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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 3rd August 2013

No. 10131—IR(ID)-142/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th June 2013 in Industrial Dispute Case No. 8 of 2012 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of the Executive Director, M/s Aryan Ispat and Power Pvt. Ltd., At Bomaloi, P.O. Lapang, P.S. Rengali, Dist. Sambalpur and its Workman Shri Santosh Kumar Pradhan, ex Driver was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 8 OF 2012

Dated the 26th June 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of
the Executive Director,
M/s Aryan Ispat & Power Pvt. Ltd.,
At Bomaloi, P.O. Lapang,
P.S. Rengali, Dist. Sambalpur.

.. First Party—Management

And

Its Workman
Shri Santosh Kumar Pradhan, ex Driver,
Qrs. No. PWD-LD-5, Commissioner's
Colony, near Jail Chowk,
Sambalpur.

.. Second Party—Workman

Appearances :

Shri Mahabir Misra, Liaison Officer	. . For the First Party—Management
Self	. . For the Second Party—Workman himself.

AWARD

This award arises out of a reference made by the Government of Odisha, in the Labour & E.S.I. Department, under the power conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide order under Memo. No. 5958(5), dated the 31st July 2012. The dispute involved under the Schedule of reference is as follows :—

"Whether the action of the management of M/s Aryan Ispat & Power Pvt. Ltd., At Bomaloi, P.O. Lapang, P.S. Rengali, Dist. Sambalpur in terminating the services of Shri Santosh Kumar Pradhan, ex Driver with effect from the 15th April 2009 is legal and/or justified ? If not, what relief the workman is entitled to ?"

2. The case of the workman as per his statement of claim is that he was working as a Driver under the management (first party) continuously from the 1st May 2005 till the 15th April 2009 on which date he was illegally refused employment. According to the workman, he was initially appointed on a monthly salary of Rs. 2,200 which was enhanced from time to time and by the date of refusal of employment, he was being paid with salary @ Rs. 3,500 per month. It is specifically narrated in the statement of claim that on 14-4-2009 at about 7-00 A.M. when the workman was on the way to the Company's Guest House, driving the Company's vehicle bearing No. OR-15J-5646 for carrying the Company employees, he was served with a vehicle requisition order issued by the Election Officer, Sambalpur at Ainthapali Check Gate and as per the requisition, he reported himself before the R.T.O., Sambalpur. He was then directed to proceed to Kuchinda, carrying election staff. On return, he kept the vehicle at the Company's Guest House located at Bhalupali and informed the matter to the Officer-In-charge namely, Mr. Pabitra Mohan Behera who informed him about the cancellation of vehicle requisition order and directed him to report duty on 15-4-2009. On the said date, when he went to the Company and was about to sign the attendance, one Mr. Biswa Bihari Pani refrained him to do so and told that Mr. Sachin Poddar, an officer of the Company did not want the workman to enter into the factory premises. On the next day, i.e., Dt. 16-4-2009, the workman again went to the Company to meet the Chief Executive Officer to put forth his grievance but he was neither allowed to meet the said officer nor permitted to mark his attendance. The workman subsequently met Mr. Sachin Poddar and expressed his grievances but it was replied to him that the management has decided to stop his duty. On 27-4-2009, the workman submitted a representation before the Company but to no effect. The workman alleges that on 1-5-2009 he met the Chief Executive Officer of the Company who directed him to sign on a blank paper and come on the next day. When he refused to do so, the said officer refused to consider his grievance. According to the workman, the management violated the mandatory provision of law while refusing him employment and therefore, he is entitled to reinstatement in service with full back wages so also other consequential benefits.

3. The management filed written statement wherein they challenged the reference on the ground of maintainability and non-application of mind by the Government. It is the case of the management that the second party was engaged as a Driver on purely temporary basis with a remuneration @ Rs. 2,200 per month as per Order, dated the 8th June 2005. His such remuneration

was also increased up to Rs. 3,500 per month. The management admits that the vehicle driven by the second party was required by the State Authority during 2009 General Election and the second party took the same for election duty. He kept the vehicle in the premises of the management on 15-4-2009 and left the key with authorised officer but from Dt. 16-4-2009 onwards he remained absent from duty. The management denies the facts relating to the refusal of employment to the workman as alleged by him. With such averment, the management prays to answer the reference in its favour and to hold that the second party is not entitled to any relief.

4. The second party submitted a rejoinder to the written statement and reiterated the facts as mentioned in his statement of claim.

5. On the basis of the pleadings of the parties, the following issues have been framed for adjudication :—

ISSUES

- (i) "Whether the action of the management of M/s Aryan Ispat & Power Pvt. Ltd., At Bomaloi, P.O. Lapang, P.S. Rengali, Dist. Sambalpur in terminating the services of Shri Santosh Kumar Pradhan, ex Driver with effect from the 15th April 2009 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. The workman examined himself and 3 independent witnesses. He also proved several documents which are marked Exts. 1 to 14. On the contrary, the management though cross-examined the workman's witness, did not choose to examine any witness or adduce any documentary evidence.

FINDINGS

7. *Issue No. (i)*—On perusal of the pleadings of both the parties and evidence of the workman examined as W.W. 1, I find there is no dispute that the workman was employed as a Driver under the management as per the letters, office orders, dated the 8th June 2005. A copy of the appointment, note sheets of the Company has been marked Ext. 1. It reveals from this documents that on 8-6-2005 the management prepared note sheets selecting the workman to be appointed as a Driver, in place of one Biren Pradhan who left the job since the 15th May 2005, at the same salary, terms and conditions, i.e. Rs. 2,200 per month. The management claims that the second party was engaged as a Driver purely on temporary basis and was given a casual employment but such fact is not mentioned in the Ext. 1.

