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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th November 2011

No. 10709—Ii/1 (B)-224/1992(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2011 in Industrial Dispute Case No. 53 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of Odisha State Road Transport Corporation and their workman Shri Indramani Sahoo, ex-Driver was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 53 OF 2008
The 28th March 2011

Present :

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

Between :

The Management of— Odisha State Road Transport Corporation, Jajpur Road/ Odisha State Road Transport Corporation, Cuttack.	. .	First-party Managements
And		
Shri Indramani Sahoo, At Paikarapur, P. O. Asureswar, Dist. Cuttack.	. .	Second-party Workman

Appearances :

Shri Ghasiram Tudu, Labour Welfare Officer.	. .	For the First-party Management
Shri Trilochan Lenka, Advocate	. .	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. 14440—Ii/1(B)-224/1992-L.E., dated the 8th November 1994 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—Ii/21-32/2007-L.E., dated the 4th April 2008. The schedule of reference runs as follows :

> "Whether the termination of services of Shri Indramani Sahoo, Sub-Driver by the management of Odisha State Road Transport Corporation with effect from the 20th December 1989 is legal and/or justified ? If not, to what relief he is entitled ?"

2. In the claim statement the second-party has stated that he was selected in an interview to be appointed as a Driver in the establishment of the D.T.M., Odisha State Road Transport Corporation, Cuttack (first-party). Consequent upon such selection he was appointed as a Driver with effect from the 21st April 1986. He used to be employed against short-term leave vacancies of regular drivers. The term of employment used to be extended from time to time. While he was continuing as such, in the year 1987, on being directed by the management, he had appeared before the Divisional Selection Committee and was selected for being appointed as a Driver on regular basis. But, instead of giving him regular appointment the first-party appointed him on short-term basis. He continued as such till the 7th July 1988 when his services were suddenly terminated. But, two persons namely, Surendra Samal and Maheswar Nayak, who had not faced the test conducted by the Selection Committee in 1987, were employed as Drivers by the management. So the workman made a representation and on his representation the management re-appointed him but only on short-term basis with a consolidated salary of Rs. 940.00 per month vide Order No. 8311, dated the 6th August 1988. Thereafter, he worked continuously till the 19th December 1989. From the 20th December 1989 he remained on leave, initially, for some days on the ground of self sickness but as he did not get well and was under medical treatment he remained on leave till the 5th June 1990. On the 6th June 1990 he submitted joining report but it was not accepted by the management on the ground that his services had already been terminated with effect from the 20th December 1989. This termination, dated the 20th December 1989 is the termination in dispute as per the schedule of reference. According to the workman, the requirement of Section 25-F of the Act being not complied with the termination is illegal. It is also claimed that Section 25-N of the Act has been violated.

3. In the Written Statement the management has contended that the second-party/workman being a substitute Driver he was engaged from time to time as and when vacancy arose due to suspension /leave of regular Drivers. In the first spell he was engaged from the 21st April 1986 to 20th February 1987 and thereafter, because of lack of vacancy, he was disengaged. Later on his fitness was judged and he was selected by the Divisional Selection Committee and again he was appointed as a Driver for the period from the 6th March 1987 to 30th June 1987 and subsequently from the 16th July 1987 to 6th July 1988 and 17th September 1988 to 19th December 1989 as per the available vacancy. Thereafter from the 20th December 1989 he was not allotted any duty as he himself left the job. In spite of repeated letters he did not turn-up for duty. So, the question of compliance of Section 25-F or 25-N of the Act does not arise.

Further contention of the first-party is that the management is now running short of vehicles, that regular drivers are sitting idle and that appointment of substitute drivers has been banned.

4. Two issues have been framed as follows :—

ISSUES

(i) "Whether the termination of services of Shri Indramani Sahoo, Sub-Driver by the management of Odisha State Road Transport Corporation with effect from the 20th December 1989 is legal and/or justified ?

(ii) If not, to what relief he is entitled ?"

