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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 17th February 2012

No. 1194—IR (ID)-95/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th January 2012 in Industrial Dispute Case No. 60 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha State Cashew Development Corporation Ltd., Khurda and its workman Shri Rabindra Kumar Sasmal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 60 OF 2010

Dated the 4th January 2012

Present :

Shri Raghubir Dash, o.s.J.s. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of M/s. Odisha State Cashew Development Corporation Ltd.,
Khurda. . . First Party—Management
And
Its Workman Shri Rabindra Kumar Sasmal,
At Barapada, P.O. Godiput, . . Second Party—Workman
Matiapada, P.S. Delanga,
Dist. Puri.

Appearances :

For the First Party—Management . . Shri S. Mishra, Advocate
For the Second Party—Workman . . Mohammed Immammudin
Advocate.

AWARD

This is a reference u/s 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 7146—ID-95/2010-LE., dated the 26th August 2010. The Schedule of reference runs as follows :—

“Whether the action of the Divisional Manager (P&G) of M/s Odisha State Cashew Development Corporation Ltd., Khurda by terminating the services of Shri Rabindra Kumar Sasmal, Watchman with effect from the 15th May 2009 is legal and/or justified ? If not, what relief Shri Sasmal is entitled to ?”

2. In this reference the order of termination of services of the second party with effect from the 15th May 2009 passed by the first party Corporation is under challenge. According to the workman, the retrenchment being violative of the provisions of Section 25-F of the Act is illegal. That apart, the reason for which he has been retrenched is not justified. It is also claimed that while terminating the workman's services the principle of 'last come, first go' has not been followed by the Management.

3. In the written statement the first party has pleaded that the second party was engaged temporarily as a Casual Labourer on daily wage basis for watch and ward services in Godiput-I (A&B) Cashew Plantation under the first party. The workman had been under such employment since the 1st July 1984 till the date of his retrenchment, i.e. the 15th May 2009. The engagement, however, was never continuous in nature.

According to the first party, the retrenchment has been effected in accordance with the provisions contained in Section 25-F of the Act. It is further contended that the retrenchment of the second party became unavoidable as the first party failed to get any income from the Godiput-I (A&B) Plantation for which the first party was not able to pay wages to the second party. It is also contended that due to the negligence on the part of the workman, most of the cashew trees standing within the Plantation area got damaged, as a result of which the first party-Corporation did not get any income from the Plantation.

4. The following issues have been framed:—

ISSUES

- (i) “Whether the action of the Divisional Manager (P&G) of M/s Odisha State Cashew Development Corporation Ltd., Khurda by terminating the services of Shri Rabindra Kumar Sasmal, Watchman with effect from the 15th May 2009 is legal and/or justified ?
- (ii) If not, what relief Shri Sasmal is entitled to ?”

5. The workman has examined himself as W. W. No. 1. He has exhibited two documents which have been marked without objection. The management, on the other hand, has examined its Divisional Manager as M.W. No. 1 and has exhibited documents which are marked Exts. A to F without objection.

FINDINGS

6. *Issue No. (i)*—It is not in dispute that the workman was under the employment of the first party since the 1st July 1984 and he was retrenched with effect from the 15th May 2009. Though it

