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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th February 2012

No. 1229—IR (ID)101/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2012 in Industrial Dispute Case No.14 of 2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Principal, Veer Surendra Sai Medical College, Burla, Sambalpur and their workman Shri Rebatikanta Kalet, Sweeper (DLR) was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 14 OF 2010

Dated the 10th January 2012

Present :

Shri P. K. Sasmal,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

Principal,
Veer Surendra Sai Medical
College, Burla,
Sambalpur.

. . First Party—Management

And

Shri Rebatikanta Kalet,
S/o of Shri Bansidhar Kalet,
At OCB Colony,
P.O./P.S. Burla,
Dist. Sambalpur.

. . Second Party —Workman

Appearances :

Shri A. K. Panigrahy, . . . For the First Party—Management
 Authorised Representative

In Person . . . For the Second Party —Workman

AWARD

The dispute as to whether the termination services of Shri Rebatikanta Kalet, Sweeper (DLR) Workman, by the Principal, Veer Surendra Sai Medical College, Burla , Sambalpur with effect from the 26th September 2007 is legal and/or justified ; and, if not, to what relief the workman is entitled, was referred to this Court for adjudication vide Order No.8582–ID-101/2010-LE., dated the 8th October 2010 by the Labour & Employment Department of Government of Odisha.

2. As required, the workman submitted his statement of claim on 25-10-2010 before the Court. The sum total of the claim of the workman is that the Principal, Veer Surendra Sai Medical College, engaged him on 1-1-2000 as a sweeper for the 1st Boy's Hostel with the oral assurance that he should work daily and would be appointed on priority in future. He said to have discharged his duties to the satisfaction of the students and the Chairman of the that hostel for which when on 19-9-2006 the Chairman had issued him a certificate for the works done by him, the students on the other hand, on 28-8-2007 intimated in an application to the Chief Secretary, Health Department for giving the job to him.

According to the workman, since the year 1995 there was no interview for appointments in the College but during the year 2005 when the advertisement was published in the newspaper for such interview, he along with other labourers engaged then called on the Principal and on 23-9-2005 prayed in writing to make publication of the advertisement for the rest number of posts after absorbing them in view of the services rendered by them. But, it is alleged, that their prayer was not considered and instead, by successive advertisement new hands were appointed without appointing the workman even though he had also offered his candidature in accordance to the advertisement.

The workman submitted further that he then approached the Odisha Administrative Tribunal, Cuttack, in case number O.A.1089 (C) of 2007 which ordered to consider his appointment but the Principal did not consider his case and, instead, terminated him from the service on 26-9-2007 without any reason or notice. He, therefore, asserted further, that having faith on the authority he worked for a period of 7 years and 9 months from 1-1-2000 to 26-9-2007 for an amount of Rs. 320 per month anticipating a regular appointment but when he was terminated, approached the Labour Court at Sambalpur in M.C. No.24/2007 to get the arrear dues. According to him, the opposites party-Principal was ordered by this Court to pay him an amount of Rs. 9,420 but the same was not paid for which he has approached the Labour Commissioner.

Alleging further that the authority concerned had conducted the interviews for of different posts in gross violation of different norms and has debarred him for the regular posting despite existence of vacancies and even after issuance of different communication from the higher authorities to consider his case, he prayed the Court to order for his reinstatement with full back wages.

3. From the written statement filed by the first party management, it appeared, that the workman was engaged as a part time labourer on the wages of Rs.40 for 2 days in a week, totalling for 8 days in a month from 11/2004 to 5/2007 purely on stop gap engagement and as such, his engagement being not against any sanctioned post, he would not be entitled to any relief. Denying the claim of the workman about his engagement from 1-1-2000 to 26-9-2007 the first party management, however, admitted about filing of M.C. 24/2007 and its disposal by this Court but submitted on the other hand that they have filed W.P. No.14250/2009 before the High Court of Odisha which is now *sub judice*. It submitted further that since the case of the workman for his appointment has already been rejected by the Director of Medical Education and Training (DMET), Odisha, the labour authority was accordingly apprised in the matter. Consequently, the management prayed to reject the claim of the workman among other things with the submission that the matter is under the adjudication of the Hon'ble High Court. Besides that, the management also challenged maintainability of the present proceeding on the ground of non-joinder of necessary parties and the nature of their institution which would not be covered under the Industrial Disputes Act, 1947 (for short, the "Act").

In his rejoinder to the written statement, the workman submitted that the management has shown irrelevant and unacceptable grounds and hence, the same should not be taken into account and basing his submissions in the statement of claim his case may be reconsidered for his reinstatement and the payment of arrear dues.

4. The following are the issues settled for adjudication :

- (i) "Whether the termination of services of Shri Rebatikanta Kalet, Sweeper (DLR) workman by the Principal, Veer Surendra Sai Medical College, Burla, Sambalpur, with effect from the 26th September 2007 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

5. The workman himself and the Associated Professor of the first party-management being the authorised representative were examined as the lone witness on their behalf respectively. Number of papers were banked upon by the parties as the documentary evidence.

FINDINGS

6. *Issue No. (i)*—Either witnesses in his examination-in-chief submitted through the affidavits supported the stands taken by them in the statement of claim and the written statement.

