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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th May 2012

No. 4227—li/1(B)-6/2006 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th October 2011 in Industrial Dispute Case No. 29 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Jagannath Exports & Imports, Atharnala Patna, Puri and its workman Smt. Satyabhama Das, Grader was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 29 OF 2006

Dated the 25th October 2011

Present :

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

Between :

The Management of
M/s Jagannath Exports & Imports,
Atharnala Patna,
Puri.

.. First Party—Management

And

Their Workman,
Smt. Satyabhama Das,
Grader.

.. Second Party—Workman

Appearances :

None	.. For First Party— Management
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Smt. S. Das	.. For Second Party—Workman herself

A W A R D

The Government of Odisha 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, 1947 have referred the matter in dispute to this Court vide Order No. 2902—li/1 (B)-6/2006-LE., dated the 31st March 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Jagannath Exports & Imports, Atharnala Patna, Puri, in terminating the services of Smt. Satyabhama Das, Grader, with effect from the 19th March 2005 is legal and/or justified ? If not to what relief she is entitled ?”

3. The case of the workman, in brief, as set out in her statement of claim is that she was working as Grader under the management with effect from January 1999. But the management without any rhyme or reason had illegally terminated her service with effect from the 19th March 2005. At the time of termination of her service, she was getting Rs. 1,600 per month. During her service period, the name of the workman was entered in the E.S.I. Corporation for availing medical facilities and also the management had deducted amount the towards Provident Fund from her monthly salary. The management had also not conducted any enquiry before termination of her service. So in these averments, the workman has prayed for her reinstatement in service with full back wages.

4. The management was set *ex parte*.

5. In order to substantiate her plea, the workman has examined herself as W.W.1 and proved the E.S.I. card and Provident Fund acknowledgement slip under the cover of Exts.1 and 2 respectively.

6. In her affidavit evidence, the workman has corroborated the facts as stated in her statement of claim. Since the management has been set *ex parte* and the evidence both oral and documentary tendered by the workman have remained unchallenged, I have no option but to answer in affirmative in favour of the workman.

7. It is stated by the workman that no one month prior notice has been given to her before she was terminated. Also notice pay or any compensation was paid to her before refusal of employment by the management. So the management has contravened the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and pre-condition one.

8. So, on careful consideration of all the materials available is the case record and in view of unchallenged testimony of the workman, I came to the finding that the action of the management in terminating the service of the workman with effect from the 19th March 2005 is neither legal nor justified and she is entitled to be reinstated in service.

9. As regards back wages, law is well settled that when the workman had not worked for the management during the period in question and she had not proved by cogent evidence that she was not gainfully employed elsewhere, payment of full back wages is not justified. However, on the facts and circumstances of this case as discussed above, in my view instead of granting full back wages, 50% back wages will meet the ends of justice.

10. Hence ordered :

That the action of the management of M/s Jagannath Exports & Imports, Atharanala Patna, Puri in terminating the service of Smt. Satyabhama Das, Grader, with effect from the 19th March 2005 is illegal and unjustified. The workman Smt. Das is 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 *ex parte*.

Dictated and corrected by me.

S.A.K.Z.. AHAMED
25-10-2011
Presiding Officer
Labour Court
Bhubaneswar

S.A.K.Z. AHAMED
25-10-2011
Presiding Officer
Labour Court
Bhubaneswar

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