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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th November 2012

No. 9669—IR(ID)-74/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th October 2012 in Industrial Dispute Case No. 8 of 2010 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Management of the Executive Officer, N. A. C., Purusottampur, Dist. Ganjam and its Workman Shri Balabhadra Nayak 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. 8 OF 2010
Dated the 10th October 2012

Present :

Shri D. C. Mishra, o.s.j.s. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Management of . . . First Party—Management
the Executive Officer, N. A. C., Purusottampur,
At/P. O. Purusottampur, Dist. Ganjam.

Versus

Its Workman, Shri Balabhadra Nayak, . . . Second Party—Workman
S/o. Dillip Ku. Nayak,
At Kanaka Street, P. O. Purusottampur,
Dist. Ganjam.

Under Section — 10 & 12 of the Industrial Disputes Act, 1947

Appearances:

For the First Party—Management . . . Shri Srikanta Mishra, Advocate, Purusottampur

For the Second Party—Workman . . . Shri K. Ch. Mishra, Advocate, Berhampur

Date of Argument—27-09-2012

Date of Award—10-10-2012

AWARD

1. The matter arises out of a reference made by the State Government in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5), read with Section 10(1) of the Industrial Disputes Act, 1947 (14 of 1947) vide their Memo. No. 6890(5)-LE., dated the 18th August 2010 for adjudication of the following dispute :—

SCHEDULE

“Whether the action of the Executive Officer, Notified Area Council, Purusottampur, Dist. Ganjam in terminating the services of Shri Balabhadra Nayak, ex Peon, Dist. Ganjam with effect from the 28th January 2009 is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

2. The workman has filed this case with prayer for reinstatement in service and full back wages.

The case of the workman runs thus :—

That, the workman Shri Balbhadra Nayak continuously served as a Peon under first party management from the 1st February 2008 up to the 28th January 2009 but thereafter without any reason, enquiry or notice, he was illegally disengaged from service by the management (first party). It is pleaded that the workman had served for more than 240 days under the management in the preceding twelve (12) calendar months of termination for which he is entitled to get protection under Section 25-F of the I. D. Act. According to the workman, the action of the management is illegal, unfair, unconstitutional and against natural justice. So he has filed the case seeking the reliefs as already stated above in Para. 1.

3. The Management has contested the case by filing W. S. denying the claims of the workman. According to the management the workman was appointed for 180 days only and after expiry of that period his service was not enhanced due to poor financial conditions of the management. It is averred that, since the workman has not completed 240 days service in the preceding one year of disengagement, he is not entitled to get protection and benefits under Section 25-F of the I. D. Act. So the Management has prayed for dismissal of the case with costs on the grounds that there is no cause of action to file the case and the case is not maintainable.

4. In view of the rival pleadings of the parties and as per the reference the following issues have been framed in this case for adjudication :—

ISSUES

(i) "Whether the action of the Executive Officer, Notified Area Council, Purusottampur, Dist. Ganjam in terminating the services of Shri Balabhadra Nayak, ex Peon, Dist. Ganjam with effect from the 28th January 2009 is legal and/or justified ?

(ii) If not to what relief Shri Nayak is entitled ?"

5. In order to substantiate the case, two witnesses have been examined from workman's side W. W. No. 1 Balabhadra Nayak is the workman and W. W. No. 2 Basudeb Mohapatra is the ex Chairman of Purusottampur N. A. C. (Management). Five documents have been proved from workman's side. Ext. 1 is the xerox copy of Certificate issued by the Chairperson of N. A. C. Purusottampur showing that the workman was working in his post from the 1st February 2008. Ext. 2 is the xerox copy of resolution of the N. A. C. (Management), dated the 10th July 2008 to appoint the workman and Ext. 3 is the xerox copy of selection letter of the workman. Ext. 4 is the Office Order No. 891, dated the 11th July 2008 of the Management (appointment letter of the workman). Ext. 5 is the xerox copy of Service Book of Shri Ladu Kishore Das who was serving as a Peon under the Management (first party).

