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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3766—li/1(B)-47/2002(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th January 2012 in Industrial Dispute Case No. 108 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, E. H. T. Construction Division (GRIDCO), 244-Sahid Nagar, Bhubaneswar and their workman Shri Rabinarayan Lenka represented by O.S.E.B. Workers Union was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 108 OF 2002

Dated the 16th January, 2012

Present :

S.A.K.Z. Ahamed, o.s.j.s. (Jr. Branch)
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Executive Engineer . . . First Party—Management
E. H. T. Construction Division (GRIDCO),
244-Sahidnagar, Bhubaneswar.

And

The Working President, O. S. E. B. Workers Union . . . Second Party—Workman
Thermal Colony, Bhubaneswar.

Appearances :

For the First Party—Management . . . None

For the Second Party—Workman himself . . . Shri Rabinarayan Lenka

AWARD

The Government of Odisha in exercising 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, 1947 has referred the matter in dispute to this Court vide Order No. 12506—li/1(B)-47/2002-LE., dated the 10th October 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

The terms of reference is as follows :

“Whether the action of the management of Executive Engineer, E. H. T. (Construction) Division, Bhubaneswar in terminating the employment of Shri Rabinarayan Lenka, N. M. R. with effect from the 1st July 1987 is legal and/or justified ? If not, to what relief Shri Lenka is entitled ?”

2. The claim of the second party workman in brief as set out in his claim statement that he was working as N. M. R. workers with effect from the 1st January 1983 under the Executive Engineer, E. H. T. (Construction) Division, Bhubaneswar and during his tenure of his service he was posted at different Subdivision and Section under the Executive Engineer. All on sudden the Executive Engineer, verbally told him not to come for duty with effect from the 1st July 1987. His plea is that neither he has been served with one month notice nor notice pay in lieu. The reasons of termination of employment is also not communicated to him. In view of the above averments, the workman has prayed for reinstatement in service with full back wages.

3. On the other hand the 1st party management remained absent in spite of notices issued by this Court and ultimately on the 20th September 2010 the 1st party management was set *ex parte*. In order to substantiate his (workman) plea the workman examined himself as W. W. 1 and proved documents such as Ext. 1 xerox copy of certificate issued by S. D. O., Bhubaneswar. Ext. 2 is the xerox copy of Executive Engineer regarding regularisation of service. Ext. 3 is the xerox copy of letter of Assistant General Manager (Elect) to the Manager (HRD), GRIDCO, Bhubaneswar. Ext. 4 is the xerox copy of letter of Regional Provident Fund Commissioner to the Post Office, Naraharipur, Remuna, Balasore.

4. W. W. No. 1 deposes that he was working as N. M. R. with effect from the 1st January 1983 under the management and on the 1st July 1987 he was refused by the management to do his duty. On this score, the evidence of W. W. No. 1 gains ample coroboration with reference to Exts. 1, 2 and 3 the documents filed on behalf of the W. W. No. 1. On the other hand the management has not adduced any evidence in support of their claims. In view of the unchallenged testimony of the W. W. No. 1, the action of management in termination of the employment of the workman Shri Rabinarayan Lenka with effect from the 1st July 1987 is not legal and the management without following the mandatory provisions of Industrial Disputes Act, 1947, terminated the services of the workman for which he is entitled to be reinstated in service.

5. Regarding his arrear wages, it is an admitted fact that he was not working under the management after his termination. In view of the settled principle of law when the workman has 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. Similarly in view of the certain principles of law the relief of reinstatement with full back wages would not be granted automatically only because it will lawful to do so. For the said purpose, several factors are required to be taken into consideration. So in the present case on careful consideration of the materials available, I am of the opinion that instead of giving any arrear back wages a lump sum amount of Rs. 5,000.00 (Rupees Five thousand) only in lieu of back wages as compensation on will meet the ends of justice in the facts and circumstances of this case.

6. Hence it is ordered :

That the termination of service of Shri Rabi Narayan Lenka with effect from the 1st July 1987 by the management of the Executive Engineer, E. H. T. (Construction) Division, Bhubaneswar is illegal and unjustified. The workman Shri Lenka is entitled to be reinstated in service with a compensation of Rs. 5,000.00 (Rupees Five thousand) only towards arrear back wages. The management is directed to implement this Award within a period of two months from the date of its publication failing which the amount shall carry interest at the rate of 20% per annum till its realisation.

The reference is answered accordingly in *ex parte*.

Dictated and corrected by me.

S. A. K.Z. AHMED
16-01-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHMED
16-01-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government