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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 29th February 2012

No. 1639—IR (ID)-2/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th December 2011 in Industrial Dispute Case No.8 of 2011 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of office of the Child Development Project Officer, Tileibani, district Deogarh and its Workman Shri Iswar Nahak was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 8 OF 2011

Dated the 27th December 2011

Present :

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

Between :

The Management of
Office of the Child Development
Project Officer,
Tileibani,
Dist. Deogarh.

. . First Party—Management

And

Their Workman
Shri Iswar Nahak,
S/o Balabhadra Nahak,
At/P.O. Asura Khola,
P.S./Dist. Deogarh.

. . Second Party —Workman

Appearances :

Smt. Namita Rout, CDPO, Tileibani	. . For the First Party—Management
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Self	. . For the Second Party —Workman

AWARD

The present dispute arose out of the reference made by the Government of Odisha in Labour & Employment Department vide their Order ,Dt. 23-4-2011 under Letter No. 3945—ID-2/2011-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 scheduled as follows :—

“Whether the termination of services of Shri Iswar Nahak with effect from 1-11-2007 by the Child Development Project Officer, Tileibani is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. In his claim statement the second-party workman submitted that he was appointed by the first-party management since 15-11-1999 and continued in service till 31-10-2007. All of a sudden the first-party management refused the service to him without assigning any reason thereof which, according to him, ultimately amounted to his retrenchment. He, therefore, alleged that the above action of the first-party management is illegal as the procedure laid down in Sections 25-F/25-N of the Act was not complied with by the first-party management. Alleging further the inaction of the first-party management, the second-party workman submitted that he was not paid with any retrenchment compensation and the principle of “first come last go” and “last come first go” was also not observed nor one month notice was served on him or the payment was made in lieu of such notice. As such, he claimed to be still in deemed service and entitled for reinstatement with full back wages and other benefits incidental thereto as after the illegal retrenchment/termination from the service he lodged a complaint petition with the local Labour Machinery at Deogarh who investigated in the matter but due to adamant attitude of the first-party management no amicable settlement could be reached and the conciliation ended in failure. On the other hand, the second-party workman submitted that the first-party management has retained the service of workman who is junior to him and fresh hands have been recruited to the establishment violating the provisions of Sections 25-G and 25-H of the Act. According to him, after retrenchment from the service he remained unemployed in spite of his best efforts for alternative employment and is now leading a miserable life under the vicious circle of poverty without any other sources of income. He submitted further that the establishment of the first-party management, namely the Child Development Project Office is a very vest and profitable unit under the State Government justifying the definition of “Industry” and since it is engaging other workmen till today without giving a chance for his reinstatement, the alleged inaction of the first-party management giving rise to an industrial dispute, he would be entitled to the reliefs of his reinstatement with retrospective effect from the date of his termination on 31-10-2007 with back wages.

3. The first-party management in their written statement submitted that the workman was engaged purely, temporarily in pursuance of W & CD Department, Letter No. 7189, Dt. 27-7-1995 to be terminated at anytime without assigning any reason and as such his claim for regular appointment as not conferred in the engagement order inasmuch as his engagement was at the sole discretion of the authority whereas the claim for re-engagement or regular appointment is purely baseless. It was submitted specifically that the service of the workman was not continuous and he was engaged on daily wages basis through payment vouchers. Consequently according to the first-party management the workman was not required to be issued with one month notice prior to his retrenchment as per the Government guidelines. The further case of the first-party management is that the engagement of the workman was part time and as per the necessity and thus, when the authority felt that his engagement was not essential he was terminated and on that score no amicable settlement was to arise and his service being temporary engagement the reinstatement with full back wages did not arise. According to them, the first-party management being a Government establishment within the purview of the Odisha Government, violation of the Act was not made and after the workman no one has been engaged in the establishment which is also not a profitable firm. Expressing the ignorance about the type of life led by the second-party workman, the first-party management submitted that the action taken in pursuance of W&CD letter is purely legal.

In the rejoinder to the written statement the workman reiterated to have discharged his work continuously and regularly in the establishment of first-party management and admitted fairly that he was paid with his wages on monthly basis. He, however, submitted that the law does not permit the first-party management to act whimsically and arbitrarily inasmuch as before his disengagement the management had to follow the procedure laid down in the Act. According to him, since he had worked for more than a decade the treatment given to him by the first-party management would create more and more problem in a civil society and when after his termination that too illegally the first-party management is getting the assigned work by engaging foreign hands, he is to be reinstated with full back wages :—

4. On the above pleadings of the parties, the following issues have been settled for just decision of the dispute.

ISSUES

- (i) "Whether the termination of service of Shri Iswar Nahak with effect from 1-11-2007 by the Child Development Project Officer, Tileibani, is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?"

