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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th February 2012

No. 1241—Ir-(ID)-102/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2012 in Industrial Disputes Case No. 17 of 2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of the Principal, Veer Surendra Sai Medical College, Burla, Sambalpur and their Workman Shri Sambhunath Sahu, ex Attendant (D.L.R.) was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 17 OF 2010

Dated the 10th January 2012

Present :

Shri Pradipa Kumar Sasmal,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Principal, . . . First-party—Management
Veer Surendra Sai
Medical College, Burla,
Sambalpur.

And

Their Workman . . . Second-party—Workman
Shri Sambhunath Sahu,
ex Attendant (D.L.R.),
S/o Late Bhujja Sahu,
At/P.O. Attabira (near Attabira P.H.C.),
P.S. Attabira, Dist. Bargarh.

Appearances :

Shri A. K. Panigrahi, Auth. Representative	. .	For the First-party—Management
Self	. .	For the Second-party—Workman

AWARD

The present dispute arose out of the reference made by the Government of Orissa (now Odisha), Labour & Employment Department, vide their Order, dated the 8th October 2010 under Letter No. 8587—ID-102/2010-LE., giving rise to the registration of the present case under Sections 10 and 12 of the Industrial Disputes Act, 1947 (for short, the "Act"). The dispute involved is Schedule as follows :

"Whether the termination of services of Shri Sambhunath Sahu, ex Attendant (D.L.R.) workman by the Principal, Veer Surendra Sai Medical College, Burla, Sambalpur with effect from the 1st June 2007 is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. In his statement of claim the workman at para. 1 disclosing his educational qualification and the marks obtained in an examination for Gr. D besides exhibiting the registration number and his residential address stated subsequently that he was appointed as an Attendant in the F.M.T. Department of Medical College, Burla on the 14th January 2004 and was issued with an identity card on Dt. 1-5-2005 and continued to perform his duty regularly up to Dt. 31-5-2007 but all of a sudden he was discharged from his duty on Dt. 1-6-2007 illegally without serving due notice to him. He submitted that thereafter he took shelter before the Cuttack Branch of the Tribunal vide Case No. OA 954 (C)/2007 which in its Order No. 3, dated the 9th April 2007 directed the Principal (of the first-party management) to allow him to continue duty on daily wage basis till contractual or regular is made but the Principal did not and instead retrenched him along with other colleagues on Dt. 31-5-2007. The workman thereafter said to have called on the Principal along with other colleagues with a prayer to allow them on duty as per the Orders of the Tribunal but the said authority did not pay any heed to their approach for which the workman approached the Assistant Labour Commissioner who took up a conciliation proceeding but on being noticed the Principal even did not attend the meeting in person nor deputed any representative. It was, however, submitted by the workman that an intimation was given by the Principal that the management had approached the Hon'ble High Court.

While the matter stood thus, the workman submitted further, that the Assistant Labour Officer knowing the fact that he was working on daily wage basis getting Rs. 320 for eight (8) days at the rate of Rs. 40 per day and accordingly mentioned in his order that he has been retrenched from service illegally without any cause. For such development, the workman, thereafter, filed Misc. Case No. 25/2007 before this Court for payment of his rest dues and accordingly this Court said to have directed the Principal after hearing to pay the workman a sum of Rs. 38,020. That amount was also not paid by the Principal for which the Labour Commissioner, Bhubaneswar was approached in the matter by the workman who directed the Principal to pay the amount but no step was taken by the said authority in spite of different protest and agitation resorted to by the workman. Thereafter, when different authorities were approached and enquiries were made by the Labour Machinery and the workman along with his colleagues gave a complaint petition on Dt. 24-1-2007 the Principal did not attend the enquiry and on the other hand, wrote to the Director, Health Department, Bhubaneswar, during September, 2007 to grant permission for contractual appointment

to the workman and others and accordingly, the said authority accorded permission to the Principal to finalise the matter himself. But, when the Principal did not respond to the orders of the authority, being aggrieved from all corners the workman and his associates approached the Joint Secretary who also directed the Principal to look into the genuineness of the matter but the authority even thereafter remained mom. Finding no other go, the workman in view of the reference made to this Court filed the statement of claims of accordingly with a prayer to reinstate him in service with back wages.

3. The management in the written statement challenged the maintainability of the proceeding before this forum by submitting that the management is not an "Industry" and does not come under the purview of the Act, whereas the proceeding would otherwise be bad for non-joinder of the necessary party.

Further case of the management is that the second-party was never engaged against any sanctioned post and since he was asked to work only on stop gap arrangement that too, as contract labourer to work for two days in a week and eight days in a month, he would not be entitled to get any relief in the case with the existing law of the land. The management also disputed the appointment of the workman as an Attendant in F.M.T. Department and issuance of the identity card to him. Such identity card was said to have been issued to the workman by the concerned contractor wherein he was also designated as a Peon and the name of the Department was mentioned as Steward, which means to look after the cleanliness of the Medical College Hospital. It, therefore, alleged that the entire statement submitted by him are false and fabricated and since he based his claim on false documents a report was made to the vigilance/police for investigation and necessary action and the development was accordingly apprised to the Labour Commissioner.

