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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 10th January 2013

No. 333—IR(ID)-42/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th December 2012 in Industrial Dispute Case No. 43 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Managements (1) Principal & Assistant Director (Tech.), The Related Instruction Centre, Choudwar, Cuttack, (2) The Director of Technical Education & Training Centre, Odisha, Cuttack and its Workman Shri Nimain Ch. Dash was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 43 OF 2011

Dated the 26th December 2012

Present :

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

1. Principal & Assistant Director (Tech.),
The Related Instruction Centre,
Choudwar, Cuttack. . . First Party—Managements
2. The Director of Technical
Education & Training Centre,
Odisha, Cuttack.

And

Shri Nimain Ch. Dash, . . . Second Party—Workman
 S/o Adhikari Iswar Chandra Dash,
 Village Dhuanpari,
 P.O. Dedhasuradeuli, Via Nalibara,
 Dist. Jagatsinghpur.

Appearances :

Shri P. K. Kar, . . . For the First Party No. 1
 Principal In-charge.
 Shri P. R. Mohanty, . . . For the First Party No. 2
 Deputy Director.

Shri Nimain Ch. Dash . . . The Second Party—Workman
 himself.

AWARD

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12(5) read with Section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute to this Tribunal for adjudication vide their Order No. 6564—ID-42/2011-LE., dated the 30th July 2011.

"Whether the retrenchment from services of Shri Nimain Ch. Dash, ex N.M.R. workman by the management of the Related Instruction Centre, Choudwar, Cuttack and the Director of Technical Education & Training Centre, Odisha, Cuttack with effect from the 1st August 2007 is legal and/or justified ? If not, what relief Shri Dash is entitled to ?"

2. The case of the second party workman as narrated in his claim statement is that since 1-11-1990 he had been working as a Peon in the Related Instruction Centre, Choudwar and used to get monthly salary from the Principal of the said Centre (First Party No. 1). However, he was being treated as an N.M.R. He was in continuous service from the date of his joining till 31-7-2007. He was terminated from service with effect from the 1st August 2007. Neither any disciplinary proceeding was initiated against him nor his service was terminated in accordance with Section 25-F of the Act. Therefore, his termination is illegal. It is further contended that some other workmen who were retrenched by the first party No. 1 have already been re-employed by the management but the case of the second party has not yet been taken into consideration.

3. In the written statement the first party No. 1 has admitted that since 1990 the service of the second party was being utilised in the R. I. Centre, Choudwar as a daily-rated worker as and when required. His service was never terminated by the first party. Rather, it was the workman who remained absent from duties with effect from the 7th July 2007. Subsequently, the R. I. Centre was closed down for good. Under such circumstances no termination order was passed. As the second party was a daily wage worker no disciplinary action was initiated for his unauthorised absence from 7-7-2007. It is further pleaded that all the regular employees working at the time of closure of the R.I. Centre were transferred to other offices functioning under the Director of Technical Education & Training Centre, Odisha (First Party No. 2). Regarding re-employment of retrenched workmen, it is contended that no temporary employees working at the time of closure has been re-engaged by the management.

4. The first party No. 2 has filed written statement separately. However, the stand taken by the first party No. 2 is almost same as first party No. 1.

5. The following issues have been settled :—

ISSUES

- (i) "Whether the first party management is an industry as defined under Section 2(j) of the I. D. Act ?
- (ii) Whether the retrenchment from services of Shri Nimain Ch. Dash, ex N.M.R. workman by the management of the Related Instruction Centre, Choudwar, Cuttack and the Director of Technical Education & Training Centre, Odisha, Cuttack with effect from the 1st August 2007 is legal and/or justified ?
- (iii) If not, to what relief Shri Dash is entitled ?"

6. The workman has examined himself as W.W. No. 1. On behalf of the management, the Principal, In-charge of the R.I. Centre is examined as M.W. No. 1 and the Deputy Director of Technical Education & Training, Odisha is examined as M.W. No. 2. Exts. 1 and 2 are marked on behalf of the second party and Ext. A on behalf of the first party.

FINDINGS

7. *Issue No. (ii)*—It is not in dispute that the second party was working in the R.I. Centre and he had completed little less than 17 years of continuous service. For the purpose of Section 25-F of the Act, it is immaterial whether the second party was a daily wager or he used to get monthly salary from the first party No. 1. It is also not in dispute that the work the second party used to perform was manual in nature. If the first party is held to be an 'industry', about which there will be detail discussion while dealing with issue No. (i), the second party will come within the definition of 'workman' under Section 2(s) of the Act. Though it is claimed that the second party unauthorisedly remained absent from duties with effect from the 7th July 2007, the management has not made any communication with the second party either inviting him to report for duty or calling for show-cause for such unauthorised absence. In the absence of any other material it is not possible to believe that the second party left the employment with effect from the 7th July 2007, more so when it is not disputed that he was in continuous employment for about 17 years. It is also not claimed by the first party that retrenchment compensation and notice pay was paid to the second party as required under Section 25-F of the Act. Since the second party has completed one year of continuous service before the disputed retrenchment, he is entitled to one month's notice or one month's wages in lieu of such notice besides retrenchment compensation. If the first party No. 1 is held to be an 'industry', then his refusal of employment with effect from the 1st August 2007 can be said to be illegal. However, it cannot be said to be unjustified in view of the admitted fact that the R. I. Centre has been closed down and it is not shown that the Centre has been reopened and any other retrenched employees have been taken back into employment. Though the second party claims that the first party has given re-employment to some of the retrenched employees, no evidence has been adduced in support of that contention. In the circumstances, the retrenchment cannot be said to be not justified.

8. *Issue No. (i)*—The first party claims that the R. I. Centre being an academic Institution/ Organisation imparting Related Theoretical Instructions to the Trade Apprentices, is not an 'industry'

as per the explanation appended to Section 2(j) of the Act. There is no explanation to the definition of the word 'industry' contained in Section 2(j) of the Act. It is the amended definition vide amending Act 46 of 1982 which contains the explanation to the definition but that amended definition has not yet been brought into force. Therefore, the contention that an Educational Institution is excluded from the definition of 'industry' is not to be accepted. In view of the principle laid down in *Bangalore Water Supply and Sewerage Board Vrs. A. Rajappa & others*, reported in AIR 1978 (S.C.) 548 an Educational Institution also comes within the definition of 'industry'.

In the result, the R. I. Centre is held to be an 'industry'.

9. *Issue No. (iii)*—The first party No. 1 being held to be an 'industry' and the termination of services of the second party being in contravention of Section 25-F of the Act, the second party/workman is entitled to relief. He has claimed for his reinstatement with full back wages. Since it is held that the retrenchment is justified and it is not shown that the R. I. Centre is in operation the second party cannot be reinstated in service. Considering that he was about to complete 17 years of continuous service, though as a daily-rated worker, it is considered just and appropriate to award him a compensation of Rs. 50,000 (Rupees fifty thousand) only for the illegal retrenchment.

The reference is answered accordingly. The management to pay Rs. 50,000 (Rupees fifty thousand) only as compensation to the workman within a period of two months of the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
26-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar.

RAGHUBIR DASH
26-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar.

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