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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 17th January 2013

No. 478—li/1(B)-38/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th November, 2012 in Industrial Dispute Case No. 58 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the United Puri-Nimapara Central Co-operative Bank Ltd. and its Workman Smt. Minakhi Panda, Class-IV employee was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 58 OF 2006

Dated the 29th November 2012

Present :

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

Between :

The Management of the
United Puri-Nimapara Central
Co-operative Bank, Ltd.

.. First Party—Management

And

Its Workman
Smt. Minakhi Panda,
Class-IV employee.

.. Second Party—Workman

Appearances :

Shri B. Sahoo, Advocate	. . For the First Party—Management
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Shri N. Satapathy, Advocate	. . For the Second Party—Workman

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. li-1(B)-38/2006, dated the 17th June 2006.

"Whether the action in terminating the services of Smt. Minakhi Panda, a Class-IV employee by the management of M/s The United Puri-Nimapara Central Co-operative Bank Ltd., Puri with effect from the 13th January 2005 is legal and/or justified ? If not, to what relief Smt. Panda is entitled ?"

2. The case of the workman, in brief, as set out in her statement of claim is that she was appointed as Sweepress under the management with effect from the 11th May 1995 rendered duty till 13-1-2005 with all sincerity. On 13-1-2005, without any rhyme and reason she was terminated from service by the then Secretary, Shri Madhusudan Behera in the said Bank without any enquiry. So also, no written order was issued to the workman to that effect. On these averments, the workman has stated that the action of the management for not inducting her in service with effect from 13-1-2005 is illegal and unjustified and accordingly she has prayed for her reinduction in service with effect from the 13th January 2005 with full back wages and other consequential relief.

3. On the other hand, the management entered appearance and filed written statement denying the allegations of the workman and prayed that the present case is not maintainable in the eye of law as the workman is not coming under Section 2(s) of the Industrial Disputes Act, 1947. The management has admitted that the engagement of the workman as a Sweepress is purely on contract basis and the Bank has not appointed her under any sanction post nor the workman was under the control and supervision of the management. On the above backdrops, it has been urged that the reference should be answered in negative against the workman.

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

ISSUES

- (i) Whether the action in terminating the service of Smt. Minakhi Panda, a Class-IV employee by the management of M/s The United Puri-Nimapara Central Co-operative Bank Ltd., Puri with effect from the 13th January 2005 is legal and/or justified ?
- (ii) If not, to what relief Smt. Panda is entitled ?

5. In order to substantiate her claim, the workman herself has examined as W.W. 1. Similarly, the management has examined its Law Officer (I/c) as M.W. 1. Both the parties neither filed any document nor proved during the trial in support of their respective cases.

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 was made by the Government is whether the action in terminating the services of the workman by the management with effect from the 13th January 2005 is legal and/or justified ? If not, to what relief the workman is entitled ?

The facts of dispute between the parties in this case is regarding the claim of the workman for employment and wages for the period out of her 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 provisions of Section 2(s) of the Industrial Disputes Act, 1947. But on perusal of the written statement the management admitted the engagement of the workman purely on contractual basis. 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 alleged termination of service of the workman with effect from 13-1-2005. No doubt, not a single piece of paper has been filed by the workman to show that she was appointed by the management Bank in the post of Sweepress as alleged.

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 Sweepress on contractual basis. The management has urged that the workman was never engaged as a regular Sweepress and has never completed 240 days of continuous service during any calendar year preceding to her alleged termination from service. The management has further urged 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 to pay her. 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 her service orally by way of refusal of employment with effect from the 13th January 2005. 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 13th January 2005 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 urged that the workman was engaged as Sweepress purely on contractual basis. So, in my opinion, the workman 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 13-1-2005. 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 granting her 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 in terminating the service of Smt. Minakhi Panda, a Class-IV employee by the management of M/s The United Puri-Nimapara Central Co-operative Bank Ltd., Puri with effect from the 13th January 2005 is illegal and unjustified. The workman Smt. Panda is only entitled to get a lump sum amount of Rs. 15,000 in lieu of reinstatement and 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
29-11-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
29-11-2012
Presiding Officer
Labour Court, Bhubaneswar

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