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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 26th June 2013

No. 5892—IR(ID)-103/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th May 2013 in Industrial Dispute Case No. 8 of 2011 of the Presiding Officer, Labour Court, Jeypore, Koraput to whom the industrial dispute between the Executive Engineer (Mechanical), Drilling & Grouting Division, Berhampur, Dist. Ganjam and their Workman Shri Kalu Nayak, ex. S.S. Helper was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE No. 8 OF 2011

Dated the 29th May 2013

Present :

Shri D. C. Mishra, O.S.J.S., (Jr. Branch),
Presiding Officer,
Labour Court,, Jeypore,
Dist. Koraput.

Between :

The Executive Engineer (Mechanical), . . . First Party—Management
Drilling & Grouting Division, Berhampur,
At/P.O. Berhampur, Dist. Ganjam.

Vrs.

Its Workman . . . Second Party—Workman
Shri Kalu Nayak, ex. S.S. Helper,
S/o. Shri Krishna Nayak,
Village Nuagada, P.O. Turubudi,
Via Khariaguda, Dist. Ganjam.

(Under Sections 10 and 12 of the Industrial Disputes Act, 1947)

Appearances :

Self	. . For the First Party—Management
Shri K. Ch. Mishra, Advocate, Berhampur	. . For the Second Party—Workman
Date of Argument	. . 9-5-2013
Date of Award	. . 29-5-2013

AWARD

The matter arises out of a reference made by the State Government, in their Labour & Employment Department, Odisha, Bhubaneswar under Section 12(5) read with Section 10(1) of the I. D. Act, 1947 vide Memo. No. 9187(5)-LE., dated the 15th October 2011 for adjudication of the following disputes :—

SCHEDULE

"Whether the action of the Executive Engineer, Drilling & Grouting Division No. 1, Berhampur, Ganjam in terminating the services of Shri Kalu Nayak, ex. S.S. Helper with effect from the 10th April 2007 by way of retrenchment is legal and/or justified ? If not, what relief Shri Nayak is entitled to ?"

2. The workman Shri Kalu Nayak (Second party) has filed this case claiming reinstatement in service with consequential service benefits.

Briefly stated the workman's case runs thus :—

That, the workman joined in service on 1-12-1987 as a N.M.R. Helper at Baghalati Project in the district of Ganjam under the management and continued there for ten (10) years. It averred that, thereafter the workman was transferred to Sutuli at Balangir and Indra Project at Khariar and continued in service till the date of his retrenchment, i.e., Dt. 10-4-2007. According to the workman, the Government decided vide Letter No. 377/2008 to retrench 114 N.M.Rs. including the workman to maintain the staff position in zero surplus level. It is pleaded that, in the above said Letter (Order), the Government had directed to follow the principles of "last come first go" while making retrenchment but without following the above direction, principles of natural justice and mandatory provisions of Section 25-F of the I. D. Act, the Executive Engineer, Drilling and Grouting Division No. 1, Berhampur, Ganjam (Management No. 1) retrenched the present workman arbitrarily, illegally and with ulterior motive in pick and chose method and allowed the Junior N.M.Rs. who were his close man to continue in service. According to the workman, he repeatedly approached the authorities to allow him to continue in service but in vain for which he approached the D.L.O., Berhampur for relief. The D.L.O. of Ganjam enquired into the matter and has submitted a failure report. The Government has referred this case for adjudication. Hence the trial.

3. The first party management has contested the case by filing W.S. It is pleaded by the management (first party) that as per Government decision, 114 members of N.M.Rs. were to be retrenched and accordingly a list was prepared in order of Seniority but due to necessity again it was decided to allow 68 N.M.Rs. to continue in service. According to the management, while making the retrenchment and allowing 68 N.M.Rs. to continue in work, it was decided that those N.M.Rs. who had rendered continued and uninterrupted works for the Department shall be taken into

consideration and only those selected N.M.Rs. were allowed to continue in work. But the present workman was regularly, unauthorisedly and wilfully neglecting and remaining absent from his duty and engaging himself else where for which *pre judice* was caused to the Department in its work and despite repeated oral and written notice, the present workman kept quite for such long period of absence and negligence in his duties for which he was not considered it for continuance in service. According to the management, for the interest of the Department, the present workman has been rightly retrenched and the mandatory provisions of Section 25-F of the I. D. Act has been duly complied but the workman refused to receive the retrenchment compensation. In the above premises prayer has been made for dismissal of the case with costs on the grounds that the workman has no *locus standi* to file the case, it is not maintainable and there is no cause of action and it is barred by limitation.

