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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 6th August 2013

No. 10189—IR (ID)-17/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th July 2013 in I. D. Case No. 1 of 2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Mahindra and Mahindra Financial Services Ltd., Cuttack and their workman Shri Ashutosh Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2011

Dated the 8th July 2013

Present :

S. A. K. Z. Ahamed, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Branch Manager,
M/s Mahindra & Mahindra Financial
Services Ltd., Urmila Complex,
2nd Floor, Madhupatna, Cuttack.

.. First Party—Management

The Regional Manager,
M/s Mahindra & Mahindra Financial
Services Ltd., Plot No. 511, Rasulgarh,
Bhubaneswar-10.

And

Shri Ashutosh Mohanty,
S/o Umakanta Mohanty,
At Champaipal, P.O. Taranga Sagarpur,
Via. Dasarathpur, Dist. Cuttack.

.. Second Party—Workman

Appearances :

Shri Jyoti Ranjan Sahoo, .. For the First Party—Management
Asst. Manager, Legal.

Shri Ashutosh Mohanty .. The Second Party—Workman himself

AWARD

The Government of Odisha in the Labour & Employment Department (Presently Labour and E.S.I. 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. 2375— ID-17/2011-LE., dated the 10th March 2011 :—

“Whether the action of the management of M/s Mahindra & Mahindra Financial Services Ltd., Cuttack in terminating the services of Shri Ashutosh Mohanty, Customer Manager with effect from the 24th March 2009 is legal and/or justified ? If not, to what relief Shri Mohanty is entitled ?”

2. The case of the second party workman, in short, is that initially he joined under the first party management as a Field Officer in the month of September 2005 and subsequently he was promoted to the post of Customer Manager in the year 2007 and continued as such till 29-5-2008. It is stated that while continuing as Customer Manager suddenly on 24-3-2009 he was refused employment without any reason or rhyme. It is alleged that even the first party did not pay his salary for the month of January 2009. It is stated that while functioning as Customer Manager under the first party no subordinates were attached to him nor he had any decision making power. According to him, the refusal of employment made to him amounts to termination of his service and the same is illegal due to contravention of the provisions of the Industrial Disputes Act, 1947.

3. Both the first party managements have filed separate written statements resisting the claim of the second party mostly on the common ground that the second party is not ‘workman’ within the meaning of Section 2 (s) of the Industrial Disputes Act and further the establishment of the first party is not an ‘industry’ within the meaning of the said Act and as such this Court has no jurisdiction to adjudicate the reference. Admitting about the employment of the second party, both the managements have taken the stand that the performance of the second party was not at all satisfactory since June, 2008 for which an advisory note was issued to him on 12-1-2009. It is stated that despite the above, the first party did not take any action against him but when he remained absent unauthorisedly with effect from the 15th January 2009, it struck off his name from the Muster Roll with effect from the 31st March 2009 presuming that he had voluntarily abandoned his service and accordingly issued him the letter of termination.

The written statement further reveals that although the Managements were ready to settle the dispute but in course of calculating the settlement amount it was found that the second party had availed a loan from the first party and as against the said loan an amount of Rs. 36,023 is still outstanding against him. The second party having voluntarily abandoned his job, it is pleaded by the first party managements that he is not entitled to the reliefs claimed in the present dispute. Rather, the managements have prayed to direct the second party to refund the amount which is still outstanding against him.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether the action of the Management of M/s Mahindra & Mahindra Financial Services Ltd., Cuttack in terminating the services of Shri Ashutosh Mohanty, Customer Manager with effect from the 24th March 2009 is legal and/or justified ?
- (ii) If not, to what relief Shri Mohanty is entitled ?”

5. To substantiate their respective stand, the second party examined himself as W.W. No. 1 and filed copy of six documents which have been marked Exts. 1 to 6. On behalf of the first party managements, two witnesses have been examined and out of them M.W. No. 1 is the Assistant Manager, Legal of first party No. 1 & M.W. No. 2 is the Regional Manager of first party No. 2. Documents marked Exts. A and B have been filed and proved on their behalf.

