

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2781 CUTTACK, TUESDAY, DECEMBER 27, 2011/PAUSA 6, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th December 2011

No. 11176—IR-ID-55/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd November 2011 in Industrial Dispute Case No. 37/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Bata Shoe Store, Kalpana Square, Bhubaneswar and its Workman Shri T. Rama Rao was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 37 OF 2010

Dated the 22nd November 2011

Present :

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

Between :

The Managements of—

1. The Managing Director,
M/s Bata India Ltd.,
418/02, M.G. Road,
Sector-17
Gurgaon-122002.

.. First Party No. 1

2. The District Manager,
M/s Bata India Ltd.,
Kalpana Square,
Bhubaneswar.

.. First Party No. 2

3. The Shop Manager, . . . First Party No. 3
 M/s Bata Shoe Store,
 128, Asahok Nagar,
 Bhubaneswar.

And

Shri T. Rama Rao, . . . Second Party—Workman
 S/o T. Pollaya,
 Qrs. No. C1/C (Side House),
 Traffic Colony,
 Near Senior Running Room,
 P.O. Jatni,
 Dist. Khurda.

Appearances :

Shri Pradipta Verma, . . . For the First Party Nos. 1 to 3
 Advocate.

Sk. Intiaz Alli
 Advocate & his Associates.

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. 5105–ID-55/2010-LE., dated the 19th June 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, Ashok Nagar Branch, Bhubaneswar a Sales unit in terminating the services of Shri T. Rama Rao, Salesman with effect from 4-7-2009 is legal and/or justified ? If not, to what relief Shri Rao 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 salesman to work on daily wage basis Shoe in the Bata Shop, Ashok Nagar Branch, Bhubaneswar. Accordingly, he joined in his duty on 8-10-1999 and continued as such till 4-7-2009. During the period from 8-10-1999 to 4-7-2009 he had worked in the shop continuously to the best satisfaction of the management. On 5-7-2009 he was refused employment without any reason. Such refusal being tantamount to retrenchment is illegal in as much as the mandatory provisions of the Act have not been complied with. Therefore, he be reinstated with back wages.

3. The Managing Director, Bata India Ltd., is arrayed as first party No.1, the District Manager of Odisha District, Bata India Ltd. as first party No.2 and the Shop Manager of the Bata Shoe Shop,

Ashok Nagar, Bhubaneswar 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 appointed not by the management of M/s Bata India Ltd., but by the Shop Manager (first party No.3) as temporary hand as per the daily requirement. The work assigned to the workman by the Shop Manager was intermitent 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 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 8-10-1999 to 4-7-2009.

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, Ashok Nagar Branch, Bhubaneswar, a Sales Unit in terminating the services of Shri T. Rama Rao, Saleman with effect from 4-7-2009 is legal and/or justified ?
- (iii) If not, to what relief Shri Rao is entitled ?”

5. The workman has examined himself as W.W.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 4 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, Odisha 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 was engaged as a temporary workman in between Dt. 8-10-1999 and Dt.4-7-2009. M.W.1 who deposes on behalf of all the first party members has admitted that the workman used to be paid wages once in a fortnight. It is not the case of the first party that the workman was engaged by the manager of the Bata Shoe Store in his personal capacity and the Manager used to pay him wages from his own pocket. It is not denied that payment of wages used to be made behalf of Bata India Ltd. The only plea denying employer-employee relationship is that the Manager of the Shop outlet had engaged him as a temporary workman. So, the presumption is that the Manager as an agent of M/s Bata India Ltd. had engaged the second party and the second party need to get wages from out of the funds of M/s Bata India Ltd. For all these reasons the second party can said to have been 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 Ext.1 showing that he had been working in Bata India's Shop with effect from 8-10-1999. 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 M/s 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 corroborates the workman's claims that the date of his initial employment is 8-10-1999. It is not disputed that on and from 4-7-2009 the workman was denied employment. According to the workman, he was under continuous employment in the Bata Shoe Shop from 8-10-1999 to 4-7-2009. But, according to the Management the workman had not rendered continuous and uninterrupted service state from 8-10-1999 till 4-7-2009. However, there is no specific plea as to whether the workman had completed 240 days of work in any of the 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. Since the management has failed to produce the documents an adverse inference has to be drawn against the management. The workman on his part has been able to show 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 period the onus shifts unto the management to produce reliable documents to show as to for how many days the workman had been engaged during the period covered from 8-10-1999 to 4-7-2009. The management has relied on the case of Range Forest Officer *Vrs. S. T. Hadimani*, reported in AIR 2002 (S.C.) 1147 wherein it is observed by the Hon'ble Supreme Court as follows :—

“Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.”

It is argued that the second party in the case at hand has not proved any document to establish the duration of continuous work. But, this case stands in a separate footing. Admittedly, the management had not issued any appointment order. As already stated, the workman had called upon the management to produce certain important Records/Registers, but the management could not produce them taking a plea which is not tenable. For that adverse inference is to be drawn and taking all the facts and circumstances into consideration it is to be held that the workman had worked continuously from 8-10-1999 to 4-7-2009. 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 4-7-2009 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 nine 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 wage. 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
22-11-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
22-11-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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