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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 29th June 2013

No. 5965—IR-(ID)-59/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th May 2013 in I. D. Case No. 5 of 2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s ECP Industries Ltd., (Cylinder Division), Balasore and their workmen Shri Pramod Kumar Jena, Shri Manas Kumar Das and Shri Raj Kishore Parida was referred to for adjudication in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 5 OF 2011

Dated the 28th May 2013

Present :

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

Between :

The Management of
M/s ECP Industries Ltd.,
(Cylinder Division), Balasore.

.. First Party—Management

And

Their workmen,
Shri Pramod Kumar Jena,
Shri Manas Kumar Das &
Shri Raj Kishore Parida.

.. Second Party—Workmen

Appearances :

Shri R. N. Mohanty	..	For the First Party—Management
Shri R. K. Jena, Shri M. K. Das, Shri R. K. Parida.	..	For the Second Party—Workmen themselves

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 their Order No. 7436—ID-59/2011-LE., dated the 16th August 2011 :—

“Whether the termination of services of Shri Pramod Kumar Jena, Shri Manas Kumar Das & Shri Raj Kishore Parida, workmen, in the guise of suspension with effect from the 10th November 2009, 1st February 2010 and 5th February 2010 by the management of E.C.P. Industries Ltd., (Cylinder Division) is legal and/or justified ? If not, what relief the workmen are entitled to ?”

2. The second party workmen’s case, in brief, as set out in their statement of claim is that while they were working on the strength of Quality Control Inspector and Quality Control Checker respectively under the first party management, they were suspended from their respective services with effect from the 10th November 2009 (in the case of Shri Pramod Kumar Jena), 1-2-2010 (in the case of Shri Manas Kumar Das) and from the 5th February 2010 (in case of Shri Raj Kishore Parida). Further, their case is that no show cause notice was issued, no subsistence allowance was paid, no domestic enquiry was conducted and due to their Trade Union Activities, they were terminated from their respective services. According to them, they were ignorant about the alleged misconduct. On these averments, the above named second party workmen have prayed for their reinstatement in service with full back wages and other consequential service benefits.

3. On the other hand, the first party management appeared and filed written statement denying the allegations of the second party workmen. According to the first party management, the second party workmen were working as Quality Control Inspector and Quality Control Checker. The first party management has stated that while the second party workmen Shri Pramod Kumar Jena and Shri Manas Kumar Das were working as Quality Control Inspector, it was detected that the workmen intentionally and knowingly passed leakage cylinders on different dates for which they were placed under suspension and show cause notice was issued to them. The management has further stated that the workman, Raj Kishore Parida while working as a Welder, he committed various major misconducts for which the management issued a letter of show cause notice and ultimately placed him under suspension. The further plea of the management is that as the explanations of the above named workmen were found unsatisfactory, the management framed charges, but the workmen did not receive the same. So the management conducted a domestic enquiry but the said enquiry has not been completed till yet due to non-co-operation of the workmen. On these averments, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues have been settled :—

ISSUES

- (i) “Whether the termination of services of Shri Pramod Kumar Jena, Shri Manas Kumar Das and Shri Raj Kishore Parida, workmen, in the guise of suspension with effect from the 10th November 2009, 1st February 2010 and 5th February 2010 by the management of E.C.P. Industries Ltd., (Cylinder Division) is legal and/or justified ?
- (ii) If not, what relief the workmen are entitled to ?”

5. In order to substantiate their claims, all the second party workmen have examined themselves as W.Ws. 1, 2 and 3 respectively and proved bunch of documents under the cover of Exts. 1 to 25. On the other hand, the first party management has neither examined any witness nor proved any document in support of its case.

FINDINGS

6. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

On perusal of the pleadings of both the parties, affidavit evidences of the second party workman and the documents filed by the workmen, it is clear that while the second party workmen were working under the management, they were placed under suspension. Though the management has taken the plea that as the explanations of the workmen were found unsatisfactory, they were placed under suspension, charges were framed and domestic enquiry was initiated against them to which the workmen have categorically denied regarding framing of charges and conduct of any domestic enquiry. Moreover, the management has also not filed a single piece of paper to show that any domestic enquiry was initiated by the management against them and due to their non-co-operation, the domestic enquiry could not be completed. So, without any documentary evidence, the oral submission of the management cannot be accepted. Above all, the management has not taken the stand that the workmen have not completed 240 days of service in 12 calendar months preceding to the date of alleged termination in the guise of suspension.

7. So, on careful consideration of all the material documents available in the case record, as discussed above, I am of the opinion that the termination of services of the second party workmen in the guise of suspension with effect from the 10th November 2009, 1st February 2010 and 5th February 2010 by the management is illegal and unjustified. Hence, the second party workmen are entitled to be reinstated in service.

8. So far the back wages is concerned, law is well settled that —

“When the workmen had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified.”

So, in view of the above settled principle of law, the second party workmen are not entitled to get any back wages. Both the issues are answered accordingly.

9. Hence ordered :

That the termination of services of Shri Pramod Kumar Jena, Shri Manas Kumar Das and Shri Raj Kishore Parida, workmen, in the guise of suspension with effect from the 10th November 2009, 1st February 2010 and 5th February 2010 by the management of E.C.P. Industries Ltd., (Cylinder Division) is neither legal nor justified. The above named second party workmen are entitled to be reinstated in service but without any back wages. The management is directed to implement this Award within a period of three months from the date of its publication.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
28-5-2013
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
28-5-2013
Presiding Officer
Labour Court
Bhubaneswar

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