5. The second-party workman has examined himself as W. W. No. 1 and has exhibited some documents. The District Transport Manager, Odisha State Road Transport Corporation, Keonjhar has adduced evidence as M. W. No. 1. Several documents have been exhibited on behalf of the management as well.

FINDINGS

6. *Issue No. (i)*—It is not in dispute that the workman was engaged as a Driver in the establishment of the first-party from the 21st April 1986 till the 7th July 1988 and thereafter from August, 1988 till the 19th December 1989. Admittedly, the workman used to be engaged against short term vacancies arising out of suspension and leave of regular Drivers of the first-party. But, it is not the contention of the management that the workman had not completed one year of continuous service as defined in the Act. Though it is there in the claim statement that on the 7th July 1988 the employment of the workman was all on a sudden terminated, that termination is not the subject matter of the present reference. In this reference the legality and justification of termination, dated the 20th December 1989 is to be decided. According to the workman, he remained on leave from the 20th December 1989 on the ground of self-sickness and that he could not resume duties till the 5th June 1990 for the reason that he did not get well. But, according to the management the workman voluntarily left his service on the 20th December 1989 and did not report for duties thereafter despite of repeated letters. However, the management has failed to prove any such letters said to have been addressed to the workman after he absented from duties with effect from the 20th December 1989.

7. "Abandonment of Service" being a question of fact onus lies on the management who takes such a plea to prove that in fact the workman had abandoned his service. The Hon'ble Supreme Court have observed that a temporary absence is not sufficient to constitute an abandonment of job. An inference that an employee has abandoned or relinquished service is not easily drawn, unless from the length of absence and from other surrounding circumstance an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon his service. This is, however, subject to the terms and conditions of service included in the Certified Standing Orders, if any. In the case at hand, the management has not relied on any Certified Standing Orders. Under such circumstances, the management should have proved the alleged correspondences it had allegedly made with the second-party when the latter continued remaining absent from duties. According to the workman, he had applied for leave on the ground of self-sickness and as there was prolonged treatment he could not resume duties till the 5th June 1990. He has further taken the plea that on the 6th June 1990 he submitted joining report alon gwith a medical certificate but the management did not accept the same saying that his services had already been terminated with effect from the 20th December 1989. Of course, the workman has not adduced evidence to show that his joining report was actually received by the management but he was not allowed to resume duties. But, he has adduced evidence to the effect that he had submitted his joining report marked Ext. 8 along with the Medical Certificate Ext. 6. The management does not admit that the workman had submitted his joining report on the 5th June 1990. However,

it can be noticed from the copy of the conciliation failure report annexed to the schedule of reference that on the 14th December 1990 the workman made a representation to the District Transport Manager and other authorities of the first-party Corporation with a copy thereof sent to the District Labour Officer, Jajpur basing on which the District Labour Officer initiated the conciliation proceeding. So, it can be said that within one year of the alleged abandonment of job, the workman had made a representation alleging that his services had been terminated illegaly. Had there been any intention to abandon the job the workman would not have made such a representation. In M. G. Patel *Vrs.* Mastan Baug Consumers Co-operative W. & R. Stores Ltd., 1997 Lab. I. C. 2537, Hon'ble Bombay High Court have observed that the legal position is almost settled that even in the case of abandonment of service the employer has to give notice to the employee calling upon him to resume his duty. It appears, the management is quite aware of this requirement for which it has taken a plea that after the 20th December 1989 the workman was not allotted any duty as because he left his service voluntarily and in spite of repeated letters he did not turn-up for duty. In the absence of proof that such letters were in fact, issued to the workman an adverse inference has to be drawn against the management. The attending circumstances do not makeout a case of abandonment of job. Therefore, the plea of voluntary abandonment of job is not to be accepted.

