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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th November 2011

No. 10704—li/1-(B)-272/1991(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th September 2011 in I. D. Case No. 121/1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of O.S.R.T.C., Cuttack and their Workman Shri Bijoy Kumar Barik was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 121 OF 1993

Dated the 17th September 2011

Present :

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

Between :

The Management of . . . First-party—Management
O.S.R.T.C., Cuttack.

And

Their Workman . . . Second-party—Workman
Shri Bijoy Kumar Barik,
Vill. Mukundapur, P.O. Chandol,
Dist. Cuttack.

Appearances :

Shri G. Tudu, L.W.O.	. . .	For the First-party—Management
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Shri T. Lenka, Advocate and Shri B. Satpathy, Advocate.	. . .	For the Second-party—Workman

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. 10313—li/1(B)-272/1991-LE., dated the 7th August 1993 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the termination of services of Shir Bijoy Kumar Barik, Driver by way of refusal of employment with effect from the 28th October 1989 by O.S.R.T.C., Cuttack is legal and/or justified ? If not, to what relief he is entitled ?"

3. The workman's case in brief, as set out in his statement of claim is that he was appointed as a Driver under the management with effect from the 29th October 1986. He was in continuous service under the management since the date of his initial appointment till the date of his termination with effect from the 28th October 1989. He has stated that there was an accident on Dt. 19-1-1987 in the route of Kendrapara to Jambu and the same fact was published in the newspaper. According to him, he was not connected with the said accident though he was Driver of Bus No. OAC-4184 from Kendrapara to Jambu on that particular date. Due to the accident and when the news was published, a G.R. Case was filed by the police in which the workman was involved. Prior to the disposal of the G.R. Case, the management charge-sheeted the workman and decided to conduct an enquiry. The enquiry was held. He has challenged that the enquiry was not fair and proper. After enquiry, the workman was penalised to give Rs. 13,000 and the same was decided to be deducted from his monthly salary at the rate of Rs. 100 per month. He made a representation to the Managing Director of the management. Further after the accident and during the so-called enquiry he was never placed under suspension and he was denying to work regularly. In the meantime there was a strike for the workers and the said strike was over and all the workers joined in their respective works. But on Dt. 28-10-1989 when the workman went to join his duty, the A.T.M., Kendrapara refused him to give any work and to drive the bus and informed that his service has been terminated. He has claimed for his termination is illegal, unjustified and motivated and he is entitled to be reinstated in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman was appointed as a substitute Driver on a consolidated pay and as per his term of appointment his services were terminated. The total strength of the management has decreased for which the management could not provide employment to the workman. The total strength of the management has decreased to such an extent that the senior than the workman have been retrenched and the permanent staff were sitting idle. It is not possible on the part of the management to give employment to the workman due to reduction of buses.

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

ISSUES

- (i) "Whether the termination of services of Shri Bijoy Kumar Barik, Driver by way of refusal of employment with effect from the 28th October 1989 by O.S.R.T.C., Cuttack is legal and/or justified ?
- (ii) If not, to what relief he is entitled ?"

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents such as the xerox copy of recovery order communicated to the workman vide Memo. No. 2927, dated the 15th March 1989 under the cover of Ext. 1. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

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

The workman in his affidavit evidence has stated that he was serving as Driver under the management since Dt. 29-10-1986. His service was terminated on Dt. 28-10-1989. He was the Driver of Bus No. OAC-4184 and he did not cause the accident which took place on Dt. 19-1-1987 and he is no way responsible for the same. According to him, only basing on the publication of the news in the newspaper, a G.R. Case was filed against him by the police. The said G.R. Case was ended with acquittal. The management has also charge-sheeted him and conducted an enquiry which was not according to the principle of natural justice and the same was unfair and improper. But after the enquiry a penalty of Rs. 13,000 was imposed against him. Similarly he has corroborated the other facts stated by him in his statement of claim that due to strike of the workers, he did not work during the strike period and after the strike, when all the workers joined, he was refused employment by the management. Subsequently he made several requests for consideration of his case but no action was taken on his representations and requests. As such, he raised an industrial dispute and his claim is to be reinstated in service with full back wages. He has proved the xerox copy of the recovery order under the cover of Ext. 1. For his due performance, he was awarded with silver medal and a wall clock as prize in the year 1988-1989 as he was the best Driver under the management.

8. The oral evidence adduced by the workman gets corroboration from the documentary evidence. Without any rebuttal evidence, there is no ground to disbelieve the sworn testimony of the workman. Although the workman has stated in his statement of claim as well as in his affidavit evidence that there was an accident published in the newspaper, a G. R. Case has been initiated against the workman, an enquiry was conducted by the management and a penalty of Rs. 13,000 was imposed on the workman but the management has not whispered a single word in its written statement about those facts. So the workman deserves to be reinstated in service. But, when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of full back wages is not justified. However, in the facts and circumstances of this case, as discussed earlier, I am of the opinion that instead of granting full back wages, 50% back wages will meet the ends of justice.

9. Hence Ordered :

That the termination of services of Shri Bijoy Kumar Barik, Driver by way of refusal of employment with effect from the 28th October 1989 by O.S.R.T.C., Cuttack is neither legal nor justified. The workman Shri Barik is entitled to be reinstated in service with 50% back wages. The management is directed to implement this Award within a period of two months from the date of 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. AHAMED
17-9-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
17-9-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government