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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th November 2011

No. 10612—1i/1(B)-99/2001(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th September 2011 in Industrial Dispute Case No. 270 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of Assistant Fruit Utilisation Officer, Odisha, Bhubaneswar and their Workman Shri Kailash Ch. Nath was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 270 OF 2008 (Previously registered as I. D. Case No. 5 of 2002 in the file of the P.O., Labour Court, Bhubaneswar)

Dated the 7th September 2011

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
Assistant Fruit Utilisation Officer,
Orissa, Bhubaneswar. .. First Party—Management

And

Shri Kailash Ch. Nath,
S/o Late Vehab Nath,
Village Gotelgram,
P.O. Satyabhamapur,
P.S. Balianta,
District Khurda. .. Second Party—Workman

Appearances :

Shri S. S. Kabi, Government Pleader	..	For the First Party—Management
Shri T. Lenka, Authorised Representative	..	For the Second Party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 870—li/1 (B)-99/2001-LE., dated the 21st January 2002 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21—32/2007-LE., Dt. 04-04-2008. The Schedule of reference runs as follows :—

> "Whether the termination of services of Shri Kailash Chandra Nath, N.M.R. Labour with effect from the 1st February 1999 by way of refusal of employment by the Assistant Fruit Utilisation Officer, Orissa, Samantarapur, Bhubaneswar is legal and/or justified ? If not, to what relief Shri Nath is entitled ?"

2. In this case the workman has taken the stand that on 1-6-1981 he joined as an N.M.R. employee under the first party and worked as such continuously till 31-1-1999. Thereafter the management, without any reason, refused him employment. It is claimed that when the workman repeatedly demanded for regularisation of his service he was denied employment. It is also claimed that the management has given fresh engagement to others even after his retrenchment. Challenging the denial of employment as illegal, the workman prays for his reinstatement with full back wages.

3. The first party in its written statement has taken the stand that the workman had worked on daily wage basis from 27-4-1983 to 1986-1987. Thereafter he abstained from duty till 1994. Again he worked on daily wage basis from 9-4-1995 to 1-7-1997. However, the workman had never completed 240 days of work in a calendar year during the entire of his work period. According to the first party, the total days of work done by the second party in each year is as follows :—

1. 1983-1984	. .	71	days
2. 1984-1985	. .	2	days
3. 1985-1986	. .	67	days
4. 1994-1995	. .	58	days
5. 1995-1996	. .	206	days
6. 1996-1997	. .	93	days
7. 1997-1998	. .	13	days

Thus, it is asserted that the second party is not entitled to get any relief.

4. The following issues have been settled in this case :

ISSUES

(*i*) Whether the termination of services of Shri Kailash Chandra Nath, N.M.R. labour with effect from the 1st February 1999 by way of refusal of employment by the Assistant Fruit Utilisation Officer, Odisha, Samantarapur, Bhubaneswar is legel and/or justified ?

(*ii*) If not, what relief Shri Nath is entitled to ?

5. The workman has examined himself as W. W. No. 1. The present Assistant Fruit Utilisation Officer of the first party is examined as M. W. No. 1. Each side has exhibited one document.

FINDINGS

6. *Issue Nos.* (*i*) & (*ii*)—Whereas the second party claims that he had worked continuously from 1-6-1981 to 31-1-1999, the first party claims that the second party had never completed one year of continuous service as defined under Section 25-B of the Act. Therefore, the burden is on the workman to prove that he had completed one year of continuous service prior to the alleged termination of service. The workman has failed to adduce documentary evidence to prove his contention. During cross-examination he has stated that the Muster Rolls maintained by the first party can show that he had been working continuously since June 1981 till the alleged date of retrenchment. On the prayer of the workman the first party has produced its Muster Rolls. Learned Advocate of the second party verified the entries made in the Muster Rolls and submitted that the entries are not useful for the purpose of contradicting what the management has contended as to the number of days worked by the second party which is reflected in the table under paragraph 3. The management has exhibited a list showing the details of the number of days worked by the second party in each month covered by the periods 1983-84 to 1985-86 and 1994-1995 to 1997-1998. It is submitted that the list which is marked Ext. A has been prepared on the basis of the Muster Rolls which are produced before this Tribunal on the prayer of the second party. Learned Advocate for the second party has verified the entries in the Muster Rolls but failed to find out any discrepancy between the entries made in the Muster Rolls and the figures shown in Ext. A. So, it is presumed that the figures shown in Ext. A tally with the figures shown in the table given under Para No. 3. The entries in Ext. A reflect that the workman has not worked for 240 days in any of the twelve calendar months counted in any manner. Therefore, it cannot be said that the workman was in continuous service for one year under the first party during the entire period of his employment. Consequently, Section 25-F of the Act is not applicable to his case.

7. In G. Yadi Reddy *Vrs.* Management of Brooke Bond India Limited and another, 1994 Lab. I. C. 186 (Andhra Pradesh High Court), it is observed that the phrase “continuous service for a period” occurring in sub-section (1) does not mean any period however short. That phrase has to be construed in the light of sub-section (2) which lays down the duration of the period and the method of reckoning it. Otherwise it would lead to bizarre consequences, with the result that a workman who was employed as a casual labourer even for a couple of days would get the right to claim the benefit of the protection of Section 25-F of the Act. In the reported case the workman had taken the plea that he worked for more than 240 days in every year during 1969 to 1979. The Labour Court had found that the workman did not work for 240 days in every year since 1969. It was submitted on behalf of the workman in that case that the workman was not given work although he was willing to take-up work for which the word “cessation of work” in sub-section (1) of Section 25-B of the Act should be interpreted with reference to the workman but not from the point of view of the management. The Hon’ble High Court observed :

> “We cannot agree. The words “cessation of work” should be interpreted, in our considered opinion, ejusdem generis which implies that when a particular expression precedes a general expression, the latter should be interpreted in the light of the

former. If so interpreted, the expression "cessation of work" should be interpreted in the light of illegal strike or lockout and matters of a similar nature which are not difficult to be foreseen like power failure, imposition of curfew, declaration of bandhs, breakdown of law and order and related matters. Merely because a casual worker was willing to work, there is no obligation on the part of the company to provide him with work even if there is no work."

In the case at hand the second party has not taken the stand that he was ready and willing to work but the management was not giving him employment throughout the month. He has also not pleaded that even though work was available the first party was not giving him employment. It is also not pleaded that the first party adopted unfair labour practice by not giving work to the workman in order to deprive him from completing 240 days of work in a year. On the other hand, he has claimed to have worked continuously from 1-6-1981 to 31-1-1999 which is found to be false. Therefore, he is not entitled to get the protection of Section 25-F of the Act.

8. It is contended by the workman that after termination of his service the management has given regular appointment to new persons but did not recall him to resume duties. This plea is not sufficient to attract the provisions of Section 25-G of the Act. The management is at liberty to give regular appointment and in the absence of materials showing that the workman was entitled to get regular appointment it cannot be said that the management has violated any mandatory provisions of the Act.

9. In the result, the alleged termination of service of the workman is neither illegal nor unjustified. Consequently, the second party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
7-9-2011
Presiding Officer, Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
7-9-2011
Presiding Officer, Industrial Tribunal
Bhubaneswar

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

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