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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd December 2011

No. 11675—li/1(B)-12/2005(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th October 2011 in I. D. Case No. 49/2005 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Tourist Officer, Barkul and its Workman Shri Srikant Kumar Nayak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 49 OF 2005

Dated the 14th October 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of
Tourist Officer, Barkul. . . First-party—Management

And

Its Workman
Shri Srikant Kumar Nayak. . . Second-party—Workman

Appearances :

Shri K. S. Padhi . . . For the First-party—Management

Shri S. K. Nayak . . . For the Second-party—Workman
himself.

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 8811—li/1(B)-12/2005-LE., dated the 21st October 2005 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the action of the management of Tourist Officer, Barkul, Dist. Khurda in terminating the services of Shri Srikant Nayak, ex-Choukidar-*cum*-Sweeper with effect from the 1st April 1999 is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?"

3. The case of the workman, in brief, as set out in his statement of claim is that he was appointed as Choukidar-*cum*-Sweeper on a monthly wage of Rs. 2,250 by the management with effect from Dt. 15-9-1994. He worked at Tourist Office, Bhubaneswar till Dt. 14-9-1995. Thereafter he was placed under Tourist Officer, Barkul Tourist Office on Dt. 14-9-1995 with same terms and conditions of service and he joined at Barkul on Dt. 15-9-1995. While working at Barkul in the month of March, 1996 the workman was asked to receive his wages at the rate of Rs. 750 instead of Rs. 2,250 to which he has vehemently objected. But the management verbally told him that if he accept his salary at the rate of Rs. 750 per month, the management would appoint him in a regular post and pursued the workman to accept the salary at the rate of Rs. 750 per month. But all on a sudden the management stopped payment of his salary of Rs. 750 per month from Dt. 1-10-1998 to Dt. 31-3-1999. When the workman demanded his salary, the management out of grudge terminated his service with effect from the 1st April 1999. According to the workman, the present termination of service by way of refusal of employment amounts to retrenchment for which the management is under statutory obligation to comply the provisions of Section 25-F of the Industrial Disputes Act. Further the workman has stated that from the date of his joining under the management till termination, he has worked for more than 240 days continuously as per the provisions of Section 25-B of the Industrial Disputes Act. Therefore, according to the workman, the present termination of service is illegal, unjustified, *mala fide*, arbitrary and the same is against the principles of natural justice. The management has also violated the provisions of Section 25-G of the Industrial Disputes Act by allowing the juniors to the workman to continue in service for which the workman has prayed for his reinstatement in service with full back wages and all consequential service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, the workman was appointed temporarily as Choukidar on leave vacancy for different periods up to Dt. 30-11-1995 and his initial pay was fixed at Rs. 750 per month. He was again engaged as Choukidar-*cum*-Sweeper on daily wage basis for watch and ward of the Restaurant Complex and the administrative building of Water Sports Complex at Barkul from April, 1997 to September, 1998. According to the management, the workman had never been engaged for more than 240 days continuously and the service of the workman was not terminated. Since the project at Barkul was transferred to Odisha Tourism Development Corporation, the services of daily wage persons including the workman were discontinued with effect from the 1st October 1998. In this background, the management has prayed that the workman is not entitled to get any relief.

5. In view of the above pleadings of the parties, the following issues are settled.

ISSUES

- (i) "Whether the action of the management of Tourist Office, Barkul, Dist. Khurda in terminating the services of Shri Srikant Nayak, ex-Choukidar-cum-Sweeper with effect from the 1st April 1999 is legal and/or justified ?
- (ii) If not, to what relief Shri Nayak is entitled ?"

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents such as, xerox copy of Letter No. 140, Dt. 26-7-1996, xerox copy of absentee statements, xerox copy of sanction order and xerox copy of detailed bill of contingent charges on March, 1999 under the cover of Exts. 1 to 9 respectively. It is pertinent to mention here that the management has appeared and filed written statement but subsequently remained absent and did not take part in the hearing though sufficient opportunities were given to the management.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

The workman in his affidavit evidence has stated that he was appointed as Choukidar-cum-Sweeper on a monthly wage of Rs. 2,250 by the management since Dt. 15-9-1994 but his wage for the period from Dt. 1-10-1998 to Dt. 31-3-1999 were not paid to him and when he demanded his salary, the management terminated his service with effect from the 1st April 1999. The workman has deposed that from the date of his joining till the date of his refusal of employment, he had worked under the management continuously without any interruption and has completed for more than 240 days in twelve calendar months preceding to the date of his termination. Since the management has not been cross-examined the workman and also did not adduce any evidence, the evidence of the workman both oral and documentary have remained uncontroverted.

8. It is stated by the workman that no notice was served on him before he was terminated. Also no notice pay and compensation was paid to him before refusal of employment by the management. Thus the management has contravened the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and pre-condition one.

9. So on careful consideration of all the materials available in the case record and in view of the unchallenged testimony of the workman, I came to the finding that the action of the management in terminating the services of the workman with effect from the 1st April 1999 is neither legal nor justified. So the workman is entitled for reinstatement in service.

10. As regards back wages, admittedly when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employment elsewhere, I am of the considered view that 25% back wages will meet the ends of justice in this case. Hence both the issues are answered accordingly.

11. Hence Ordered :

That the action of the management of Tourist Office, Barkul, Dist. Khurda in terminating the services of Shri Srikant Nayak, ex-Choukidar-cum-Sweeper with effect from the 1st April 1999 is illegal and unjustified. The workman Shri Nayak is entitled to be reinstated in service with 25% back

wages. The management is directed to implement this Award within a period of one month from the date of its publication, failing which, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
14-10-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
14-10-2011
Presiding Officer
Labour Court, Bhubaneswar

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