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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd December 2011

No. 10957—IR(ID)-13/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th November 2011 in Industrial Dispute Case No.11 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Bata Shoe Store, Jatni, Dist. Khurda and its Workman Shri Bibhu Ranjan Pattanaik was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 11 OF 2010

Dated the 14th November 2011

Present :

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of	..	First party—Management No. 1
(1) The Managing Director, M/s Bata India Ltd., 418/02, M. G. Road, Sector - 17, Gurgaon - 122 002.		
(2) The District Manager, M/s Bata India Ltd., Kalpana Square, Bhubaneswar.	..	First party—Management No. 2

(3) The Shop Manager, . . . First party—Management No. 3
 M/s Bata Shoe Store, Plot No. 5,
 Khurda Road, Railway Market, Jatni.

And

Shri Bibhu Ranjan Pattnaik, . . . Second party—Workman
 S/o. Shri Bira Kishore Pattnaik,
 At/P. O. Badatota, Via Jatni, Dist. Khurda.

Appearances:

Shri Pradipta Verma, Advocate . . . For the First party—Management
 Nos. 1 to 3.

Shri Rashmi Ranjan Mohanty, 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. 2264—ID-13/2010-LE., dated the 19th March 2010. The Schedule of reference runs as follows:—

“Whether the action of the management of M/s Bata India Ltd., Kalpana Square, Bhubaneswar represented through M/s Bata Shoe Store, Railway Market, Jatni, Dist. Khurda, a Sales unit in terminating the services of Shri Bibhu Ranjan Pattanaik, Salesman with effect from the 10th April 2009 is legal and/or justified ? If not, to what relief Shri Pattanaik is entitled ?”

2. The workman/second party herein has taken the stand that he was employed by the District Manager of M/s Bata India Ltd. (first party No. 2) as a Salesman to work on daily wage basis in the Bata Shoe Shop at Plot No. 5, Khurda Road (Railway Market), Jatni. Accordingly, he joined in his duty on the 6th July 2003 and continued as such till the 10th April 2009. During the period from the 6th July 2003 to the 9th April 2009, he had worked in the Shop continuously to the best satisfaction of the management. On the 10th April 2009, he was refused employment without any reason. Such refusal being tantamount to retrenchment is illegal inasmuch as the mandatory provisions of the Act have not been complied with. Therefore, he be reinstated with full back wages.

3. The Managing Director, Bata India Ltd. is arrayed as first party No. 1, the District Manager of Orissa District, Bata India Ltd. as first party No. 2 and the Shop Manager of the Bata Shoe Shop as first party No. 3. The District Manager, Bata India Ltd. (First party No. 2) has filed the written statement on behalf of all the first parties. It is contended by the first party Management that the second party workman was not appointed by the management of M/s Bata India Ltd. but by the shop Manager (first party No. 3) as a temporary hand as per the daily requirement. The work assigned to the workman by the Shop Manager was intermittent and sporadic and it was never regular or perennial in nature. The workman used to be engaged as per the requirement of the Shop which arises mostly during the festival seasons. Since his job was temporary in nature, he was liable to be released from employment by the Shop Manager as and when work was not

available for the workman. Therefore, compliance of the mandatory provisions of the Act are not required. It is also contended that the workman had not rendered continuous and uninterrupted service from the 6th July 2003 to the 10th April 2009.

4. The following issues have been settled:—

ISSUES

- (i) “Whether there is Workman-Employer relationship between the parties ?
- (ii) Whether the action of the management of M/s Bata India Ltd., Kalpana Square, Bhubaneswar represented through M/s Bata Shoe Store, Railway Market, Jatni, Dist. Khurda, a Sales unit in terminating the services of Shri Bibhu Ranjan Pattanaik, Salesman with effect from the 10th April 2009 is legal and/or justified ?
- (iii) If not, to what relief Shri Pattanaik is entitled ?”

5. The workman has examined himself as W. W. No. 1 and a co-workman as W. W. No. 2. On behalf of the management the District Manager has been examined as M. W. No. 1. On behalf of the workman, documents have been marked from Exts. 1 to 8 but from the side of the management, no document has been exhibited.

