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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th January 2011

No. 639—li/1(B)-78/2002-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th October 2010 in I. D. Case No. 112 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No.II, Garadpur and its workman Shri Deb Aprasad Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 112 OF 2002

Dated the 19th October 2010

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of Executive Engineer, .. First Party—Management
Mahanadi-Chitrotpala Island,
Irrigation Division No.II, Garadpur .

And

Its Workman .. Second Party—Workman
Shri Deba Prasad Nayak

Appearances :

Shri S. K. Das, Divisional Accountant .. For the First Party—Management

Shri T. Lenka, Advocate .. For the Second Party—Workman

AWARD

The Government of Orissa in exercise of the 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 have referred the matter in dispute to this Court vide order No. 12572—li-1(B)-78/2002-LE., dated the 11th October 1992 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is follows:

“ Whether the action of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. II , Garadpur, Kendrapara in terminating the services of Shri Deba Prasad Nayak, Ex-Work Charged Khalasi with effect from the 1st December 2001 is legal and/or justified ? If not, what relief he is entitled to ?”

3. The case of the workman in brief is that initially he joined as N.M.R. Store Choukidar under the management with effect from the 1st June 1982 and he was directed to work at the way bridge. He was discharging his duties satisfactorily, as Store Choukidar. He has passed intermediate examination, so the management appointed the workman as Work Charged Watchman with effect from the 1st January 1983. He was directed to do very often the work as official and clerical work. As the post of Work Charged Choukidar and Work Charged Khalasi belong to the same rank and same scale of pay, the management subsequently re-designated the workman as Work Charged Khalasi from the post of Work Charged Choukidar without any application for change of the post . The workman was working continuously since the 1st June 1982 as N.M.R. Store Choukidar, and Work Charged Khalasi up to the 30th November 2001 on the 1st December 2001 when the workman went to join in his duty, he was not allowed to perform his duty without any written order. He came to know that a registered letter was sent to him in his native place address. So he proceeded to his village and came to know that the registered letter had been returned back. So he came to the office and the management handed over a copy of the office order regarding notice of retrenchment of Work Charged, N.M.R. and D.L.R. workers along with a copy of the list of staff declared as surplus. The workman on receipt of the said copy of the office order was very much surprised and came to know that his service had been terminated with effect from the 1st December 2001. He has not received the notice pay and retrenchment compensation for the whole period of service which is illegal and unjustified. Due to his seniority he could not have retrenched from service. After his retrenchment, the management has engaged new Khalasi either N.M.R. or Work Charged. So the termination of service of the workman from the 1st December 2001 is illegal, unjustified, motivated and in-operative in law. So in this background the workman has raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred to the Government and a reference has

been received from the Government and this I.D. Case has been initiated wherein the workman has prayed for his reinstatement 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 has been retrenched from service with effect from the 30th November 2001 afternoon being declared as surplus in the post of Work Charged Khalasi in accordance with the Department of Water Resources letter No. 20222, dated the 29th May 2001. Basing on the representation of the workman, the Government in Department of Water Resources letter No. 15035, dated the 29th April 2003 he has been allowed to work as Work Charged Watchman. Accordingly the workman joined as Watchman under the Work Charged establishment of the management vide order No. 1626, dated the 1st August 2003 on the 1st August 2003. So in this background the management has prayed that the reference is not maintainable.

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

I S S U E S

“(i) Whether the action of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. II, Garadpur, Kendrapara in terminating the services of Shri Deba Prasad Nayak, Ex-Work Charged Khalasi with effect from the 1st December 2001 is legal and/or justified ?

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

6. In order to substantiate his plea, the workman has examined himself as W.W.1. Similarly the management has examined his Assistant Engineer as M.W.1. The workman has proved the documents marked as Exts. 1 to 17 but the management has not proved any document on his behalf.

F I N D I N G S

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

According to W.W.1, he initially joined as N.M.R. Store Choukidar under the management with effect from the 1st June 1982. Thereafter due to his educational qualification (I.A.) the management appointed him as Work Charged Watchman with effect from the 1st January 1983. He was doing the clerical and official work under the management. On the 1st December 2001 when he went to join his duty he was not allowed to perform his duty without any written order. Thereafter he came to know that a registered letter was sent to his native place and it was returned back from his village. A xerox copy of the termination letter was received from the office and came to know that his service was terminated with effect from the 1st December

2001 without following the mandatory provisions of the Industrial Disputes Act regarding notice or notice pay, retrenchment compensation, etc. perused the documents marked as exhibits on behalf of the workman.

8. M.W.1 admitted about the service rendered by the workman under the management. The workman was performed his duties till the 30th November 2001 as Work Charged Khalasi and was taking his salary/duty pay without any objection. He was not attending the office with effect from the 1st December 2001 for which the retrenchment order was sent through registered post with A.D. to his native place and the same was returned back to the office of the management with a postal remark " the addressee is absent ". As the workman was not attending the office after the 30th November 2001, the retrenchment order as well as the retrenchment benefit including notice pay could not be paid to him in due time. So from the evidence it is admitted that notice pay, retrenchment compensation, etc. were not paid to the workman. So it is a clear violation of the mandatory provisions of the Industrial Disputes Act and principle of natural justice also. So on careful consideration of all the materials available in the case record I am inclined to hold that the action of the management in terminating the services of the workman with effect from the 1st December 2001 is neither legal nor justified.

9. Regarding reinstatement in service of the workman it is an admitted fact that the workman has already been reinstated in service with effect from the 1st August 2003 as Work Charge Watchman. The workman has applied for reconsideration of his case for the post of Work Charged Watchman with a view to avoid his retrechment in the category of Work Charged Khalasi. The proposal was duly approved by the Government and he was re-engaged as Work Charged Watchman. In the cross-examination M.W.1 has deposed that the workman has already joined in service on the 1st August 2003 as Work Charged Store Choukidar. The salary of Choukidar, Mate and Khalasi are same. At the time of retrenchment, the workman was a junior most Khalasi. However, in the meantime the workman has reinstated in service as Work Charged Watchman i.e. Store Choukidar. So basing on the materials available I am of the opinion that further order of reinstatement of the workman in service is not required at all.

10. Regarding back wages, it has been argued by the workman that he is entitled for full back wages as per law. But the management has taken the plea that as the workman has not worked for the management on the principle of " no work no pay " , the workman is not entitled to get any back wages. It is an admitted fact that the workman has not worked for the management during the relevant period. According to the settled principle of law the payment of back wages is not a matter of right. The reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. However, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting full back wages for the relevant period, a lump sum amount of Rs.20,000 as compensation in lieu of back wages will meet the ends of justice in the instant case.

11. Hance Ordered :

That the action of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Division No. II, Garadpur, Kendrapara in terminating the services of Shri Deba Prasad Nayak, Ex-Work Charged Khalasi with effect from the 1st December 2001 is illegal and unjustified. The workman Shri Nayak entitled for reinstatement in service with compensation in lieu of back wages. But as the workman has already been reinstated in service, now the workman is entitled to get a lump sum amount of Rs. 20,000 (rupees twenty thousand) only in lieu of back wages. The management is directed to pay the above amount within a period of one month from the date of its publication in the official Gazette, failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
19-10-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
19-10-2010
Presiding Officer
Labour Court, Bhubaneswar

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