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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 26th June 2012

No. 4957—li-1(B)-69/2008(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th April 2012 in I. D. Case No. 17 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Sangrami Gas, Nayachouk, Madhupatna, Cuttack and its Workman Shri Arakhita Rout was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.17 OF 2008

Dated the 26th April 2012

Present :

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

Between :

The Management of M/s Sangrami Gas, .. First Party—Management
Nayachouk, Madhupatna, Cuttack.

And

Its Workman .. Second Party—Workman
Shri Arakhita Rout.

Appearances :

Shri B. D. Sahoo, .. For the First Party—Management

Shri T. Lenka, .. For the Second Party—Workman
Vice- President.

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Dispute Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 8442—li-1 (B)-69/2008-LE., dated the 5th August 2008.

“Whether the action of the management of M/s Sangrami Gas, Nayachouk, Madhupatna, Cuttack in terminating the services of Shri Arakhita Rout, ex Delivery Man by way of refusal of employment with effect from the 25th November 2006 is legal and/or justified ? If not, what relief Shri Rout is entitled to ?”

2. It has been urged by the workman that he was working under the management as Delivery Man from February 1997 and he received salary from the management at the rate of Rs. 3.50 on delivery of 300 Gas Cylinders and Rs. 4 on delivery of 400 Gas Cylinders respectively per month. The workman as because raised voice against the management to increase the wages, the management terminated his service without any rhyme and reason on 25-11-2006. As the management illegally terminated him (workman), he has raised the present case praying to reinstate him with full back wages. Hence this case.

3. The management in its turn has filed written statement refuting the claim of the workman. According to him, the management was neither employer nor the workman at any point of time was engaged by the management. There was no employer and employee relationship between the management and the workman for which the present case is not maintainable. Further the management has stated that his firm is not coming under the purview of Industrial Disputes Act, 1947 and ultimately prayed for dismissal of the present case.

4. In view of the above pleadings of both the parties, the following issues are settled :

ISSUES

- (i) “Whether the action of the management of M/s Sangrami Gas, Nayachouk, Madhupatna, Cuttack in terminating the services of Shri Arakhita Rout, ex Delivery Man by way of refusal of employment with effect from the 25th November 2006 is legal and/or justified ?
- (ii) If not, what relief Shri Rout is entitled to ?”

5. In order to substantiate their pleas, the workman has examined himself as W.W. 1 and proved the copy of Letter No. 3627, dated the 26th April 2007 of the Assistant Labour Officer, Cuttack under the cover of Ext. 1. On the other hand, the management has examined its proprietor as M.W. 1 and proved the copy of register of wages from January 2005 to December 2006, copy of muster roll from January 2005 to December 2006, copy of delivery list from December 2005 to December 2006 and copy of notice of daily hours of employees approved by the Assistant Labour Officer, Cuttack under the cover of Exts. A to D respectively.

FINDINGS

6. *Issue Nos. (i) & (ii)*—Both the issues are taken up together for the sake of convenience

W.W. 1 in his affidavit evidence has stated that he was working as Delivery Man since February 1997 and continued to work as such till 25-11-2006 when the management illegally terminated his service by way of refusal of employment. The workman has proved the letter of the Assistant Labour Officer, Cuttack under the cover of Ext. 1 wherein the Assistant Labour Officer, Cuttack asked for a reply from the workman of the statement filed by the management. But in that letter Ext. 1, there is no mention that the workman was working under the management. On the other hand, M.W. 1 has reiterated the facts stated in its written statement.

7. On perusal of the documents filed by both the parties, it is crystal clear that nowhere it has been mentioned that the workman was working under the management. Move over the register of wages and the muster roll for the period from January 2005 to December 2006 under the cover of Exts. A and B respectively do not disclose the name of the workman. So the workman has miserably failed to establish that he was working under the management for a period of 240 days in a year preceding to the date of his termination. On the other hand, the management has clearly established that the workman has not worked for 240 days in a year preceding to the alleged date of termination. So, when the workman has not worked for the management, the question of compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 does not arise. So on careful consideration of all the materials available in the case record, as discussed above, I am of the opinion that the termination of service of the workman with effect from the 25th November 2006 by the management is legal and justified and the workman is not entitled to get any relief.

8. Hence Ordered :

That the action of the management of M/s Sangrami Gas, Nayachouk, Madhupatna, Cuttack in terminating the services of Shri Arakhita Rout, ex Delivery Man by way of refusal of employment with effect from the 25th November 2006 is legal and justified. The workman Shri Rout is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
26-4-2012
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
26-4-2012
Presiding Officer
Labour Court
Bhubaneswar

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