FINDINGS

6. *Issue No. (i)*—While the second party claims that he was employed by the District Manager, Orissa District, Bata India Ltd., the management takes the plea that he was engaged by the Shop Manager on temporary basis and was given employment as and when a temporary hand was felt necessary for the Shop Counter. There is no document like an appointment order containing the terms and conditions of employment. However, it is admitted by the management to the extent that the second party had been working in the Bata Shoe Shop during the period from the 6th July 2003 to the 10th April 2009. During cross-examination of the workman (W. W. No. 1), it was suggested to him that the Bata Shoe Shop at Plot No. 5, Khurda Road (Railway Market) Jatni is run by a franchisee. This plea is not there in the written statement. That apart, the District Manager (M. W. No. 1) during his cross-examination has admitted that the Shop Manager of Bata Shoe Shop is a permanent employee of M/s Bata India Ltd. He has further stated that in case of any need, the Shop Manager appoints temporary Salesman for a limited period and pays remuneration to the temporary hand from out of the sale proceeds of the Shop. In view of such statements made by the District Manager, there is little room for any doubt that the second party was employed by the Shop Manager as a temporary hand but such employment was made on behalf of M/s Bata India Ltd.

The workman has relied on Exts. 1 to 5 to prove that he was an employee of M/s Bata India Ltd., But none of the exhibited documents reflects that the workman was employed by the District Manager, Orissa District, Bata India Ltd. as averred in the claim statement. According to the management, the second party was employed as a temporary hand and it is also the case of the second party that he was employed on daily wage basis. Since it is found that the Shop Manager (First Party No. 3) had employed the workman on behalf of the Bata India Ltd., it is to be held that there exists Workman-Employer relationship between the second party on one hand and all the first parties on the other.

7. *Issue No. (ii)*—Ext. 1 is a copy of the pay slip for the period from the 9th January 2006 to the 29th January 2006 which reflects that the date of initial engagement of the workman is the 6th July 2003. It provides corroboration to the workman’s claim that the date of his initial employment is

the 6th July 2003. It is not disputed that on and from the 10th April 2009, the workman was denied employment. According to the workman, he was under continuous employment in the Bata Shoe Shop from the 6th July 2003 to the 10th April 2009. But according to the management, the workman had not rendered continuous and uninterrupted service starting from the 6th July 2003 till the 10th April 2009. However, there is no specific plea as to whether the workman had completed 240 days of work in each of the calendar years covered by the aforesaid period. On the prayer of the workman to produce documents such as Salary sheets and Provident Fund card the management in their objection took the stand that such documents are not available with them. This explanation is not convincing and an adverse inference has to be drawn against the management. The workman by exhibiting certain documents, besides the averments made in the written statement, has been able to establish that he had been working in the Shoe Shop during the aforesaid period. When the management takes the plea that the workman had not rendered continuous and uninterrupted service during the said period the onus lies on the management to produce reliable documents to show as to for how many days the workman had been engaged in each of the calendar months covered by the period from the 6th July 2003 to the 10th April 2009. Under such circumstances, it is to be presumed that the workman was engaged for more than 240 days in each of the calendar year covering the period from the 6th July 2003 to the 10th April 2009. As a result, the denial of employment being not in accordance with the provisions contained in Section 25-F of the Act is illegal. That apart, the management has not shown any justification for having denied employment to the second party. Therefore the termination of service of the second party with effect from the 10th April 2009 is neither legal nor justified.

8. *Issue No. (iii)*—The termination of service of the workman is found to be without any valid reason. The workman, though a temporary hand, was in the employment of the first party for little more than five years. The termination of his service being wrongful the second party is entitled to be reinstated as a temporary hand on daily wage basis. The relief of back wages in the absence of pleading and proof that the workman is not in gainful employment cannot be granted. Accordingly, it is held that the workman be reinstated without any back wages. However, if there is delay in the implementation of the Award for any reason, whatsoever, the management shall be liable to pay back wages from the date the Award becomes enforceable till the date of its implementation.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
14-11-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
14-11-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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