5. The workman got himself examined as W.W.1 besides examining two other independent witnesses as W.W.2 and W.W.3. Among other things, he, of late proved the appointment Order No. 405, Dt.20-11-1999 issued to him by the CDPO, Tileibani, on the orders of the Sub-Collector, Deogarh as Ext. W.4. In their turn the present CDPO was examined as lone witness on behalf of the management. They, however, filed the photo copies of number of official letters, note sheets and orders etc. as the documentary evidence which were marked as Ext. M.2 to Ext. M.9.

FINDINGS

6. *Issue No. (i)*—In his examination in chief submitted through the affidavit and marked as Ext. W.1 the workman as W.W.1 stated about the date of his appointment and the nature of job made by him since the date of his appointment and also deposed about the particular calendar date, i.e. 31-10-2007 since when he was all on a sudden refused with the service without assigning any reason thereof. The sum total of the statement of the workman in his examination in chief is that the action taken by the first-party management is non est and void *ab initio* which was also not legal in the eye of law and the provisions of the Act. According to him, after retrenchment from the service he has remained unemployed in spite of his best efforts for alternative employment and is leading a miserable life. As stated earlier, he, of late produced and proved the appointment order on 20-10-2011 which was marked Ext.W.4. from the recital of the said appointment order, it appeared that the first-party management on the orders of the Sub-Collector, Deogarh, appointed the workman vide Order No. 405, Dt. 20-11-1999 to work as the night watchman in view of the application submitted by him on 12-11-1999 and he was said to be paid with an amount of Rs.11 per day for the job to be rendered by him. He was asked specifically in the appointment order (Ext.W. 4) to work from 15-11-1999. When cross-examined, W.W.1 was not able to say if his appointment was temporary or permanent but stated to have been paid salary regularly for every month. He however, at the same time denied the suggestion that being a temporary employee he was paid with Rs. 11 as daily wages from out of the contingent fund. On the other hand, he admitted fairly that his appointment was temporary but there was no stipulation that his services can be terminated at anytime without assigning any reason. In fact, from the contents of the appointment order (Ext.W.4), it appeared, that though the service of the workman was shown to be purely temporary but there was no assertion that the same can be terminated at anytime without assigning any reason. Instead, from the last Para. of the evidence of the workman it is found that he denied the suggestion that there is no post of night watchman or sweeper in the office of the CDPO, Teleibani, and that till date none else has been engaged/appointed as the night watchman/sweeper. This witness was not able to say if the office of the first-party management is a profitable organisation but admitted fairly in the next breath that it is a Government unit. He concluded the evidence by denying the suggestion that in view of the Government order he was not entitled to reinstatement to the job and/or back wages.

From the evidence of W.W.2 and W.W.3, it appeared, that either of them worked as the Choukidar and Watcher at BSNL Tower and C.G. Godown situated near the office where the workman was working. The sum total of their evidence is that the workman rendered his service in the establishment of the first-party management for years continuously by discharging his duty with utmost devotion and sincerity but during the year 2007 he was illegally retrenched by the first-party management and since then he being a poorman, his family members are starving when cross-examined, W.W.2 deposed that for the last about two to four years he has not seen the workman doing the job and from the disclosure made by the workman he could know that he was illegally terminated from the job. According to W.W.2, from the day- to- day performance of the workman he could say about his poverty and miseries but expressed his ignorance about the performance of any work by the workman in any hotel. W.W.3 when cross-examined stated that for the last 17

years he has been staying at Telibani and could know the workman who was initially a labourer but about 8 years back he worked as a watcher in the CDPO Office, Teleibani and continued with the job for 5-6 years. He was not able to say if the service of the workman was permanent and/or temporary but deposed with vehemence that the workman had disclosed him that he was paid with monthly salary and also disclosed further that he was terminated from the job. In his fairness W.W.3 admitted that he had never visited the family of the workman but denied the suggestion that he has no knowledge about the service occupation and/or family affairs of the workman.