is claimed that the workman was never employed continuously, no evidence has been adduced to prove that the workman had not completed one year of continuous service immediately before the disputed retrenchment. Rather, the compensation calculation sheet which is prepared by the management and marked as Ext. A discloses that the workman was employed continuously from 1984-1985 up to 2008-2009 and that in almost each and every year he was engaged for 240 days or more than that. The management has tried to make out a case of valid retrenchment in terms of Section 25-F of the Act. Exts. D and E reflect that the Management had issued a Cheque for Rs. 25,970 only towards retrenchment compensation and one month's notice pay which the workman refused to accept. M.W. No. 1 has adduced evidence that vide letter No. 499, dated the 15th May 2009. The order of retrenchment was passed and the services of the workman were terminated with effect from the 15th May 2009. Ext. 1 is a copy of that order. It reflects that the services of the workman were terminated with effect from the 15th May 2009 due to absence of Cashew trees in the Plantation where he was engaged for watching and up-keeping of the Plantation. According to M.W. No. 1 the termination was effected from the 15th May 2009 but the amount towards retrenchment compensation as well as one month's notice pay was remitted in the shape of a Cheque bearing No. 394550, dated the 7th July 2009 which was sent to the workman by post but on being refused to be received by the workman it was returned to the first party. Ext. E is a copy of the letter along with which the Cheque is said to have been sent to the workman. In the absence of specific plea that the amount towards compensation and notice pay was offered to the workman on the 15th May 2009, the date the retrenchment order was served on the workman, or soon thereafter so as to form part of one transaction related to the retrenchment, it is to be presumed that the termination was given effect to from the 15th May 2009 whereas the amount of compensation and notice pay was remitted to the workman on the 7th July 2009. Thus, the remittance was made about seven to eight weeks after the retrenchment was given effect to. Therefore, the order of retrenchment and the remittance of the amount in the shape of a Cheque cannot be said to have formed part of one transaction. In *Pramod Jha and others Vrs. State of Bihar & others*, 2003 S.C.C. (L&S) 545 Hon'ble Supreme Court have observed that payment or tender of compensation has to be made at the time of retrenchment and if the payment or tender is made after the time when the retrenchment has taken effect it would vitiate the retrenchment for non-compliance with the mandatory provisions of Section 25-F of the Act. It is well settled that termination of service without complying with Section 25-F of the Act would render the order of termination *void ab initio*. In that view of the matter the retrenchment is illegal.

7. Now I shall take up the plea on non-compliance of the procedure for retrenchment as enumerated in Section 25-G of the Act.

M.W. No. 1, who is the Divisional Manager of the first party-Corporation has deposed in his cross-examination that Ext. 2 is a list containing information about the date of engagement of all the Watchmen working in different Units under Khurda Division of the first party-Corporation. He has also admitted that a Watchman engaged in one Unit within the Division can be transferred to any other Unit within the Division, Ext. 2 with its enclosure which is the list containing the particulars of all the Watchmen employed in Khurda Division was obtained by the workman from the first party by way of an application under the Right to Information Act. The list enclosed to Ext. 2 reflects that a large number of persons employed after the 1st July 1984, the date from which the second party was under the employment of the first party, are still in the employment of the first party. In other words, several Watchmen working in the establishment of the first party who are junior to the

second party have been allowed to remain in employment but the services of the second party have been terminated on the ground that the Plantation where he had been engaged as a Watchman was denuded of Cashew trees. If the Management decided not to employ any Watchman in Godiput-I (A & B) Cashew Plantation, then it should have transferred the second party to any other Plantation site or to the office of the first party where Night Watchmen are required. In case there was surplus of Watchman, then the junior most of all the Watchmen working in the establishment of the first party should have been retrenched. Of course, the Management has the freedom to depart from the Rule "last come, first go" when case of retrenchment of its employee arises. But, in that case the employer should be possessed of sufficient materials to support its action whereby it has deviated from the Rule. In the case at hand, the Management alleges that because of the gross negligence on the part of the second party all the trees of Godiput Plantation got damaged. But, no material is placed before this Tribunal to support this claim. The Management does not appear to have taken any action against the Workman at any point of time even though the workman was in continuous employment for a period of about twenty-five years. It is admitted by M.W. No. 1 that the workman had been working in the Godiput Plantation through out the twenty-five years of his employment and no disciplinary action was taken against him for the alleged misconduct. Under such circumstances, it cannot be said that the deviation from the Rule contained in Section 25-G of the Act is justified by the Management. Therefore, the termination being in contravention of Section 25-G of the Act is not justified.

8. *Issue No. (ii)*—Admittedly, the workman was under the employment of the first party for a very long period. No disciplinary action has been taken against him for any misconduct. His juniors are still under the employment of the first party. There is availability of job. Therefore, the workman is found entitled to be reinstated in service.

Regarding payment of back wages, it is neither pleaded nor deposed to that since the date of retrenchment the workman has not been in gainful employment. On the other hand, his services were terminated in a whimsical manner. Under such circumstances, the Tribunal considers it just and appropriate to Award payment of 50% of back wages to the workman from the date of his retrenchment till the date this Award becomes enforceable, after which the workman shall be entitled to get 100% of wages till his actual reinstatement.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
04-01-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
04-01-2012
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
T. K. PANDA
Under-Secretary to Government