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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 19th July 2012

No. 5616—IR-(ID)-51/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd July 2012 in Industrial Dispute Case No. 49 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s IRC Tubes (Unit of IRC Logistics Ltd.), Balasore and its Workman Shri Dayandhi Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 49 OF 2011

Dated the 2nd July 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Managing Director,
IRC Tubes (Unit of IRC Logistics Ltd.),
At/P.O. Somanathpur,
Via Remuna,
Dist. Balasore.

.. First Party—Management

And

Shri Dayanidhi Behera,
At/P.O. Somanathpur,
Via Remuna,
Dist. Balasore.

.. Second Party—Workman

Appearances :

None	.. For the First Party—Management
Shri Dayanidhi Behera	.. For Second Party—Workman himself.

AWARD

The Government of Odisha, in their Labour and E.S.I Department, in exercising powers conferred upon them by Section 12 (5) read with Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute to this Tribunal for adjudication vide their Order No. 7812—ID-51/2011-LE., dated the 25th August 2011 :

“Whether the termination of services of Shri Dayanidhi Behera, Workman with effect from the 2nd June 2009 by the employer of M/s IRC Tubes (Unit of IRC Logistics Ltd.), Somanathpur is legal and/or justified ? If not, what relief Shri Behera is entitled to ?”

2. In short, the case of the second party as narrated in his claim statement is that he had joined as an Office Assistant and Stenographer on 1-11-2008 in the establishment of the first party and completed the period of probation of six months by working sincerely to the satisfaction of the management. But, on 1-6-2009 the management refused him employment without assigning any reason.

3. The first party management did not appear before this Tribunal to contest the case.

4. The point for consideration is as to whether the termination of service of the second party with effect from the 2nd June 2009 is legal and/or justified and if not, what relief he is entitled to.

5. The second party has filed his affidavit evidence and has proved his appointment order, dated 10-10-2008 which is marked as Ext.1.

6. Ext.1 is the order of appointment. It reflects that the first party had offered the second party for his appointment as Office Assistant and Stenographer with effect from the 1st November 2008 at a consolidated salary of Rs. 4,500 per month subject to terms and conditions contained in that appointment order. One of the terms is that the second party on accepting the order of appointment would be on probation for six months and that during the probation period the management shall have the right to terminate his service at any time without assigning any reason and without any notice or salary in lieu of notice. It is further contemplated in the appointment order that on the second party's confirmation in the first party would have the right to dispense with the former's service at any time giving him thirty days notice in writing or alternatively, salary in lieu of such notice.

7. The conciliation failure report copy whereof is enclosed with the order of reference received from the State Government reflects that despite of notice served on the first party no one had appeared to attend the conciliation proceeding. But, the Manager (P&A) of the first party had written a letter to the Conciliation Officer stating therein, *inter alia*, that the second party's performance was not satisfactory in as much as he had committed several misconducts like intentional late attendance on regular basis, disobedience of orders and unauthorised absence. It further reflects that in his letter the Manager (P&A) had stated that the management had issued a letter to the second party terminating his employment which was sent to his permanent address.

8. On the basis of the afore stated materials it is held that the second party was an employee of the first party from 1-11-2008 till the date of retrenchment, i.e., 1-6-2009. Assuming that during

this period he had rendered continuous service, the number of days he worked is 212. Thus, he did not complete one year of continuous service as defined under Section 25-B of the Act. Therefore, Section 25-F of the Act is not applicable to the case in hand.

9. Section 25-G of the Act lays down the procedure for retrenchment. The Workman has neither pleaded nor adduced evidence as to how the procedure for retrenchment has been violated. There is no material showing that the principle of “last come first go” was not followed in this case. Therefore, it is not possible to arrive at a conclusion that Section 25-G of the Act has been contravened.

10. Therefore, the retrenchment of the second party cannot be said to be illegal. However, in terms of the reference not only the legality but also the justifiability of the retrenchment is to be answered by this Tribunal. The order of appointment (Ext.1) does not contain any such term and condition which gives an option to the management to extend the probation period of six months. In the case at hand the second party was allowed to be continued in service beyond the period of six months. Therefore, in absence of any material to the contrary there can be a valid presumption that after expiry of the probation period the appointment of the second party was confirmed. In that event the management was required to give 30 days notice, or salary in lieu thereof, to the second party in order to bring about a valid termination of service. The management having kept itself away from the present proceeding has failed to produce materials to justify its action. Rather, the conciliation failure report reflects that the service of the second party was terminated on the ground of alleged misconducts. Under such circumstances, the termination of service which is under challenge cannot be said to be justified.

11. Since the termination of service is not justified, the second party should be reinstated in service. Considering the period of employment, the nature of engagement and the fact that the retrenchment is not in violation of the mandatory provisions contained in the Act back wages from the date of retrenchment till the date the Award becomes enforceable should not be granted in favour of the second party.

12. In the result, the reference is answered in favour of the second party. The first party-management to reinstate the second party within 30 days of the date of publication of the Award in the Official Gazette. On its failure to implement the Award it shall be liable to pay back wages from the date the Award becomes enforceable till the date of reinstatement.

Dictated and corrected by me.

RAGHUBIR DASH
2-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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2-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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