7. In their turn the first-party management got examined the present incumbent CDPO as the lone witness. In her examination in chief through the affidavit, marked as Ext. M.1 she claimed to have worked in the Office of CDPO, Tileibani since 29-9-2010 and deposed further that the workman was working as contingent paid Choukidar sine 12-11-1999 and he was engaged on purely temporary basis by the then Sub-Collector, Deogarh, on daily wages of Rs.11 per day. According to this witness, the workman was being paid wages for his working days only and he was not entitled for any other benefit inasmuch as no muster roll or payment register was maintained for him he was working as and when required by the first-party management. The further evidence of M.W.1 in examination-in-chief was that the workman was being engaged and paid wages as per the availability of contingent funds allotted by the Government and that as contingent fund was not sufficient to meet the wages of the second-party workman, he was disengaged, with a view to disentitle the workman from the reliefs claimed in this case, M.W.1 stated further that since the workman was not in continuous service, the first-party management did not issue notice to terminate and he was not paid compensation as per the provisions of the Act and that the workman would not be entitled to the relief claimed before this Court as he had agitated the matter before the Odisha Administrative Tribunal, Cuttack in O.A No. 1337, (C) of 2008 but on hearing the case the Hon'ble Tribunal did not pass any order for his reinstatement.

Besides the above evidence, M.W.1 proved the xerox copy of the Letter No. 7189, Dt. 27-7-1995 of the woman and Child Development Department addressed to all the CDPOs regarding engagement of contingent Choukidar in which such employee was ordered to be engaged on daily wages basis at the rate of Rs. 11 whenever essential provided the CDPO Office building is located in a distant place from the block office and such engagement would be purely temporary and terminated at anytime without assigning any reason thereof and shall not confer any future claim for regular appointment. According to the above communication, the expenditure on that score shall be met out of the overall contingent expenditure admissible per annum in a project. Subsequent to the engagement of the workman some other official papers like note sheets, photo copy of the appointment order of the workman and the statement of payment made to him were proved by M.W.1 as Ext. M.3 to Ext.M.6 whereas the parawise report in O.A. No.1337, (C) 2008 and the forwarding report addressed to the Government Advocate, O.A.T., Cuttack vide letter No. 596, Dt. 31-10-2008 of the CDPO, Tileibani Block were proved Ext.M.9 and the photo copy of the compliance report submitted to the District Labour Officer, Deogarh vide Letter No. 557, Dt. 21-10-2008 of the CDPO was proved as Ext.M.8.

When cross-examined, M.W.1 admitted at the initial para that initially the workman was paid with an amount of Rs. 11 per day which was subsequently enhanced to Rs. 50 and when he was terminated from the service given with an amount of Rs. 70 as such wages. She (M.W.1) denied the suggestion that though the workman was entitled to other allowances they had intentionally not paid the same to him. She also denied the suggestion that the workman from the date of his engagement on 12-11-1999 worked continuously till his termination from the service. She, however, admitted the fact the workman was engaged in the job by her after taking permission from the Sub-Collector but he was retrenched from the job without seeking the permission of the said authority by volunteering further that due to lack of funds the action was taken by her. While concluding her evidence M.W.1 denied the suggestion that the Odisha Administrative Tribunal had directed to consider the suitability of the workman in the event of appointment of any other person in the post held by him by denying further that in obedience of the orders of the Hon'ble O.A.T. she has retrenched the second-party workman from the service but appointed one Krushna Sahu, the nephew of her Office Clerk, Tanu Charan Sahu.

This much the evidence led by the parties to the proceeding.

8. In the written note of argument submitted to Court on 19-12-2011 it was submitted by the first-party management that the workman was not discharging the duties regularly and continuously, that he was not paid on monthly basis as claimed by him but was being paid on daily basis by contingent vouchers and that since the engagement of the workman was purely dependant upon the allotment of contingent fund he was not being engaged continuously and ultimately not employed from 1-11-2007 due to want of contingent fund. Therefore, when the submissions made on behalf of the first-party management in the written note of argument is taken into account along with the evidence adduced by the parties, it remained a fact that the workman either from 12-11-1999 or 15-11-1999 worked in the office of the first-party management till 31-10-2007, covering a period of about 8 years. Perhaps for such undisputed fact it was asserted in the written note of argument by the first-party management that though the workman had rendered service for more than 240 days preceding 1-11-2007 for one year only he was not being engaged for more than 240 days in preceding year for which he was not paid compensation as per the Act.

