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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 31st May 2013

No. 5141—li/1 (B)-164/1998 (Pt)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st February 2013 in Industrial Dispute Case No. 9 of 1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of The Samaj, Gopabandhu Bhawan, Cuttack and its Workman Shri Pitamber Mishra was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 9 OF 1999

Dated the 21st February 2013

Present :

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

Between :

The Management of The Samaj, . . . First Party—Management
Gopabandhu Bhawan,
Cuttack.

And

Its Workman . . . Second Party—Workman
Shri Pitamber Mishra.

Appearances :

For the First Party—Management . . . Shri S. K. Das , Advocate

For the Second Party—Workman Shri B. S. Tripathy, Advocate

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them 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 following dispute to this Court for adjudication vide Order No. 15552—li/1 (B)-164/1998-LE., dated the 31st December 1998.

“Whether the termination of services of Shri Pitamber Mishra, Sub-Editor/News Reporter by the management “The Samaj” with effect from the 7th September 1997 is legal and/or justified ? If not, to what relief Shri Mishra is entitled ?”

2. The case of the workman, in brief, as set out in his statement of claim is that he joined as Sub-Editor in the Editorial Section of the management in the year 1986. Subsequently the workman was assigned the duty of News Reporter in addition to his duty as Sub-Editor. Initially the workman was being given a consolidated payment of Rs.250 per month which was enhanced to Rs.600 in the year 1991 and to Rs. 780 per month in the year 1994. On 12-12-1989 the workman submitted a representation to the management for being confirmed in the post of either Sub-Editor or in the post of News Reporter and for payment of regular salary. The management kept the matter pending. Being aggrieved the workman submitted a complaint before the District Labour Officer, Cuttack raising a dispute for regularisation of his service. The District Labour Officer, Cuttack on 25-8-1997 issued notice to the management after which the management prevented the workman from entering into the premises of The Samaj with effect from the 7th September 1997. The Gate-keeper of the organisation informed the workman that his services had been terminated. On 7-9-1997 the General Manager of the management informed the workman that the service of the workman was no more required. The request of the workman for being supplied the written order was turned down. Being aggrieved by such action of the management the workman raised an industrial dispute in which conciliation failed and the same culminated in the present reference.

3. On the other hand, the management appeared and filed written statement contending that there was no master and servant relationship between the management and the second party. Further contention of the management is that the second party not being a workman the present case cannot be decided as an industrial dispute. The second party had been engaged by the management as a News Representative under The Samaj and he was never an employee under the management at any point of time. The second party had been initially engaged on piece rate basis. The last engagement of the second party was in the year 1995 vide agreement, dated 8-6-1995. As per agreement the terms of contract was for two years with effect from the 1st April 1995 which duly expired on 31-3-1997. The contract stipulated that the second party would send day-to-day important news to the City Edition of The Samaj and in exchange he would get service charge an amounting to Rs. 780 which included reimbursement towards conveyance, postage, telephone and other expenses. The second party was free to conduct any other business of his own choice. Since the engagement of the second party was contractual in nature and such contract terminated on 31-3-1997, the assignment of the second party automatically ceased after the stipulated date, i.e. after 31-3-1997. As per Clause 5 of the agreement the second party was free to send his news to any other publication or electronic media etc. after sending the same to The Samaj and enter into agreement with other publications or electronic media for that purpose. Clause 7 of the

agreement made it clear that the second party was at liberty to conduct any other business of his own choice. Mainly on these grounds the management has contended that the workman is not entitled to any relief whatsoever.

4. In view of the above pleadings of the parties, the following issues have been framed :

ISSUES

(i) Whether the termination of services of Shri Pitamber Mishra, Sub-Editor/News Reporter by the management "The Samaj" with effect from the 7th September 1997 is legal and/or justified ?

(ii) If not, to what relief Shri Mishra is entitled ?

5. In order to substantiate his plea, the workman has examined as W.W.1 and proved the documents under the cover of Exts.1 to 6. On the other hand, the management has examined one Choudhury Sangram Keshari Mishra as M.W.1 and proved the documents under the cover of Exts.A to G.

6. It is pertinent to mention here that the workman filed a Writ Petition bearing W.P. (C) No. 17313 of 2008 challenging the Award on 22-11-2007 passed by this Court and ultimately the Award was quashed by the Hon'ble High Court of Orissa, Cuttack and direction was given to this Court to send the disputed signatures to the Handwriting Expert and after obtaining the report, this Court shall proceed in accordance with law. In view of the observation made by the Hon'ble Court, the disputed signatures were sent to the Handwriting Expert for comparison and after receiving the report, this Court also issued notice to the Handwriting Expert who was examined as Court Witness No.1 (C.W.1).