8. On behalf of the workman it is argued that in order to deprive the workman from being absorbed in regular vacancy so that some persons junior to him could be absorbed, the management refused him employment when he reported for duty on the 6th June 1990. Referring to the documents exhibited by the management such as Exts. C to J, it is argued that as a matter of fact several substitute Drivers were absorbed in 1991 and if the second-party were not denied employment with effect from the 6th June 1990 or for that matter on the 20th December 1989, he would have been absorbed against regular vacancies, Ext. F reflects that case of the second-party could have been considered for such absorption but as because he was shown to have absconded since the 21st December 1989 his case was not considered by the Divisional Selection Committee. There is sufficient force in such contention. Since the workman was not in employment as a substitute Driver due to the disputed refusal of employment his case could not be considered for regularisation even though he was eligible for that. But, in this reference it is not within the scope of the reference to determine whether he should have been regularised by way of absorption in regular vacancies. It is also difficult to give a finding that in order to deprive him from being considered for such absorption he was denied employment. Because, admittedly the workman was out of employment from the 20th December 1989 to the 5th May 1990 and it is quite possible that for such long absence the management refused him further employment with effect from the 6th June 1990.

9. Be that as it may, when the plea of abandonment of employment is found not acceptable, it is to be held that the management terminated the workman's service with effect from the 20th December 1989 which is illegal inasmuch as it is not claimed that the provisions of Section 25-F of the Act have been complied with. The termination is also found to be unjustified because it is admitted by M. W. No. 1 that after the workman was terminated the management had engaged new Drivers due to availability of work and paucity of Drivers. It is not proved by the management that because of lack of work the second-party could not be given further employment.

Accordingly, Issue No. i is answered in favour of the second-party and it is held that the termination of his service with effect from the 20th December 1989 is neither legal nor justified.

10. *Issue No. (ii)*—The workman seeks for his reinstatement in a regular post of Driver with full back wages and other benefits of service. Since the workman at the relevant time was a substitute Driver and there was no automatic absorption of the Drivers on the basis of seniority and since

there is no scope for any deliberation as to whether the workman was refused absorption illegally, the relief of reinstatement in regular posts of Driver cannot be considered. If at all, the relief of reinstatement is to be granted then he is to be reinstated as a substitute Driver.

The workman had worked for about two and a half years as a substitute Driver. Some of his contemporaries were absorbed in regular vacancies. Had the workman been continued till such regularisation was made he could have been absorbed. It also appears, the management was all along in need of Drivers. This has come from the mouth of M. W. No. 1. It is also stated by M. W. No. 1 that even now the management will take the second-party as a substitute Driver. Under such circumstances, it would be appropriate to direct the management to reinstate him as a substitute Driver but taking into consideration that the workman is now aged about 57 and even if he is reinstated he would remain in employment for a very short period, some alternative appropriate relief may be taken into consideration.

So far back wages is concerned, there is no averment in the claim statement that the workman has not been in gainful employment. However, in his affidavit evidence he has taken that plea. Therefore, the management has made a bald statement through M. W. No. 1 that the workman has been gainfully employed by Private Bus Owners. When cross-examined the witness failed to specify as to under whom the second-party had been gainfully employed. But, it is a fact that when the workman was kept out of employment he was in his thirties. He had the experience of driving heavy passenger vehicles. So, it cannot be believed that he was out of employment all throughout. The possibility of his being employed by Private Bus Owners cannot be ruledout. On the other hand, if he would have been absorbed in regular vacancy in the year 1991 or even thereafter he would have earned much more than what he might have got from the Private Bus Owners. Considering all these facts and circumstances, this Tribunal is of the considered view that a compensation of Rs. 1,50,000 (Rupees one lakh fifty thousand) only in lieu of reinstatement and a part of his back wages would be just and appropriate. Therefore, the management is called upon to pay a sum of Rs. 1,50,000 (Rupees one lakh fifty thousand) only to the second-party as compensation in lieu of reinstatement and back wages within a period of three months of the date of publication of the Award in the Official Gazette.

The issue is answered accordingly.

The reference is disposed of in terms of the discussions made above.

Dictated and corrected by me.

RAGHUBIR DASH
28-3-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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28-3-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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

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