amendment) Act, 1997 shall have or shall be deemed ever to have a right to claim for regularisation of his service on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reason thereof. Provided that in case of workman falling within the scope of Section 25-F of the Industrial Disputes Act, 1947, one month’s wages and such compensation as would be payable under the said section shall be paid in case of termination of services”.

So in view of such provisions of said statute Section 25-F of the Industrial Disputes Act is applicable to such temporary service holders. So the plea of the management in this regard has no force at all.

9. The workman has taken the plea that he was working continuously for the period from the 1st March 1999 to the 1st June 2002. In order to get the benefit under Section 25-F of the Industrial Disputes Act the workman has to work 240 days in 12 calendar months preceding to the date of termination. According to the settled principle of law as reported in A. I. R. 2010 S.C. 1236 that burden of proof that the workman was on continuous service of 240 days initially lies on the workman. When the workman claimed and deposed that he worked for 240 days burden of proof shifts to the employer-management to prove that he did not complete 240 days of service in requisite period to

constitute continuous service as the workman would have difficulty in having access to all official documents, muster rolls, etc. in connection with his service. In the instant case the workman deposed and claimed regarding such continuous service for the period from the 1st March 1999 to the 1st June 2002 and also proved two attendance registers for the month of January and February, 2000 vide Exts. 6 and 6/a which show that for the month of January, 2000 he has worked for 31 days and for the month of February, 2000 for 29 days. So the plea of the management that he has worked as Mate on daily part-time basis is not correct. On the other hand, the management has not proved any document in support of his denial plea regarding the days of work devoted by the workman though he has proved some other documents vide Exts. A to C. Admittedly the provisions of Section 25-F of the Industrial Disputes Act has not followed by the management while terminating the service of the workman by way of refusal of employment which is clear violation 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 as discussed above, 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 and the workman is entitled for reinstatement in service.

10. Regarding back wages, when the workman has not worked for the management during the period in question and has not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified as pleaded. Similarly in a catena of decisions of the Hon'ble Supreme Court it has been held that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. So in the instant case, taking all the materials as discussed above, I am of the opinion that instead of granting full back wages to the workman a lump sum amount of Rs. 25,000 as compensation in lieu of back wages will meet the ends of justice in this case. Hence both the issues are answered accordingly.

11. Hence Ordered:

That the termination of services of Shri Lokanath Satapathy, 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 Satapathy is entitled to be reinstated in service with a lump sum amount of Rs. 25,000 (rupees twenty-five thousand) only as compensation in lieu of back wages. The management is directed to implement this Award forthwith.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
31-3-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
31-3-2011
Presiding Officer
Labour Court, Bhubaneswar

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