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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th January 2011

No. 1147–Ii/1-(B)-60/2007-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th January 2010 in I. D. Case No. 17 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Saheed Nagar Government High School, Saheed Nagar, Bhubaneswar and their Workman Shri Purusottam Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 17 OF 2008

Dated the 6th January 2011

Present :

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

Between :

The Management of Saheed Nagar Government High School, Saheed Nagar, Bhubaneswar. .. First-party—Management

And

Shri Purusottam Behera,
Qrs. No. IV, R-1/4,
Capital High School Campus,
Near LIC Office, Kharvelnagar, Unit-III,
Bhubaneswar. .. Second-party—Workman

Appearances :

Shri L. Choudhury, Asst. Govt. Pleader.	:	For the First-party—Management
Shri Sushanta Dash, 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 Orissa in the Labour & Employment Department vide their Order No. 3928—Ii/1(B)-60/2007-LE., Dt. 29-3-2008 for adjudication by this Tribunal. The Schedule of reference runs as follows:–

> "Whether the action of the Headmaster, Saheed Nagar Government High School, Saheed Nagar, Bhubaneswar in terminating the services of Shri Purusottam Behera w.ith effect from 23-3-1999 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

2. The case of the second-party workman, in short, is that he was working with the first-party School as a Contingent Menial with effect from the 2nd July 1987 but his services were terminated with effect from the 23rd March 1999. Though he had completed more than one year of continuous service, there was no compliance of Section 25-F of the Act, nor was there any enquiry before the alleged termination of service. The retrenchment being illegal, he should be reinstated in service with full back wages.

3. The first-party management has contended that neither it is an 'industry' nor is there 'employer-employee' relationship between the parites. The workman was not appointed in terms of the Statutory Rules. He was engaged as a Contingent Menial w.e.f. 2-7-1987 and he continued as such till 30-9-1989. He used to get Rs. 7 per day from 'other contingencies'. Thereafter, he worked in the Tribal Development Co-operative Corporation of Orissa Ltd. (for short, 'T.D.C.C.') for sometime. Thereafter, on 12-12-1994 he approached the first-party for employment. On his request he was allowed to work as a Contingent Menial as and when required on daily wage basis. The payment of wages used to be made to him from the 'subsidiary heads' collected from the students. His performance being found not satisfactory, he was not given further employment with effect from 23-3-1999.

4. The following issue has been settled :–

ISSUE

(i) "Whether the action of the Headmaster, Saheed Nagar Government High School, Saheed Nagar, Bhubaneswar in terminating the services of Shri Purusottam Behera with effect from 23-3-1999 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

5. Both the sides have adduced evidence. The workman has examined two witnesses including himself as W.W. No. 1, W. W. No. 2 is a retired Headmaster of the first-party School. On behalf of the first-party, one Office Assistant of the School is examined as M.W. No. 1. On behalf of the workman Exts. 1 to 5 have been marked and on behalf of the management only one exhibit has been marked.

FINDINGS

6. *Issue No. i* :– There is no dispute that the workman was employed in the School as a Contingent Menial on daily wage basis and he was denied employment with effect from 23-3-1999.

workman claims to have worked continuously from 2-7-1987 to 23-3-1999. But, this is found to be incorrect. In his deposition the workman has admitted that in the year 1991 he was working as a 'Mali' in T.D.C.C. . Ext. A, marked without objection, reflects that the workman was working in T.D.C.C. . The workman has further stated in his cross-examination that from 1991 to December 1994 he did not get wages from the School as he was kept out of employment. This statement does not appear to be reliable. It is quite possible that during this period he was in the employment under some other employer (s). Because he has admitted that in the year 1991 he was working as a 'Mali' in T.D.C.C. . So, the management's plea that the workman had left the job in the year 1989 and thereafter he was re-engaged w.e.f. 12-12-1994 is found to be reliable. There is no industrial dispute on the aforestated discontinuation. The workman has not shown to have challenged that discontinuation at any point of time. Therefore, for all purposes he is to be deemed to be under the employment of the first-party during the period between 12-12-1994 and 23-3-1999. There is no positive denial that the workman did not complete one year of continuous service prior to the disengagement under reference. Therefore, it is to be presumed that the workman has complied with the requisitions under Section 25-B of the Act. It is not asserted by the first-party that before removing him from employment the requirements of Section 25-F of the Act were complied with. Though it is clearly pleaded that the workman was discontinued on the ground of unsatisfactory performance, no disciplinary proceeding was initiated before driving him out of employment.

7. It is asserted by the first-party that it being an Educational Institution is not an 'industry' and the second-party is not a 'workman' as per the definitions in the Act. In (Miss) A. Sunderambal *Vrs.* Government of Goa, Daman and Diu etc., reported in 1988 (57) FLR 462 (S.C.), the Hon'ble Supreme Court have observed that an Educational Institution has to be treated as an 'industry' in view of the decision in the Bangalore Water Supply & Sewerage Board *Vrs.* A. Rajappa 1978 (36) FLR 266 (S. C.). Therefore, the first-party is an industry. So, it is to be considered as to whether the second-party is a 'workman'. Admittedly, the second-party was employed as a Contingent Menial. According to the first-party, he was a casual labourer doing different kind of manual work. The workman says that he was appointed to work as a peon. The workman has deposed that he was being engaged for garden-work and therefore, he comes under the category of 'skilled labourer'. In the facts and circumstances of this case, the second-party has to be considered to be an 'unskilled' or 'skilled' worker. Therefore, he is coming within the definition of 'workman' as defined in the Act.