From the cross-examination of the workman W.W.1, it appeared that he admitted to have been orally appointed without any written appointment order for the post and in the last Para. of his evidence stated with vehemence that his service was terminated without issuing him any written order by the management. Photo copies of number of letters and the orders passed in M.C.24/2007 were brought into evidence by him.

During his cross-examination also the witness M.W.1 examined on behalf of the management at Paras. 4 and 9 together admitted that the workman had been engaged in the service on the oral orders and terminated without issuance of a written notice and that he was also not paid with any

retrenchment compensation with an explanation that the same was not necessary. During further cross-examination M.W.1. deposed at Para. 12 that the workman was retrenched in view of the generality of the mention made in Ext.M-11. That document was found to be the orders made by the DMET, Odisha, in view of the observation made by the Odisha Administrative Tribunal on the application filed by some other workman. This witness admitted about non-payment of the dues of the workman in accordance to the orders of this Court in M.C.24/07 by deposing further that the same was not done in view of pendency of the dispute before the Hon'ble High Court. He, ofcourse, expressed his ignorance about filling of any other MISC. case to stay the orders passed in M.C.24/2007.

Some other evidence regarding the alleged irregularities committed by the Principal in the interviews conducted by the management and the appointments made thereafter were adduced by the workman through documentary evidence and M.W.1. was cross-examined on that score at length but, it appeared to my humble view, that the same cannot be considered being redundant before this forum in the present proceeding. But from the examination-in-chief of M.W.1 at Para. 6 it appeared that subsequent to the rejection of claim of the workman by DMET, Odisha, on consideration of the direction given in O.A. No.1089 (C) of 2007, he has filed another case in O.A. No.3197 (C)/2008 which is still pending for adjudication. Ext.M-9 was proved by M.W.1 in that behalf. He, therefore, stated in the subsequent Paras. of his affidavit that in the same matter two different forums can not be approached. Such statement of M.W.1. remained unchallenged during cross-examination ; and, as such, the same would be held to have been admitted. The workman did not mention on his own accord about the same nor obtained any explanation even during cross-examination about the circumstances under which such a case was again filed by him. He can, therefore, be blamed to have suppressed with the truth. However, it is found that when the management has approached the Hon'ble High Court in a writ petition as against the orders passed by this Court in M.C.24/2007, the workman in his turn has again filed a fresh application before the Odisha Administrative Tribunal agitating his grievances and both the proceedings are now pending before the respective forum.

7. Both the parties have placed written arguments in support of their respective cases. But when workman has not submitted any citation, the management has pressed into service the case laws reported in 2009 (Supp-I) OLR-561 (Jitendra Vrs. Registrar) ; (2009) 2 SCC (L & S) 646 (Krishna Vrs. Mohd.) ; (2010) 1 SCC (L &S)1126 (Union Vrs. M.K.) ; and (2010) 1 SCC (L &S) 545=(2009) 15 SCC 327 (Jasbir Vrs. Haryana).

Out of those case laws, in 2009 (Supp.-I) OLR-561 (*supra*) when it was held that any appointment made on temporary or *ad hoc* basis in violation of the mandate of the constitution is not permissible and thus void ; in (2010) 1 SCC (L&S) 545 (*supra*) it was observed that in the event of alleged violation of Section 25-F of the Act, the nature of appointment, the period of appointment, the availability of the job etc. should be weighed the Court for determination of such an issue. In (2009) 2 SCC (L &S) 646 (*supra*) their Lordships referring the other judicial pronouncements held that the workman has to prove completion of 240 days of work under Section 25-F Act. However, in (2010) 1 SCC (L&S) 545 (*supra*) their Lordships held further that "an order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case where the workman

particularly a daily wager (underline nine) who has completed 240 days of work in a year preceding the date of termination has not been found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice.” Saying so, their Lordships at Paras. 17 and 18 of the judgement discussed the manner in which the compensation should be awarded and determine.

8. Thus, keeping in mind the above principles, when the dispute involved in this case is examined, it is found that the workman had rendered the job admittedly as a daily wager. As such, he in view of the observation made by their Lordships in (2010) 1 SCC (L &S) 545 (*supra*), notwithstanding the length of service rendered by him under the management, would not be entitled to the relief of reinstatement with full back wages as prayed for by him. As regards the legality or otherwise of his termination and to receive the compensation, if any, in lieu thereof, it is seen that he has admittedly filed another proceeding in M.C. 24/2007 for computation of money/benefit due to him which has already been disposed of by this Court and the parties are now fighting such litigation elsewhere. In that view of the matter, it would, in my humble view, not be proper otherwise to award any compensation. Consequently, issue No.1 is answered against the workman.

9. *Issue No (ii)*—For the discussion made in issue No.i, the workman would not be entitled to any other relief also. Hence, answering this issue accordingly, it is ordered :

That the reference be and same is adjudicated against the workman on contest but without any cost.

Dictated and corrected by me.

P. K. SASMAL
10-1-2012
Presiding Officer
Labour Court
Sambalpur

P. K. SASMAL
10-1-2012
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

T. K. PANDA

Under-Secretary to Government