7. At this stage, it should be made clear that before deciding both the above issues, it is to be determined whether the second party was a workman or not under the establishment of the first party management.

In this context, the W.W.1 in his evidence has stated that he was working as a News Reporter and also doing news editing works till 7-9-1997 under the management. During his entire evidence he has not proved any letter of appointment to show that he was an employee under the management. On the other hand, in his cross-examination he has stated that he has not remembered if he has received any order of appointment from the management. When the agreement on 8-6-1995 was confronted to W.W.1, at first he denied its authenticity and wanted its examination by Handwriting Expert and accordingly the report was submitted under the cover of Ext.7. In the above context, the management wanted to rely upon the agreement on 8-6-1995 stated to have been executed by the workman to which the workman seriously disputed on the ground that the signature in the agreement is not his signature.

8. Therefore, to ascertain the signature appearing in the agreement on 8-6-1995 is genuine or not, the same was sent to Handwriting Expert along with other documents for comparison and examination. On the basis of the said documents, the Handwriting Expert opined and submitted his report under the cover of Ext.7. The Handwriting Expert examined as Court Witness No. 1

(C.W. No.1) who deposed that the genuineness of the signatures in the agreement has been examined and comparison with reference to various documents by him and ultimately he opines that the signature appearing in the agreement on 8-6-1995 is not genuine and is not the signature of the workman. Though the management has cross-examined at length nothing has been elicited from his mouth to impeach his testimony on the above score. So the contention raised by the management that there was no employer and employee relationship between the first party management and the second party workman on the strength of agreement Ext.E has no force at all and is rejected being devoid of any merit.

9. During the course of argument, the learned counsel for the management has contended that the application under the cover of Ext.C written by the workman described himself as news contributor and not as an employee of the management and basing upon Ext.C, the management prayed to reject the claim of the second party workman. But, on perusal of Ext.C, it is seen that the workman has not uttered a single word as alleged by the management, rather he has stated in his application that he was getting his dues of Rs. 150 to supply news at the relevant point of time and prayed to enhance the same. On perusal of Exts. A, B, C, D, E, F and Exts. 1, 2, 3, 4, 5 and 6 filed on behalf of the parties, in my considered opinion that there was employer-employee relationship between the management and the second party workman. Therefore the second party was a workman under the management within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947. In view of the discussion made in the foregoing paragraphs, the termination of services of the workman with effect from the 7-9-1997 is covered under Section 2 (oo) of the Industrial Disputes Act, 1947 and not Section 2 (oo) (bb) of the Industrial Disputes Act, 1947. Hence Section 25-F of the Industrial Disputes Act, 1947 is applicable in the case of the workman. Admittedly, at the time of termination of service of the workman, the management has not complied the provisions of Section 25-F of the Industrial Disputes Act, 1947, which is a mandatory and precondition one. So, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that the termination of services of the workman by the management with effect from the 7th September 1997 is illegal and unjustified.

10. Regarding the relief is concerned, the workman has examined himself as W.W.1 on 4-6-2001 and in his evidence, he has deposed that his age is 58 years. So considering the above version and admission of the workman, he is now about 70 years old. Therefore, it is not wise to direct the management for reinstatement of the workman in service. But at the same time, the workman had rendered service under the management for about 11 years and in the meantime the case is lingering from the year 1999 i.e. for about 14 years. So considering the age, status and his nature of duties, I am of the considered view that in stead of giving direction for reinstatement in service with back wages, a lump sum amount of Rs.2,50,000 as compensation will meet the ends of justice in the facts and circumstance of this case. Both the issues are answered accordingly.

11. Hence Ordered :

That the termination of services of Shri Pitamber Mishra, Sub-Editor/News Reporter by the management "The Samaj" with effect from the 7th September 1997 is neither legal nor justified. The workman Shri Mishra is entitled to get a lump sum amount of Rs.2,50,000 (Rupees two lacs fifty thousand) only as compensation in lieu of reinstatement in service with back wages. The management is directed to implement this Award within a period of two months from the date of its publication, failing, the amount shall carry interest at the rate of 10% (ten per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED
21-2-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
21-2-2013
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government