Non has been examined from Management side but documents marked Exts. A to C have been proved. Ext. A is the original Note Sheet of N.A.C. Purusottampur (Management) from the 23rd June 2008 to the 31st July 2009. Ext. B is the original C. R. No. 4 (XIII), dated the 23rd June 2008 of the Management and Ext. C is the original Office Order No. 891, dated the 11th July 2008 of the N.A.C. Purusottampur vide which the workman was appointed in service.

Issue Nos. I & II—In order to prove that the workman has worked for 240 days in the preceding one year of termination, he has relied on oral as well as documentary evidence. W. W. No. 1 has deposed that he was working as a Peon under the Management from the 1st February 2008 and was attached to the Chairperson, N.A.C., Purusottampur, Ganjam. W. W. No. 2 has corroborated the above evidence of W. W. No. 1. The Management side has disputed the above evidence of workman witness Nos. 1 & 2. Ext. 1 is the certificate granted by W. W. No. 2 in favour of the workman. On perusal of Ext. 1 it is found that the said letter is a xerox copy and does not bear the Order No. or letter No. of the Management or the date of issue. Further, Ext. 1 reveals that the workman was serving under the person who has issued it but not under the Management. Therefore Ext. 1 cannot be accepted and reliance cannot be placed on it. Ext. 4 and Ext. D are the same documents, i. e., the appointment order of the workman. Ext. 4 reveals that the workman was appointed for 180 days only. Admittedly he has been disengaged after completion of that period (180 days). Ext. A reveals that due to bad financial condition of the Management, extension of service period of the workman could not be allowed. So, non extension of service of the workman is not disengagement or retrenchment as because he has not completed 240 days of service.

In order to get protection under Section 25-F of the I. D. Act, the workman should prove that he has continuously worked under the management for at least 240 days during the preceding twelve calendar months of disengagement. The definition of continuous service of one year has been defined under Section 25-B(2) (a) (ii) as follows :—

"One year means two hundred forty days during preceding twelve calendar months."

"As per Section 25-F of the I. D. Act, those workman employed in any Industry continuously for not less than one year under an employer shall get the benefits under that Section."

In the decisions reported in “2006. III. LLJ-326, Chief Engineer, Ranjitsagar Dam and another *Vrs.* Shama Lal and others” and “2006. LLR- 887 (SC. 2J) LN 1843” it has been held that :—

“Burden of prove as to 240 days worked lies on the employee but not on the employer.”

In the decision reported in “M. P. Electricity Board *Vrs.* Hariram, etc., 2005 LLR - 1”, it has been held that :—

“The workman has to prove that he has worked continuously for 240 days in a year.”

In the decision reported in “Management of Koraput Panchabati Gramya Bank, Koraput *Vrs.* A. Mina Rao, workman, 2006 (Supp-II) OLR 819”, it is held that :—

“For attracting provisions of Section 25-F, the basic requirements of 240 days continuous service in the calendar year preceding the termination from service is mandatory.”

In the case at hand, the workman could not prove that he has completed 240 days service during preceding one year of his termination. Rather, Ext. 4 relied on by the workman very clearly reveals that he was engaged for only 180 days. So the workman cannot get any benefit or protection under Section 25-F of the I. D. Act.

The workman has taken a plea that he was engaged in a permanent post and in place of retired Peon Shri Ladu Kishore Das and he has proved the Service Book of said Ladu Kishore Das as Ext. 5. Ext. 5 reveals that the nature of appointment of Ladu Kishore Das was temporary. Further in view of the discussions made above this plea of the workman has no meaning or force at all as he cannot get any benefit in this case. Hence it is held that the action of the Executive Officer, N.A.C., Purusottampur, District of Ganjam (Management) in terminating the service of Shri Balabhadra Nayak, ex Peon (Workman) with effect from the 28th January 2009 is legal and justified. So the workman is not entitled to get any relief in this case. Hence Order.

ORDER

The reference is answered on contest against the second party but in favour of the Management. The action of the Management in terminating the services of Shri Balabhadra Nayak (Workman) with effect from the 28th January 2009 is legal and justified. The workman is not entitled to get any relief in this case.

Dictated and corrected by me.

D. C. MISHRA
10-10-2012

Presiding Officer, Labour Court, Jeypore

D. C. MISHRA
10-10-2012

Presiding Officer, Labour Court, Jeypore

By order of the Governor

J. DALANAYAK

Under-Secretary to Government