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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th June 2013

No. 5897—IR (ID)-82/2011-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. 07 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 Simanchal Dalai, Exx-NMR 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. 07 OF 2011
The 29th May 2013

Present :

Shri D. C. Mishra, o.s.j.s., (Jr. Branch)
Presiding Officer,
Labour Court, Jeypore,
Koraput.

Between :

The Executive Engineer,
Drilling and Grouting Division No. 1
At/P.O. Berhampur,
Berhampur-7,
Ganjam.

.. First Party—Management

Versus

Its Workman
Shri Simanchal Dalai,
S/o Sada Dalai,
Vill B. Mahulpada,
P.O. Turubudi,
Via Khariaguda,
Dist. Ganjam.

.. Second Party—Workman

Under Section 10 & 12 of the Industrial Disputes Act, 1947

Appearances :

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

A W A R D

This 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 Industrial Disputes Act, 1947 vide memo. No. 8543 (5)-LE., dated the 19th September 2011 for adjudication of the following disputes.

SCHEDULE

“Whether the action of the Executive Engineer, Drilling and Grouting Division No.1 Berhampur, Ganjam in terminating the services of Shri Simanchal Dalai, Ex-NMR (Store Watch man) with effect from 10th April 2007 is legal and/or justified, If not what relief Shri Dalai entitled to?”.

2. briefly stated the workman’s case runs thus :—

That the workman Simanchal Dalai joined in service on 1-1-1990 as N.M.R. Store Watchman at Bhaghalati project in the district of Ganjam under the first party management and continued there for ten (10) years and thereafter on transfer, service at various irrigation projects under the management upto 10-4-2007 when he was retrenched from job. 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), 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-G 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 closeman to continue in service. he has specifically mentioned that a gradation list of 114 N.M.Rs. including him was prepared for retrenchment and in the that list the Sl. No. of the workman was 92 whereas one Sudam Dalai whose Sl. No. was 106 and junior to the workman has been kept in service. According to the workman, he repeatedly approached the authority to allow him to continue in service but in vain for which he approached to the D.L.O. berhampur/Ganjam for relief. The D.L.O 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 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. It is further averred that. While making retrenchment and allowing 68 N.M.Rs. to continue in work, it was decided that those N.M.Rs. who had rendered continued and un interrupted 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 willfully neglecting and remaining absent from duty and engaging himself elsewhere for which prejudice 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 to continue in the service. According to the management, for the interest of 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 retrenched compensation. In the above premises prayer has been made for dismissal of the case on the grounds that the workman has no locus stande to file the case, it is not maintainable, there is no cause of action and it is barred by limitation.

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

- (i) "Whether the action of the Executive Engineer, Drilling and Grouting Division No.1 Berhampur, Ganjam in terminating the services of Shri Simanchal Dalai, Ex-NMR (Store Watch man) with effect from 10th April 2007 is legal and/or justified ?
- (ii) if not what relief Shri Dalai is entitled to ?

5. In order to substantiate the case the workman Simanchal Dalai has been examined as W.W. No.1. (four) 4 documents have been proved from workman side. The gradation list of 114 N.M.Rs. prepared by the management is marked Ext.1. and the retrenchment order issued by the Government vide letter No. 377/17 Dt. 11-12-2006 is marked Ext.2. The letter No. 30 Dt. 20-2-2007 of the Junior Engineer is marked Ext.3 and the retrenchment order of the workman is marked Ext.4.

Shri Ashok Kumar Nayak, Executive Engineer, Drilling and Grouting Division No.1, Berhampur, has been examined as M.W. No.1. No documents proved from management side.

6. *Issue Nos. (i) & (ii)*—The workman i.e. W.W. No.1 has deposed that 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 acknowledgement 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 illegality has been committed by the management by giving VRS 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 acknowledgement 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 evidence that the 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 another 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 can not be accepted.

As per discussions made above, the present workman is entitled to be reinstated in his service. 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 be present in the office and pray for continuance in service. The workman has not proved that he was un employed during the period of retrenchment. According to the management, the workman never came to the office and approached to continue in service. The workman has given evidence that he does not claim back wages but he only want for reinstatement in services. 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 costs.

Dictated and corrected by me.

SRIKANTA MISHRA
24-5-2013
Presiding Officer
Labour Court, Jeypore

SRIKANTA MISHRA
24-5-2013
Presiding Officer
Labour Court, Jeypore

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