8. Ext. 3 is a copy of the Resolution of the staff meeting held in the School on 11-1-1999 taking a decision that since the work of the second-party was unsatisfactory another person should be engaged in his place. It further reflects that basing on that Resolution the then Headmaster passed orders disengaging the second-party with effect from 23-3-1999 and allowing one Niranjan Panditray to work in his place. Thus, it is quite clear that even though work was available the second-party was dis-engaged and in his place another person was engaged for the same work which the second-party used to perform,. Since it is held that the first-party is an 'industry' and the second-party was a 'workman' and since it is found that his services were terminated without compliance of Section 25-F of the Act or without any disciplinary proceeding, the disengagement is illegal. It is also unjustified in as much as he was removed from employment even though the work for which he was engaged was still available.

9. It is argued that since the second-party was a Contingent Menial/daily wager there was no necessity of any disciplinary proceeding. In this regard, the observation of the Hon'ble Supreme Court in M.C.D. *Vrs.* Pravin Kumar Jain & others, reported in 1999 Lab. I.C. 619 (S. C.) may be referred to. In that case the workman was a casual worker who by an order of the management was disallowed to work with effect from a certain date. In that factual background Hon'ble Supreme Court have observed that if it was by way of penalty, then atleast a regular departmental enquiry had to be conducted and if it was a simpliciter discharge order, it is violative of Section 25-F of the Act. It is further observed that if it was a penalty order it would fail on merit as not having followed the procedure of departmental enquiry. In Kuldip Singh *Vrs.* State of Himachal Pradesh and another, 1988 Lab. I. C. NOC 22 (Himachal Pradesh), the Hon'ble High Court of Himachal Pradesh have observed as under :

> "Even a daily-rated workman cannot be pushed out of employment, on such grounds and under such circumstances, without compliance with the basic rules of natural justice, although no regular departmental enquiry is required to be held against him. It may be reiterated that in the case of a daily-rated employee against whom penal action is proposed, the least that is required to be done is : (1) to inform him of the proposed action, (2) to disclose to him the material sought to be relied against him, (3) to afford him a reasonable opportunity to correct or controvert such material and to place his view-point, and (4) to arrive at a fair and just decision supported by reasons."

From the observations of the Hon'ble Supreme Court as well as Himachal Pradesh High Court, it becomes quite clear that even in the case of a daily wager some action in the nature of domestic enquiry is necessary before termianting his services.

Having found that the termination of service under reference is illegal and unjustified, it is to be considered as to what relief in the facts and circumstances of the case is to be extended to the second-party.

10. The second-party was a Casual Worker/Contingent Menial. He had worked with the first-party for little more than four years. Ext. 3 reveals that while the workman was disengaged another person was engaged in his place. There is no evidence whether any daily wager is still working in the School. M.W. No. 1 has stated that the Government has banned engagement on Contingent Menial since long. It is not asked to the witness as to whether any casual worker/daily wager is still working in the School. If the first-party has been engaging even a single daily wager who was not in the Roll of the first-party prior to 12-12-1994, then the second-party is entitled to be reinstated. It is also quite possible that under some instructions from the higher authorities the first-party has discontinued the engagement of all Contingent Menial/Casual Workers. If the School is no more in need of a daily wager and has been managing without any Contingent Menial/Casual Labourer, then it would be prejudicial to the first-party if reinstatement of the second-party is insisted upon. It is now well settled that the relief of reinstatement with full back wages cannot follow automatically when the termination of an employee is found to be illegal. On payment of back wages, it is observed in U. P. State Brassware Corporation Ltd. and another *Vrs.* Udai Narain Pandey, 2006 (108) FLR 201 (S. C.) that an industry may not be compelled to pay to the workman for the period during which he apprently contributed little or nothing at all to it.

The second-party was a casual worker. At the time of his termination he was aged about 32. He has adduced evidence through W.W. No. 2 and also by his own evidence that he was not in any other employment during the relevant period. The management has not shown the workman to have been in gainful employment during the relevant period. Considering all these facts and circumstances, this Tribunal directs the management to reinstate the second-party as a daily wager if it is still availing the services of any daily wager even if that may lead to the termination of services of any such worker now on the Roll of the first-party. If no Casual Workeer/Contingent Menial is now under the employment of the first-party, then the first-party shall pay a compensation of Rs. 50,000 (Rupees fifty thousand) only to the second-party in lieu of reinstatement with the condition that if in future the first-party engages any Casual Labourer/Contingent Menial then preference be given in continuous service with the deeming that he had been in continuous service with the first-party since 12-12-1994. In case the workman gets reinstatement, then for all purposes, except back wages, he shall be deemed to be in continuous employment under the first-party since 12-12-1994.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
6-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
6-1-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

P. K. PANDA
Under-Secretary to Government

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