FINDINGS

6. *Issue No. (i)*—Before adjudicating the issue on the question of legality and justifiability of the order of termination of the second party, this Court considers it appropriate to give a finding on the question of maintainability of the reference. In this connection, it is found that the first party has challenged the reference on the ground that its establishment is not an ‘industry’ and that the second party is not a ‘workman’ as defined under the Industrial Disputes Act.

Although it is pleaded in the written statement that the first party is a company registered under the Companies Act, 1956 and is being governed by the RBI and in course of business it only deals with financial services and as such it can not be said to be an ‘industry, but no evidence is forthcoming to substantiate such stand. Both the witnesses examined on behalf of the management have not whispered a single word as to how and why the establishment of the first party would be excluded from the definition of ‘industry’. Hence, this Court holds that the establishment of the first party is an ‘industry’ within the meaning of Section 2 (j) of the Industrial Disputes Act.

The other ground challenging the maintainability of the reference is that the second party being a Customer Manager is not a ‘workman’ and therefore this Court lacks jurisdiction to adjudicate the reference. Law is well settled that to exclude a person from the definition of ‘workman’, there must be evidence to the effect that his/her duty was either managerial or supervisory in nature, inasmuch as he/she had absolutely control over the subordinates and by virtue of his/her appointment in the managerial cadre he/she was quite competent to call for explanations from the subordinates for dereliction in duty ; to sanction their leave as and when sought for by them ; to initiate disciplinary action against the errant employees for misconduct, if any, etc. On a scrutiny of the evidence, both oral and documentary, it is found that the first party managements have not brought on record anything which would reflect that by virtue of his designation as Customer Manager the second party was discharging managerial/supervisory functions. Rather, his appointment letter as Associate Trainee marked Ext. 1 and the Transfer Order marked Ext. 3 disclose that he was subordinate to the Branch in-Charge and the Regional Manager. The first party managements having failed to establish that the second party by virtue of his designation was discharging managerial/supervisory duties, this Court holds that he is a ‘workman’.

7. Ext. A, the copy of termination letter discloses that due to unsatisfactory performance of the second party and non-reporting to duty with effect from the 15th January 2009 his services have

been terminated. As regards the poor performance of the second party, neither the first party has conducted any enquiry nor even asked him to show-cause as to why disciplinary proceedings shall not be initiated against him. When the first party presumed the poor performance of the second party to be a misconduct, it is not understood as to why it remained silent over the matter and did not proceed against the second party departmentally. The record discloses that instead of proceeding against the workman departmentally the first party simply terminated his service without affording him a chance to have his say in that matter. The termination of his service on the above-stated ground is therefore not sustainable.

8. Regarding the plea of the management that the second party had voluntarily abandoned his job with effect from the 15th January 2009, the copy of the Attendance Register marked Ext. 6 (which has been filed & proved by the second party and marked without any objection from the first party) reflects that from 19-1-2009 onwards the second party has been shown to have undertaken tour till 31-1-2009 and thereafter he has performed his duty till 14-3-2009. Such being the position, the plea that the second party voluntarily abandoned his job with effect from the 15th January 2009 is not at all acceptable.

9. Admittedly, the second party has rendered continuous service under the management for more than three and half years and thereby he was entitled to the protection envisaged under Section 25-F of the Industrial Disputes Act, 1947. As there has been admitted non-compliance of the provisions of Section 25-F of the I. D. Act, the action of the management is held to be neither legal nor justified.

10. *Issue No. (ii)*—In view of the findings arrived at on Issue No. (i), the second party is entitled to some relief. It is seen that the second party is presently aged about 38 years and there is every reason to presume that he must be earning something to maintain his livelihood soon after termination of his service. Taking into consideration the age of the workman, his status and the length of service he had rendered under the first party, this Court declines to grant him the relief of reinstatement with back wages. But, for the illegal termination of his service it is felt appropriate to grant him some compensation in lieu of reinstatement and back wages. Accordingly, a compensation of Rs. 1,50,000 (Rupees one lakh fifty thousand only) is awarded in favour of the workman in lieu of his reinstatement and back wages, which should be paid to him after adjusting the loan amount of Rs. 36,023 shown to be outstanding against the workman.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
8-7-2013
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
8-7-2013
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

J. DALANAYAK
Under-Secretary to Government