4. As per the reference of the Government and in view of the rival pleadings of the parties the following issues have been framed for adjudication :—

ISSUES

- (i) "Whether the action of the Executive Engineer, Drilling & Grouting Division No. 1, Berhampur, Ganjam in terminating the services of Shri Kalu Nayak, ex. S.S. Helper with effect from the 10th April 2007 by way of retrenchment is legal and/or justified ?
- (ii) If not, what relief Shri Nayak is entitled to ?"

5. In order to substantiate the case the workman Shri Kalu Nayak has examined himself as W.W. No. 1. Documents marked Exts. 1 to 4 have been proved by the workman. Ext. 1 is the copy of the Gradation List of N.M.Rs. prepared by the Executive Engineer (Management) and Ext. 2 is the copy of Letter No. 37717, Dt. 11-12-2006 to retrench all the N.M.Rs. Ext. 3 is the copy of Letter No. 27, Dt. 28-2-2007 of the then Junior Engineer of the management and Ext. 4 is the copy of retrenchment Order No. 1728, Dt. 10-4-2007.

Shri Ashok Kumar Nayak, Executive Engineer, Drilling & Grouting Division No. 1, Berhampur-7 has been examined as management witness No. 1. No documents have been proved from management side.

6. *Issue Nos. (i) and (ii)*—The workman, i.e. W. W. No. 1 has deposed that the N.M.Rs. juniors to him have been retained in service but he has been illegally retrenched. This fact has been clearly admitted by the management witness No. 1 but the witness has taken a plea that the workman was not available in the locality or in his address to allow him to continue in his job. In the cross-examination, the M.W. No. 1 has admitted that no registered letter was sent to the workman nor any other acknowledgment has been kept by the management from the workman that he was really intimidated by the management to continue in his work. Since some junior Co-N.M.Rs. have been retained in service, therefore the principle of "last come first go" has not been strictly followed as required under Section 25-G of the I. D. Act. Thus illegally has been committed by the management by giving V.R.S. to the present workman and retaining juniors to him.

The management has taken another plea that the present workman could not be retained in service due to not available in the area. M.W. No. 1 has admitted that no registered letter was sent to the workman nor it was published in the local news paper nor any acknowledgment has been

kept from the workman to the effect that the management had observed the required legal principles meticulously. He has further admitted in the cross-examination that, principles of "first come last go" and "last come first go" has not been followed in this case as the present workman was not heard in the area during that time. However such assertion has not been substantiated as discussed above.

The management has taken a further plea that, the present workman was remaining absent unauthorisedly for long period for which the management was suffering a lot in discharging the work but the management has not proved this fact by any cogent evidence. Further, the management did not initiate any Departmental Proceeding or enquiry against the workman for his negligence in duty. So this plea of the management cannot be accepted.

As per discussions made above, the present workman is entitled to be reinstated in his work, the workman has not rendered any service to the management during the retrenchment period. Though the management (first party) was duty bound to draw the attention of the workman by paper publication or otherwise about continuity in service but it was also the duty of the second party workman to present himself in the office and pray for continuance in service. The workman has not proved that he was unemployed during the period of retrenchment. According to the management, the workman never came to the office and approached to continue in service. Therefore, back wages benefits is not allowed to the workman. The workman has filed claim statement with many other claims but those are not in the reference for which not answered. Hence, order :

ORDER

The reference is answered on contest in favour of the workman as per the following norms :—

The retrenchment of the workman with effect from the 10th April 2007 by the management is not legal or justified. He be reinstated in his post within six (6) months hence. No back wages is allowed to the workman. Also no order is passed as regards to cost.

Dictated and corrected by me.

D. C. MISHRA
29-5-2013
Presiding Officer
Labour Court, Jeypore.

D. C. MISHRA
29-5-2013
Presiding Officer
Labour Court, Jeypore.

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