According to the management, the O.A.T., Odisha in its judgment had not given any specific order and since the matter was sent to the higher authority for consideration of appointment and the workman had not merit or eligibility for the same its case was rejected by the higher Health Authority. Reiterating the engagement of the workman for two days in a week the management submitted further that he has already been paid with all his dues for the working period from 11/2004 to 5/2007 whereas the workman had never complained for his arrear claim after receipt of his dues at any time during his engagement. Termination of service of the workman after 5/2007 was admitted by the management and stating further that the order passed by this Court in Misc. Case No. 25/2007 having been challenged before the Hon'ble High Court vide W.P. No. 14251 of 2009 for adjudication, the management prayed to reject the claim of the workman among other things for the pendency of the above writ petition before the Hon'ble Court.

In the rejoinder to the written statement the workman referring about number of communications made by the different higher Health Authorities to consider his case by the Principal, submitted that the Principal had suppressed the truth and had asserted the facts which are not acceptable and instead, are liable to be rejected whereas the entire disputes having been covered under the different provisions of the Act, he would be entitled to reinstatement with full back wages.

ISSUES

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication :—

- (i) "Whether the termination of services of Shri Sambhunath Sahu, ex Attendant (D.L.R.) workman by the Principal, Veer Surendra Sai Medical College, Burla, Sambalpur with effect from the 1st June 2007 is legal and/or justified ?

(ii) If not, to what relief the workman is entitled ?"

5. The workman himself and the Associate Professor of the Management Institution, who is also found to be the authorised representative of the first-party management, were only examined as the lone witness on their respective behalf. Photo copies of number of letters, circular orders and the orders passed by different authorities including the Hon'ble High Court were brought into record by the parties as the documentary evidence.

FINDINGS

7. *Issue No. (i)*—The workman in his examination-in-chief submitted to the Court on Dt. 16-3-2011 through the affidavit reiterated in nutshell, the stand taken by him in the statement of claim and the rejoinder and found to have deposed further that he has not received the notice in W.P. (C) No. 14251/2009. While in the box he proved as many as 24 photo copies of different documents including his identity card. When cross-examined the workman stated to have worked since 1-4-2004 as Attendant and denied the suggestion that he was engaged by the Professor, Forensic Science of V.S.S. Medical College, Burla, during the year 2005. In the next breath he admitted that the Professor, F.M.T. of V.S.S. Medical College, Burla had not issued him with any engagement letter in respect of any post but he was engaged as Attendant by his verbal/oral direction besides admitting that the Principal of the said college being the highest authority has not issued any engagement letter in his favour. When questioned about the entries in his identity card, proved as Ext. W-2, the workman admitted that Steward is a post in the Hospital but not a Department by deposing further that the Steward distribute the work among the Sweepers of the Hospital at morning hour and looks after the work of the Sweepers. Denying the suggestion about engagement as daily wages for only two days in a week he admitted on the other hand to have received his wages from 2004 to 2005 besides admitting that he has not received any letter from the management towards his disengagement in service. But when he was allowed to be examined further for his examination-in-chief the workman as W.W.1 stated that the then Principal J. K. Balawant Ray and Superintendent Miss Janet Khako of the management had issued him the identity card during the year 2005 and state further that since the proceeding initiated by the first-party management before the Hon'ble High Court regarding payment of their dues has in the mean time been dismissed, he being the workman under the first-party management would be entitled to get the dues from them. But when cross-examined the workman admitted to have worked as an Attendant in Forensic Department of the management on daily wages and that in the identity card (Ext. W-2) he has been shown as a Peon. In the subsequent para. of the cross-examination the workman admitted further that appointments in the Forensic Department are made according to the Government Rules and that he was not appointed by the Principal of the management but engaged by the Professor on daily wages. He claimed to have been issued with an appointment order by the Professor but stated that he was getting an amount of Rs. 320 per month from the office of the Principal by working throughout the month. From the statement given by this witness during cross-examination at paras. 10 and 12 it appeared that no advertisement was published in any paper or otherwise when he was engaged but subsequently in accordance to the publication for interview he had applied for the post of the Attendant but could not qualify the test. He answered in the negative during cross-examination regarding the non-joinder of other authorities of the Health Department as necessary parties to the present suit and denied the suggestion that he would not be entitled to any dues from the first-party management since the Principal had not appointed him and even his engagement by the Professor was also not legal.