8. The workman claims that he was working as Driver under the management from Dt. 1-5-2005 but the management contend that he was employed as per Order, dated the 8th June 2005. The workman relies upon the Ext. 1, his selection note for appointment, dated the 8th June 2005. Therefore, it cannot be said that the second party was engaged on duty from Dt. 1-5-2005. However, the said discrepancy is of little consequence. The workman has relied upon his salary payment sheet for the month of September, 2005 and October, 2005 marked Ext. 2 and Ext. 2/a which reveal that for the said months he was getting a total salary of Rs. 2,200 per month. The management has admitted the statement of the workman that his salary was enhanced from time to time and reached Rs. 3,500 per month by the year 2009. The workman proved himself to be a regular employee by adducing oral as well as documentary evidence but the management fails to

establish its allegation that the workman was a temporary employee or engaged casually. The workman has proved the contribution sheets showing his registration under Employees Provident Fund Scheme under the management which are marked Ext. 3 to Ext. 3/b. On the basis of the materials on record and discussions made above, it is crystal clear that by the month of April, 2009, the workman was a regular Driver under the management and was getting monthly salary of Rs. 3,500.

9. Now, the core question arises whether the workman was illegally refused employment with effect from Dt. 15/16-4-2009. In his pleading as well as evidence the workman has stated that on Dt. 14-4-2009 at about 7-00 A.M. while he was proceeding to carry Company's employees from its Guest House, driving the vehicle bearing No. OR-15J-5646, he was served with a vehicle requisition order by the Election Officer, Sambalpur at Ainthapali Check Gate for the purpose of General Election and he immediately reported himself before R.T.O., Sambalpur. Such fact is not disputed by the management. The workman clearly deposed that he proceeded to Kuchinda carrying election staffs as per the Order of the Election Officer and returned to the Company's Guest House on Dt. 15-4-2009. During course of hearing, a copy of the Order of the District Magistrate and Collector, Sambalpur regarding requisition of the aforesaid vehicle on 14-4-2009 has been marked Ext. 4. As per this document, the Company's vehicle driven by the second party was requisitioned for election duty from Dt. 14-4-2009 to Dt. 16-4-2009. The management does not dispute the fact of requisition of the vehicle and performance of election duty by the second party on Dt. 14-4-2009. In the written statement the management admitted that after completion of election duty, the workman kept the vehicle in the premises of the management. Therefore, the workman made no default in his duty till Dt. 15-4-2009. It is the allegation of the workman that from Dt. 16-4-2009 he was not allowed to perform his duties but it is the claim of the management that the second party did not turn up for duty on 16-4-2009 and remained absent from the said date. The management has not adduced any evidence in counter to the evidence of the workman that he came to the Company's premises and met officials who did not allow to perform his duty. The management does not assign any reason as to why the workman, a regular driver would voluntarily abandon his work and put to loss of employment and salary. The workman during course of his evidence, has proved a copy of registered letter, dated the 27th April 2009 sent by him to the Senior Manager, Personnel of the management Company requesting him to carry on his duties and the said document has been marked Ext. 5. The workman has further proved a letter, dated the 9th July 2009 sent by Registered Post to the management Company by the Advocate of the workman with request to allow him to join in service and extend other benefits and the said document has been marked Ext. 6. The management on the contrary has not proved to have issued any reply to the registered letters sent by the workman and his Advocate. It is therefore, crystal clear that though the workman was interested to perform his duties under the management, he was not allowed to do so. Admittedly, the second party worked under the management continuously for a period of about 4 years but no notice as served upon him regarding the intention of the management to dismiss him from service. There is no disciplinary proceeding against the workman and he was never asked to join in duty soon after he was compelled to perform election duty on Dt. 14/15-4-2009. The non-consideration of the grievance of the workman by the management and non-response to the registered notice is sufficient to hold that the management illegally refused employment to the workman in violation of the provisions of the Industrial Disputes Act. On a careful perusal of the evidence on record and discussions made above I am constrained to hold that the action of the management in refusing

employment to the second party amounts to illegal termination of service with effect from the 15th April 2009. The issue is answered accordingly in favour of the second party.

10. *Issue No. (ii)*—Since it has already been held that the management terminated the service of the second party workman illegally with effect from the 15th April 2009, he is entitled to reinstatement in service. As regards back wages, I find the management has not put any evidence to show that the workman was employed anywhere subsequent to his termination of service and therefore, the workman is entitled to full back wages with all consequential service benefits.

In view of the determination of the issues in the manner aforesaid the reference needs be answered in favour of the workman. Hence, the following Award.

AWARD

The reference is answered on contest against the first party management without cost. The first party is directed to reinstate the second party in service within a period of one month of publication of the Award in the Official Gazette. The management is further directed to extend all service benefits to the workman as per its Company's norms, fix his salary and other dues at appropriate scale and pay full back wages to the second party with effect from the 15th April 2009 within a period of 3 months. In default of payment of back wages and other dues to the workman within the stipulated date, the first party shall be liable to pay interest on the arrear amount @ 6 % per annum.

Dictated and corrected by me.

SRIKANTA MISHRA
26-6-2013
Presiding Officer
Labour Court, Sambalpur.

SRIKANTA MISHRA
26-6-2013
Presiding Officer
Labour Court, Sambalpur.

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