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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th May 2012

No. 4209—li/1(B)-54/2004-(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th November 2011 in Industrial Dispute Case No. 57/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Modi Farm, At/Post Patnaikia, Dist. Puri and their workmen Shri Rabindra Behera and Shri Ratnakar Swain was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 57 OF 2005

Dated the 4th November 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of employer of . . . First Party—Management
M/s. Modi Farm, At/P.O. Patnaikia,
Dist. Puri.

And

Their workmen . . . Second Party—Workmen
Shri Rabindra Behera and Shri Ratnakar Swain

Appearances :

Shri K. K. Modi . . . For the First Party —Management

Shri R. Behera

Shri R. Swain

. . . For the Second Party—Workmen themselves

AWARD

The Government of Odisha 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, 1947 have referred the matter in dispute to this Court vide Order No. 9050–li/1(B)-54/2004-L.E., dated the 27th October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the action of the employer of M/s. Modi Farm, At/P.O. Patanaikia, Dist. Puri in retrenching the employment/services of Shri Rabindra Behera and Shri Ratnakar Swain, workmen with effect from the 15th January 1995 is legal and/or justified ? If not, to what relief Shri Behera and Shri Swain are entitled ?"

3. The case of the workmen, in brief, as set out in their separate statement of claim is that they were working under the management with effect from the 1st October 1984 as unskilled labourer and preferably Watchman duties in the night. But all of a sudden, the management retrenched their employment/services with effect from the 15th January 1995 without any rhyme or reason and also without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947. At the time of their retrenchment, they were getting Rs. 450 per month and both of them have completed for more than 240 days of service in every year. So according to the workmen, without complying the mandatory provisions of the Industrial Disputes Act, their retrenchment from services is illegal, unjustified and improper. So the workmen have prayed for their reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workmen. According to the management, there was no relation of master and servant between the management and the workmen. So the question of retrenchment of their services does not arise.

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

ISSUES

- (i) "Whether the action of the employer of M/s. Modi Farm, At/P.O. Patanaikia, District Puri in retrenching the employment/services of Shri Rabindra Behera and Shri Ratnakar Swain, workmen with effect from the 15th January 1995 is legal and/or justified ?"
- (ii) If not, to what relief Shri Behera and Shri Swain are entitled ?

6. In order to substantiate their pleas, the workman Rabindra Behera has examined himself as W. W. 1 and proved the xerox copy of certified copy of Order dated the 19th August 2005 passed by the Additional District Magistrate-cum-Authority under Minimum Wages Act, Puri in M. W. Case No. 47/1995 under the cover of Ext. 1. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to him.

FINDINGS

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

W. W. 1 in his affidavit evidence has fully corroborated the facts already averred in their statement of claim. In his affidavit evidence, W. W. 1 has categorically stated that they were engaged by the management with effect from the 1st October 1984 and they rendered continuous service till the 14th January 1995. But the management without any rhyme or reason had illegally retrenched their services with effect from the 15th January 1995 without complying the provisions of Section 25-F of the Industrial Disputes Act. The evidence of W. W. 1 in this respect has nowhere been challenged by the management in the evidence. In absence of any rebuttal evidence, I find no cogent reason to disbelieve his evidence. Rather the unchallenged testimony of W. W. 1 clearly goes to show that they had rendered continuous service with effect from 1st October 1984 to the 15th January 1995 when they were illegally retrenched from their services and the management while retrenching, had not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, which in my view, are complete violation of the provisions of the Industrial Disputes Act. So after carefully examining the entire evidence on record and the document already relied upon by W. W. 1, I am of the considered view that the retrenchment of employment/services of the workmen with effect from the 15th January 1995 by the management is illegal, unjustified and against the mandate of Section 25-F of the Industrial Disputes Act. In that view of the matter, the workmen are entitled to be reinstated in service.

8. Regarding back wages, when the workmen had not worked for the management during the period in question and they had not proved by cogent evidence that they were not gainfully employed elsewhere, payment of full back wages is not justified. However, on the facts and circumstances of this case, as discussed above, I am of the opinion that instead of granting full back wages, 50% back wages will meet the ends of justice.

9. Hence Ordered :

That the the action of the employer of M/s. Modi Farm, At/P.O. Patanaikia, District Puri in retrenching the employment/services of Shri Rabindra Behera and Shri Ratnakar Swain, workmen with effect from the 15th January 1995 is neither legal nor justified. Both the workmen Shri Behera and Shri Swain are entitled to be reinstated in service with 50% back wages. The management is directed to implement this Award within a period of one month from the date of its publication, failing which, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
4-11-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
4-11-2011
Presiding Officer
Labour Court, Bhubaneswar

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