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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th March 2011

No. 3185-ii/1(B)-61/2005-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th January 2011 in I. D. Case No. 80 of 2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Baunsagadia Service Co-operative Society Ltd., Baunsagadia, Nayagarh and their workman Shri Trinath Bhatta was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 80 OF 2005

The 18th January 2011

Present :

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

Between :

The Management of the Baunsagadia Service Co-operative Society Ltd.,
Baunsagadia, Nayagarh. . . First-party-Management

And

Their Workman Shri Trinath Bhatta,
At/P.O. Baunsagadia, Via Sarankul,
Dist. Nayagarh. . . Second-party-Workman

Appearances :

None . . For the First-party-Management

Shri Trinath Bhatta . . For the Second-party-Workman himself.

AWARD

The Government of Orissa in exercise of 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. 10161-li/1 (B) 61/2005-LE., dated the 26th November 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :-

“Whether the action of the Secretary, Baunsagadia Service Co-operative Society, Baunsagadia, Sarankul, Nayagarh in terminating the services of Shri Trinath Bhatta, Assistant Secretary-cum-Salesman with effect from dated the 17th August 2001 is legal and/or justified? If not, to what relief Shri Bhatta is entitled?”

3. The case of the workman in brief is that he was working as Assistant Secretary-cum-Salesman under the management since 1980. But the management without complying the mandatory provisions of the Industrial Disputes Act and without conducting any enquiry the service of the workman was terminated with effect from 17-8-2001 on the ground of mis-appropriation of fund of the Society. So he raised an industrial dispute before the labour authority and when the conciliation failed, the matter was referred to the Government and this reference has been received and this I.D. Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages.

4. In spite of notice to the management, though he appeared has not filed any written statement and was set *ex parte*.

5. In the *ex parte* hearing, in order to substantiate his plea, the workman has examined himself as W. W. 1 but has not proved any document on his behalf.

6. According to W. W. 1, he joined in the service of the management on 23-7-1980 as Salesman. It was the post of Salesman-cum-Assistant Secretary but he was never a Secretary of the Society of the management. On 17-8-2001 his service was terminated by the management without following the mandatory provisions of the Industrial Disputes Act regarding prior notice or notice pay and retrenchment compensation etc. for which he raised an industrial dispute.

The evidence of the workman remained unchallenged. I also found no reasonable ground to disbelieve the sworn testimony of the workman. So on careful consideration of entire evidence as discussed above, I came to the finding that the action of the management in terminating the services of the workman with effect from 17-8-2001 is neither legal nor justified. Hence he is entitled to be reinstated in service.

7. Regarding back wages, according to the settled principle of law the relief of 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. Further according to the settled principle of law as reported in 2004 (Supp.) OLR 694 the principle of no work no pay is to be applied to the workman when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified.

8. Hence Ordered :

That the action of the Secretary, Baunsagadia Service Co-operative Society, Baunsagadia, Sarankul, Nayagarh in terminating the services of Shri Trinath Bhatta , Assistant Secretary-*cum*-Salesman with effect from 17-8-2001 is illegal and unjustified. The workman Shri Bhatta is entitled to be reinstated in service but without any back wages. The management is directed to implement that Award within a period of one month from the date of its publication in the official Gazette.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. DASH
18-1-2011
Presiding Officer
Labour Court
Bhubaneswar

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18-1-2011
Presiding Officer
Labour Court
Bhubaneswar

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