On the other hand, the authorised representative of the management in his examination-in-chief through the affidavit, marked as Ext. M-1, found to have reiterated the stand taken by the management in the written statement and stated further to have filed W.P. No. 14251/2009 against the orders passed by this Court in Misc. Case No. 25/2007. With such assertions, he stated further, that in view of the pendency of the proceeding before the Hon'ble Court the orders of the Labour Commissioner could not be implemented whereas the second-party workman though applied for a contractual appointment along with others according to the advertisement but during the course of interview and selection process he having been found not suitable was not appointed as a contractual employee, whereas the decision as to keep a post vacant or fill up the same on contractual/regular post being the policy decision of the Government the workman cannot challenge the same. Denying the engagement of workman for 240 days in a calendar year and stating about his engagement, if any, without due process of law, this witness (M.W. 1) has stated that the different provisions of the Act was not required to be complied with by the management. He asserted with vehemence that the workman was not engaged at any point of time against any sanctioned post and he having been engaged purely on stop gap arrangement on daily wage basis that too for 8 days in a month would not be entitled to get any relief in this case. M.W. 1 during his appearance in the box among other things proved the photo copies of different documents including the orders passed in O.A. No. 954/2007, which were marked as Exts. M-2 to Ext. M-14. During cross-examination M.W. 1 admitted that no retrenchment order had been issued to the workman and no compensation was paid with the further statement that the same was not necessary as the workman was a daily labourer. This witness was however, not able to say the specific calendar date of each month on which the workman was working for non-availability of the information thereon but reiterated that the workman had to work for two days in a week of a particular month. He admitted that the workman was not given all the benefits applicable to a regular employee as his engagement was not in accordance to the Government Rule, though he admitted in the next breath that the workman was working in the Forensic Department of the Medical College, Burla.

This much is the evidence adduced by the parties

7. In the written note of argument submitted by the workman on Dt. 27-12-2011, it was found that he has again reproduced the stand taken by him in the statement of claim and rejoinder besides reiterating the allegations against the management about the irregularities committed in the interview for different posts and the subsequent appointment given to different persons. He has also alleged about non-compliance of the statutory provisions of the Act by the management.

On the other hand, the authorised representative of the management in the written note of argument submitted almost the sum total of the evidenciary value of the documents proved by him while in the box besides mentioning certain legal position. But, when the workman did not submit any case law to substantiate his claim, the management pressed into service the case laws reported in 2009 (Supp.-1) O.L.R. 561 (Jitendra Vs. Registrar); (2009) 2 S.C.C. (L. & S.) 646 (Krishna Vs. Mohd.); (2010) 1 S.C.C. (L. & S.) 1126 (Union Vs. M. K.) and (2010) 1 S.C.C. (L. & S.) 545—(2009) 15 S.C.C. 327 (Jasbir Vs. Haryana).

Out of those case laws, in 2009 (Supp.-1) O.L.R. 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 S.C.C. (L. & S.) 545 (*Supra*), it was observed that in the event of alleged violation of Section 25-F of the I. D. Act, 1947, the nature of appointment, the period of appointment, the availability of the job etc. should be weighed with the Court for determination of such an issue. In (2009) 2 S.C.C. (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 of the I. D. Act, 1947. However, in (2010) 1 S.C.C. (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 mine) who has completed 240 days of work in a year preceeding the date of termination has not been found to be proper. Compensation in stead of reinstatement has been held to meet the ends of justice." Saying so, their Lordships at Paras. 17 and 18 of the judgment discussed the manner in which the compensation should be awarded and determined.

8. 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 wagger. As such, he, in view of the observation made by their Lordships in (2010) 1 S.C.C. (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 the workman had admittedly filed another proceeding in Misc. Case No. 25/2007 for computation of noney/benefit due to him which has already been disposed of by this Court and the parties are now fighting such litigation elsewhere. Of course, the management though claimed to have approached the Hon'ble Court in W.P. No. 14251/2009 against the orders of this Court passed in Misc. Case No. 25/2007, no such document was produced by them in connection with this case. However, M.W. 1 stated on Oath about filing of such an application whereas, the workman though claimed that such a proceeding in the mean time was dismissed by the Hon'ble Court, he in his turn was also not able to produce any such paper. Be that as it may, when the workman for the discussion made above was found not entitled to reinstatement with back wages and was found to be entitled to the compensation, the award to that effect having been already ordered by this Court it would be too early to deal with the same otherwise pending disposal of the dispute in between them by the Hon'ble Court.

The principles of *res judicata* was held applicable to a dispute under the Act by different judicial pronouncements. In that view of the matter, I am of the considered view that the workman would not be otherwise permitted to agitate the grievances regarding the legality or otherwise of the termination of his service in a subsequent proceeding like the present one being barred under the principles of constructive *res judicata*. Consequently, when he remained satisfied by agitating his claim in the Misc. Case under Section 33 (C) of the Act and ultimately found to be entitled to receive the amount due to him. He even otherwise would not be entitled to any compensation further in lieu of his termination from service, in the light of the principles decided in (2010) 1 S.C.C. (L. & S.) 545 (*Supra*).

Thus, concluding the discussion in the above manner, issue No. 1 is answered against the workman.

11. *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.

AWARD

That the reference be and the 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