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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 5th January 2013

No. 177—li/1(B)-122/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd August 2012 in I. D. Case No. 15 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Employer of Bus No. OSX-4397, Puri and their Workman Sri Bhramarabar Mohanty represented through the Secretary, Shri Nilagiri Motor Karmachari Sangh, Puri was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 15 OF 2006

Dated the 2nd August 2012

Present :

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

Between :

The Management of the employer of . . . First Party—Management
Bus No. OSX-4397, Puri.

And

Their Workman . . . Second Party—Workman
Shri Bhramarabar Mohanty, represented
through the Secretary Sri Nilagiri Motor
Karmachari Sangh, Puri.

Appearances :

Shri N. P. Pattnaik . . . First Party—Management himself
Shri B. Mohanty . . . Second Party—Workman himself

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. 1402—li/1(B)-122/2005-L.E., dated the 13th February 2006.

"Whether the action of the employer of the Bus No. OSX-4397 in terminating the services of Shri Bhramarabar Mohanty, Driver by way of refusal of employment with effect from the 28th February 2003 is legal and/or justified ? If not to what relief Shri Mohanty is entitled ?".

2. The case of the workman in brief, as set out in his statement of claim is that in the year 1987 he was working as a Driver of the vehicle bearing Registration No. OSX-4397 owned by Shri Nitya Prasad Pattnaik, the management till February 2003. Then he was terminated from service by way of refusal of employment. No notice was served upon him. His further claim is that he was completed 15 years of service but no compensation was paid to him. So in this background, the workman has raised an industrial dispute before the labour authorities and when the conciliation failed, the matter was informed to the Government and this reference has been received from the Government and this Industrial Dispute Case has been initiated wherein the workman has prayed for his reinstatement in service with full back wages with continuity service and all other service benefits.

3. On the other hand, the management entered appearance and filed written statement admitting that the workman was working as a Driver in OSX-4397 Bus from 1991 till April 2002. Thereafter the workman without informing the management worked as a Driver in Bus No. OSP-6622 of Bhabani Sankar Mohanty. Therefore, the question of notice for refusal of employment or notice pay as claimed by the workman does not arise at all. The workman of his own accord left the service of the management and was driving the vehicle of other owners. Even during the year 2004 the workman had worked under the management as evident from a V. C. R., dated the 31st May 2004. Therefore, the refusal of employment and non-payment of salary etc. are all imaginary. On those averments, the management has prayed that the workman is not entitled to get any relief as prayed for and the reference should be answered in favour of the management.

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

ISSUES

- (i) "Whether the action of the employer of the Bus No. OSX-4397 in terminating the services of Shri Bhramarabar Mohanty, Driver by way of refusal of employment with effect from the 28th February 2003 is legal and/or justified ?
- (ii) If not, what relief Shri Mohanty is entitled ?"

5. In order to substantiate his plea, the workman has examined two witnesses altogether out of whom, W. W. 1 is the workman himself and W. W. 2 is the Secretary, Sri Nilagiri Motor Karmachari Sangh, Puri and proved the documents under the cover of Exts. 1 to 7. On the other hand, the management has examined himself as M. W. 1 and proved the copy of vehicle checking report, dated the 31st May 2004, copy of F. I. R., dated the 6th September 2005 and the copy of vehicle checking report, dated the 4th May 2010 under the cover of Exts. A to C respectively.

FINDINGS

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

Before going to discuss the evidence of both the parties, it is pertinent to mention here that the reference made by the Government is whether the termination of service of the workman with effect from the 28th February 2003 is legal or justified. The facts of the dispute between the parties in this case is regarding the claim of the workman for employment and wages for the period of his out of employment. On the other hand, the management has tried to make out the case that the workman is not entitled to any relief in view of the facts that even after the alleged termination of service by way of refusal of employment of the workman with effect from the 28th February 2003, he worked as a Driver under the management during the year 2004 for which the alleged termination is misnomer. In order to substantiate the above fact, the management has filed the copy of vehicle checking report, dated the 31st May 2004 under the cover of Ext. A in which the workman has signed as a Driver. The management has further urged that the workman has also worked as a Driver under different other Bus Owners in different years after 2003. However, the evidence of both the parties remained silent regarding compliance or non-compliance of Section 25-F of the Industrial Disputes Act, 1947 prior to the alleged termination of service with effect from the 28th February 2003.

7. It may be useful to refer the provisions stipulated under Section 10(4) of the Industrial Disputes Act, 1947 which reads as follows :

"Wherein an order referring an industrial dispute to (a Labour Court, Tribunal or National Tribunal) under this Section or in a subsequent Order, the appropriate Government has specified the points of Dispute for adjudication, (the Labour Court or the Tribunal or the National Tribunal, as the case may be) shall confine its adjudication to those points and matters incidental thereto".

8. Be that as it may, the issues involved in the present dispute which was referred by the Government for adjudication has to be kept in mind to see regarding the provisions of Section 25-F of the Industrial Disputes Act, 1947 has been duly complied prior to the alleged date of termination of service of the workman by way of refusal of employment. But surprisingly there is no evidence from either side to that effect. But the management has admitted in his written statement that the workman was working as a Driver from 1991 to 2001. Further M. W. 1 has deposed that the workman was never engaged as a regular driver and has never completed 240 days of continuous service during any calendar year preceding to his alleged termination from service. The M. W. 1 has further deposed that since the workman did not fulfil the conditions as laid down under Section 25-F of the Industrial Disputes Act, 1947, no notice or notice pay was required or to pay him. But the management has totally failed to file any document to that effect.

9. In the authority reported in AIR 2010 S. C. 1236 in the case of Director, Fisheries Terminal Divisions *Vrs.* Bhikubhai Meghajibhai Chavda, it has been observed as follows :

"The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service."

But in the instant case, the management has not filed a single piece of paper to prove that the workman had not worked for 240 days in a calendar year preceding to the alleged date of termination of service by way of refusal of employment. On the other hand, it is the plea of the workman that the management had terminated his service orally by way of refusal of employment with effect from the 28th February 2003. Admittedly, the provisions of Section 25-F of the Industrial Disputes Act, 1947 has not been followed at all by the management on or before the date of termination of service of the workman which is a precondition and mandatory one. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the action of the management in terminating the services of the workman by way of refusal of employment with effect from the 28th February 2003 is neither legal nor justified.

10. Law is well settled that :

"The relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to-do-so. For the said purpose, several factors are required to be taken into consideration."

In the instant case, the management has filed the copy of the vehicle cheeking report, dated the 31st May 2004 under the cover of Ext. A in which the workman has signed as a Driver. So when the workman has subsequently engaged under the management and admittedly do the work of other owners in my opinion he is not entitled for order of reinstatement in service in this case. Regarding back wages, admittedly the workman had not worked for the management after the 28th February 2003 till his next appointment. Further law is well settled that :

"When the workman 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."

But on careful consideration of all the materials available in the case record as discussed above, I am of the considered view that instead of giving him full back wages, a lump sum amount of Rs. 15,000 as compensation will meet the ends of justice in this case. Hence both the issues are answered accordingly.

11. Hence Ordered :

That the action of the employer of the Bus No. OSX-4397 in terminating the services of Shri Bhramarbar Mohanty, Driver by way of refusal of employment with effect from the

28th February 2003 is illegal and unjustified. The workman Shri Mohanty is only entitled to get a lump sum amount of Rs. 15,000 (Rupees fifteen thousand) only in lieu of 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
2-8-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
2-8-2012
Presiding Officer
Labour Court, Bhubaneswar

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