On the other hand the workman in his written note of argument, Dt. 14-12-2011 among other things stated that his engagement was "continuous service" from the date of joining (15-11-1999) till the date of termination (1-11-2007) and thus from the date of his last working day i.e. 31-10-2007 preceding to last one year up to 1-11-2006 he had undoubtedly worked for more than 240 days in a year of 12 months i.e. 275 days as per the Ext.M.6. It was, therefore, contended by him that the first-party management has not served one month notice or one month notice pay in lieu of notice and also has not paid the retrenchment compensation to him, which was being admitted by M.W.1 at Para.6. On the other hand, he asserted that one fresh hand was recruited and doing the job of the second-party workman in the establishment of the first-party management and hence while terminating the service of the workman when the first-party management has not followed the condition precedent to retrenchment as per the Act, the action being violative of the provisions of the Act, the workman would be entitled to reinstatement with full wages and other

service benefits and cost of litigation inasmuch as after being terminated illegally the second-party workman had ventilated the dispute before the Conciliation Officer-*cum*-District Labour Officer, Deogarh but the dispute ended in failure due to adamant attitude of the first-party management.

9. From the evidence and the submission advanced by the parties it remained a fact that when the workman could not establish the engagement of a new hands in his place by the first-party management after the retrenchment, the management in its turn could not produce any order of the Odisha Administrative Tribunal passed in the dispute. The workman was also found silent on the issue. But, at the same time, it remained a fact that the workman had worked in the establishment of the first-party management 12-11-1999, 15-11-1999 to 31-10-2007. The only grievance of the first-party management was that his service was purely temporary and was liable to be retrenched at anytime without any notice. But, it was at the same time, admitted on behalf of the management by M.W.1 that the wages of the workman was enhanced from time to time from Rs. 11 to Rs. 50 and Rs. 50 to Rs. 70.

Judicial pronouncement is to the effect that the engagement of a workman as a daily wager does not by itself amount to putting the workman to notice that he was being engaged in a scheme or project which was to last only for a particular length of time or up to the occurrence of some event and therefore the workman ought to know that his employment was short lived. However, it was held that it is for the employer to prove the aforesaid ingredients so as to attract sub-clause (bb). [2003 IOLR 233 (SC)-S.M. Nilayjkar Vrs. Telecom District Manager, Karnataka-referred]. Admittedly the first-party management has failed in alleging and proving the ingredients of sub-clause (bb) as stated above and for want of such proof the termination of services of the workman amount to retrenchment. Once retrenched, the underlined object of Section 25-F is to be satisfied. The object of that section is two fold. Firstly a retrenched employee must have one month time available at his disposal to search for alternate employment so either he should be given one month's notice or should be paid wages for notice period ; secondly, the workman must be paid compensation at the time of retrenchment or before, such compensation is not only reward for past employment but also substance for period of consequent non-employment.

Thus, the above provisions of the Act having been admittedly not complied with by the first-party management the dispute arising out of termination of the workman in relation to denial of past service and wages being covered under the term "Industrial Dispute" under Section 2A of the Act would be within the cognizance of the Labour Court and for the failure of the first-party management in retrenching the workman who has established the burden of proving more than 240 days employment, this Court in view of the power given to it under Section 11A can held the exercises made by the first-party as not justified.

Therefore to conclude the discussion on the issue, it is held that the termination of the service of Shri Iswar Nahak with effect from 1-11-2007 by the Child Development Project Officer, Tileibani is not legal and/or justified. This issue is, therefore answered in favour of the workman.

10. *Issue No. (ii)*—For the discussions made in the issue No.(i) and the evidence led on behalf of the workman that after denial of service to him from 1-11-2007 he was rendered jobless leading to his family to starvation, he having been terminated from the past service illegally, would be entitled to the reinstatement with full back wages, cost of the litigation and interest as well in the event of non-compliance of the orders of the Court. Hence answering this issue according it is ordered :

AWARD

That the reference is answered on contest against the first-party management with a cost of Rs. 1,000. The first-party management is hereby directed to reinstate the workman in his earlier post with full back wages within one month hence and to pay all the entitlements within a period of three months from this day failing which the first-party management represent by the CDPO, Tileibani shall personally pay the interest @ 6% per annum from the arrear dues of the workman.

Dictated and corrected by me.

P. K. SASMAL
27-12-2011
Presiding Officer
Labour Court
Sambalpur

P. K. SASMAL
27-12-2011
Presiding Officer
Labour Court
Sambalpur

By order of the Governor

T. K. PANDA

Under-Secretary to Government