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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 6th July 2012

No. 5226—IR-ID-23/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st May 2012 in Industrial Dispute Case No. 1 of 2011 of the Presiding Officer, Labour Court, Jeypore to whom the industrial dispute between the Management of the Executive Officer, N.A.C., Purushottampur, At/P.O. Purushottampur, Dist. Ganjam and its workman Smt. Rashmi Kumari Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT
JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 1 OF 2011

Dated the 31st May 2012

Present :

Shri D.C. Mishra, O.S.J.S. (Jr. Branch)
Presiding Officer,
Labour Court, Jeypore,
Dist. Koraput.

Between :

The Management of
Executive Officer,
N.A.C., Purushottampur,
At/P.O. Purushottampur,
Dist. Ganjam.

.. First Party—Management

Versus

Its Workman,
Smt. Rashmi Kumari Mohapatra,
D/o Shri Bijay Kumar Mohapatra,
Ratha Street, P.O. /P.-S. Purushottampur,
Dist. Ganjam.

.. Second Party—Workman

Under Sections 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

Shri Srikanta Mishra, Advocate, Purushottampur.	. . For the Management
Shri K. Ch. Mishra, Advocate, Berhampur.	. . For the Workman
Date of Argument	. . 9-5-2012
Date of Award	. . 31-5-2012

AWARD

1. The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Memo. No. 3071 (4)-LE., dated the 26th March 2011 for adjudication of the following disputes :

“Whether the termination of services of Smt. Rashmi Kumari Mohapatra, Ex-Homeo Assistant by way of refusal of employment with effect from the 28th January 2009 by the management of Notified Area Council, Purushottampur, Dist. Ganjam is legal and/or justified ? If not, to what relief Smt. Mohapatra is entitled ?”

2. The case of the workman runs thus :

That, the post of Homeo Assistant was sanctioned by the State Government of Odisha vide Order No. 41290, Dt. 16-12-1998 of the Housing & Urban Development Department for Homeopathic Dispensary of N.A.C., Purushottampur (Management). Subsequently the Purushottampur N.A.C. (Management) resolved on 31-3-2008 to engage a Lady Homeo Assistant in its Homeopathic Dispensary. Accordingly the management made advertisement on 30-4-2008 and the workman (second party) applied for the post along with others. On 19-5-2008, the selection committee of the N.A.C., Purushottampur, selected the workman for the post and she was appointed as Lady Homeo Assistant vide office Order No. 539, Dt. 20-5-2008 and she joined in the post on the same day, i.e., on 20-5-2008. It is avered that, the workman continued in her service from 20-5-2008 to 28-1-2009 but without any rhyme or reason and without giving one month notice or complying the mandatory provisions of section 25-F of the I.D. Act, 1947, the workman was not allowed to continue in her work from 28-1-2009. The workman has specifically mentioned that, she was signing on the attendance register daily and receiving the wages @ Rs.2,100 per month by signing on the salary bill. According to the workman, since she has continuously worked for 254 days, i.e., for more than 240 days, she is entitled to get the protection granted under I.D. Act. So the workman lodged a complaint before the D.L.O., Berhampur, Ganjam and several attempts were made by the D.L.O. for conciliation but ultimately the conciliation failed. So this reference has been made by the Labour Department vide Memo. No. 3071 (4) Dt. 26-3-2011. Subsequently the workman filed claim petition. Hence the case.

3. The management, i.e., N.A.C., Purushottampur has contested the case by filing W.S. admitting that the workman was engaged as Lady Homeo Assistant at the rate of Rs. 2,100 monthly wage but it has denied the claim of the workman that she has worked continuously for more than

240 days. According to the management, the workman was engaged for 180 days only and thereafter her engagement has not been extended for which the claim of the workman that she has worked for more than 240 days is not correct. The management has further averred that the second party workman is not a workman for which one month notice or compliance of Section 25-F of the I.D. Act, is not necessary. In the above premises the management has prayed for dismissal of this case with cost.

4. In view of the rival pleadings of the parties the following issues have been framed for adjudication :

ISSUES

- (i) "Whether the termination of services of Smt. Rashmi Kumari Mohapatra, Ex-Homeo Assistant by way of refusal of employment with effect from the 28th January 2009 by the management of Notified Area Council, Purushottampur, Dist. Ganjam is legal and/or justified ?
- (ii) If not, to what relief Smt. Mohapatra is entitled ?"

5. In order to substantiate the case, the workman Smt. Rashmi Kumari Mohapatra, has examined herself as W.W. No.1.

She has proved some documents which have been marked as Exts. 1 to 7. The copy of Order No. 41290, dated 16-12-1998 by which the post was sanctioned is marked as Ext.1. The advertisement made by the management vide letter No. 473, dated 30-4-2008 is marked as Ext. 2. The resolution of the Executive Body No. 4(i), dated 29-3-2008 by which the monthly wage of Lady Homeo Assistant was fixed at Rs. 2,100 is marked as Ext.3. The resolution of the Selection Committee dated 19-5-2008 by which the workman was selected for the post is marked as Ext. 4. The appointment Order No. 539, Dt. 20-5-2008 of the workman issued by the management is marked as Ext.5. The Attendance Register of the management (18 sheets) from 20-5-2008 to 27-1-2009 has been marked as Ext.6. The office order by which the post of Homeo Assistant was converted to Lady Homeo Assistant is marked as Ext.7.

6. None has been examined and no documents proved from management side.

7. Issues No (i) & (ii)—W.W. No.1, the workman has deposed that she was selected by the Selection Committee of the N.A.C., Purushottampur (Management) for the post of Lady Homeo Assistant and engaged by the management vide office Order No. 539, Dt. 20-5-2008. The further evidence of W.W.No.1 is that, she continued in service from 20-5-2008 to 28-1-2009 without any break i.e., for 254 days. According to W.W.No.1, during her service periods, she has signed on the Attendance Register and received wages by acknowledging on the salary bills prepared by the management. Ext.6 is the copy of Attendance Register which reveals that the workman Rashmi Kumari Mohapatra, has signed on the Attendance Register from 23-5-2008 to 27-1-2009. The evidence of W.W. No.1 that she has worked for 254 days has not been challenged and assailed in the cross-examination and Ext.6 corroborates this evidence. Therefore, the plea of the management that the workman has worked for only 180 days cannot be accepted. The documents (Exts.) relied on by the workman have been obtained from the management under R.T.I. Act and those documents have not been disputed by the management. When the unchallenged evidence of W.W. No.1 coupled

with documentary evidence (Exts.1 to 7) is analysed, this Court is driven to conclusion that the workman has worked for 254 days continuously. Admittedly the management has not complied the mandatory provisions of Section 25-F of the I.D. Act before retrenchment of service of the workman. So the termination of service of Smt. Rashmi Kumari Mohapatra, ex- Homeo Assistant with effect from the 28th January 2009 by the management is illegal and unjustified and the workman should be reinstated in her post immediately. Since the workman is not in any gainful employment, she is entitled to get 1/3 back wages.

Hence Order :

ORDER

The reference is answered on contest in favour of the workman and against the management but without any cost. The management is directed to reinstate the workman immediately with 1/3 back wages.

Dictated and corrected by me.

D.C. MISHRA
31-5-2012
Presiding Officer
Labour Court
Jeypore

D.C. MISHRA
31-5-2012
Presiding Officer
Labour Court
Jeypore

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