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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 9th May 2012

No. 3619—li/1(B)-57/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th November 2011 in Industrial Dispute Case No. 82 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s. Skypak Services Specialists Ltd., Mumbai (East) and its Workman Shri Goutam Dash was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 82 OF 2006

Dated the 24th November 2011

Present :

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

Between :

The Management of M/s. Skypak . . . First-party Management
Services Specialists Ltd.,
Mumbai (East).

And

Their Workman Shri Goutam Dash, . . . Second-party Workman
Ex-Operation Assistant.

Appearances :

Shri Manas Jena	. . . For the First-party Management
Shri Goutam Dash	. . . For the Second-party Workman himself

AWARD

The Government of Odisha in exercise of the 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. 9980–li/1(B)-57/2006-L.E., dated the 13th November 2006 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

"Whether the refusal of employment to Shri Goutam Dash, Ex-Operation Assistant, Cuttack Branch with effect from the 27th June 2003 by the management of M/s. Skypak Services Specialists Ltd., Andheri (East), Mumbai in the colourable exercise of the transfer order is legal and/or justified ? If not, what relief he is entitled to ?"

3. The case of the workman, in brief, as set out in his statement of claim is that initially he joined as Pickup Delivery Staff (P. U. D.) under the management at Paradeep with effect from the 8th October 1987. Subsequently, on the 3rd May 1993 he was appointed as regular Operation Assistant and was confirmed in the said post on the 2nd November 1993, Thereafter, he was transferred to Cuttack Branch on the 1st August 2002 and he accordingly joined there. The workman was also cover under E. S. I. and E. P. F. Schemes under the management. While the workman was working as such, surprisingly the management without serving any transfer order, had issued the relieve order on the 26th June 2003. Subsequently, on the 12th July 2003, he had received the transfer order to Dibrugarh. When the workman requested the management for payment of arrear outstanding dues and T. A. advance to proceed to the new place of posting, the management became annoyed and bore grudge against him. Again the management issued letter, dated the 30th August 2003 requesting the workman to join at Dibrugarh and after receipt of the said letter, the workman proceeded to Dibrugarh on the 13th September 2003 and submitted the joining report before the Branch Incharge, but the Branch Incharge of Dibrugarh expressed his inability to allow the workman to join there as he (Branch Incharge) had not received any such transfer order of the workman from the higher authorities. So, the workman returned back to Kolkata and met with Regional Manager who on the 18th September 2003 directed the workman to get back to Cuttack and to join there. But the Branch Manager of Cuttack Branch did not allow him to work there. So, he informed the matter to the higher authorities repeatedly but no action was taken by the management. But all of a sudden when he met with the Branch Manager of Cuttack Branch on the 14th May 2005, he has informed to the workman that his service has already been terminated with effect from 27th January 2003. According to the workman, no charge was framed for any misconduct and no enquiry

was also conducted against him. Further, according to the workman prior to the termination of his service by way of refusal of employment, no notice or notice pay and compensation was paid to him. So, in these backgrounds, the workman has prayed for his reinstatement in service with full back wages and other service benefits.

4. The management No. 1 and 2 appeared and filed separate written statements partly admitting and partly denying the claim of the workman. But it appears both the written statements filed by the abovementioned management are same and equal. According to the management, the workman was appointed as Operational Assistant with effect from the 3rd May 1993 at Cuttack Branch. As the workman was found misappropriating the cash on delivery amount, he was transferred to Dibrugarh Branch vide letter, dated the 2nd July 2003, but the workman failed to report at his new place of posting. So, in these averments, the management has prayed for dismissal of the present case.

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

ISSUES

- (i) "Whether the refusal of employment to Shri Goutam Dash, Ex-Operation Assistant, Cuttack Branch with effect from the 27th June 2003 by the management of M/s. Skypak Services Specialists Ltd., Andheri (East), Mumbai in the colourable exercise of the transfer order is legal and/or justified ?"
- (ii) If not, what relief he is entitled to ?

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the documents under the cover of Exts. 1 to 14. 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 them.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

In his affidavit evidence, the workman has fully corroborated the facts stated in his statement of claim. The workman has deposed that neither any charge was framed for any misconduct nor any domestic enquiry was conducted against him prior to his termination by way of refusal of employment. Though the management has taken a stand in its written statement that due to misappropriation of cash on delivery amount, but the said fact has not been substantiated by the management in any manner by adducing and proving the documentary evidence. Except the above plea, the management has not disputed anything regarding the plea of the workman. So, as no rebuttal evidence has been adduced by the management to disbelieve the sworn testimony of the workman, the evidence adduced by the workman remained unchallenged.

8. On perusal of the documents as available in the case record, it clearly shows that the workman has worked for more than 240 days in twelve calendar months preceding to the date of

termination by way of refusal of employment and at the time of termination, the management has not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and pre-condition one. So, on careful consideration of all the materials available in the case record as discussed above and in view of the unchallenged testimony of the workman, I came to the finding that the refusal of employment to the workman with effect from the 27th June 2003 by the management in the colourable exercise of the transfer order is illegal and unjustified. So, the workman is entitled to be reinstated in service with full back wages.

9. Hence, it is ordered :

That the refusal of employment to Shri Goutam Dash, Ex-operation Assistant, Cuttack Branch with effect from the 27th June 2003 by the management of M/s. Skypark Services Specialists Ltd., Andheri (East), Mumbai in the colourable exercise of the transfer order is neither legal nor justified. The workman Shri Dash is entitled to be reinstated in service with full back wages. The management is directed to implement this Award within a period of two months 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
24-11-2011
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
24-11-2011
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government