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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 21st October 2013

No. 12158—IR(ID)-109/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd August 2013 in Industrial Dispute Case No. 75/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Libra Exporters Ltd., Choudwar, Cuttack and its workmen Shri Nabaghan Panda & Shri Ashok Kumar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 75 OF 2010

Dated the 23rd August 2013

Present :

Shri P. K. Ray, S. C. (Sr. Branch)
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Management of M/s. Libra Exporters Ltd., Choudwar, Cuttack. First Party—Management

And

Its Workmen, (1) Shri Nabaghan Panda, S/o. Sanatana Panda, At Mundamala, P.S./P.O. Choudwar, Dist Cuttack. Second Party—Workmen
(2) Shri Ashok Kumar Sahoo, S/o Dhadi Sahoo, At Sangrampur, P.O. Uttarpur, P.S. Kishore Nagar, Dist Cuttack.

Appearances :

For the First Party—Management	..	Mirza Azim Beig, Auth. Rept.
For the Second Party—Workmen	..	Shri Nabaghan Panda & Shri Ashok Kumar Sahoo

A W A R D

This case has been instituted under section 10(1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & ESI Department of the Government of Odisha under section 12(5) of the Act vide its letter No. 8504–ID-109/10-LE, dated the 4th October 2010 with the following schedule:–

“Whether the alleged illegal retrenchment from services of Shri Nabaghan Panda and Shri Ashok Kumar Sahoo by way of refusal of employment w.e.f. 20th November 2007 by the Management of M/s. Libra Exporters Ltd., Choudwar, Cuttack is legal and/or justified ? If not, what are the benefits Shri Nabaghan Panda and Shri Ashok Kumar Sahoo are entitled to ?”

2. The case of the second party workmen is that they were the permanent employees of the first party management vide employees Code No. KE 13010 and KE 13021 and employed as Markman in the Marking Department since January and July, 1994, respectively. After damage of 100% Export Unit the first party management transferred all the workers to M/s. Libra Exporters Ltd. Accordingly, the second party workmen were transferred on 2nd July 2007 with a condition that the category shall remained unchanged besides continuity of service will not be disrupted. In response to the transfer order when the second party workmen joined the work they found the nature, grade, category and designation have been changed and they were placed as Spinner and also asked to collect bobbins from the machine and to deliver the same at the Winding Department like Coolies whereas the posts of Markman in the Company were lying vacant. The aforesaid act of the first party management is a clear case of violation of Item No. 7 of the fourth Schedule of Section 9-A of the Industrial Disputes Act as it has changed the designation, category and grade of employment of the second party workmen. Since the management did not respond to the protest made by the second party workmen and ultimately on 20th November 2007 the management did not allow both the second party workmen to enter into the factory premises to perform their duties without assigning any reasons they approached the Labour Machinery. It is asserted that even during conciliation before the D. L. O. the management remained adamant and submitted a written report before the Conciliation Officer denying all the allegations as well as expressing its inability to reinstate both the workmen in their former post. Ultimately, after failure of conciliation the present reference has been made for adjudication of the dispute.

3. The first party management in their written statement refuting the allegations made by the second party workmen has stated that after the 100% Export Unit was damaged by accidental fire on 28th December 2005 destroying the entire factory as well as raw materials it was decided to take all the 100% Export Unit staff to M/s. Libra Exporters Ltd., including the second party workmen. After the transfer the second party workmen were adjusted in the Spinning Department without any change in their grade and pay but the second party insisted to be engaged as Markman though there was no such post available in the said unit not the same was required. After working for three months both the workmen remained absent and did not join in their duties inspite of intimation through letters. Subsequently, the second party workmen filed complaint before the D. L. O. alleging retrenchment by the first party management. During conciliation the workmen insisted to work as Markman only. Since the said post was not required in the first party management and it offered them to work in Batching, Drawing, Spinning and Winding Department, the second party workmen refused to accept the same and voluntarily abandoned their services. Hence, the conciliation proceeding ended in failure. The first party management has not retrenched nor terminated the services of the second party workmen. Rather, the second party workmen did not work under the first party management unlike other employees of 100% Export Unit. Therefore, the second party workmen are not entitled to any relief sought for.

4. The second party workmen in their rejoinder further stated that when they insisted for absorption as against the post of Markman the first party management in order to take revenge on 20th November 2007 did not allow the workmen to enter into the factory premises to perform their job. They have further stated that grade is not only confined to scale and pay but it extends to quality, rank, level of dignity, etc.

5. In the aforesaid premises, the issues framed are as follows:

ISSUES

- (i) Whether the second party members have voluntarily abandoned their services ?
- (ii) Whether there has been any retrenchment by way of refusal of employment ?
- (iii) Whether the alleged illegal retrenchment from services of Shri Nabaghan Panda and Shri Ashok Kumar Sahoo by way of refusal of employment w.e.f. 20th November 2007 by the management of M/s. Libra Exporters Ltd., Choudwar, Cuttack is legal and /or justified ?
- (iv) What relief ?

6. In order to substantiate their respective case while the second party workmen examined one of its workmen as W. W. 1 and filed documents marked Exts. 1 to 7, on behalf of the first party management its Personnel Officer has been examined as M. W. 1 and filed documents marked Exts. A, A/1 and B.

FINDINGS

7. *Issue Nos. (i) and (ii)*—While the second party workmen claim retrenchment of their services by the management, i.e., by way of not allowing them to enter inside the factory premises, the stand of the management is that when both the workmen were not given the post of Markman in spite of their effort to adjust in some other work of similar nature, they did not turn up to perform their duties irrespective of notices sent to them. Admittedly, there is no letter of retrenchment. No document has been filed on behalf of the management to show that the intimation to resume their duties have been served on them.

On close scrutiny of the evidence adduced on behalf of both the parties it is found that the entire controversy cropped up due to non-posting of the second party workmen against the post of Markman, i.e., the post against which they were serving prior to their transfer to the present Libra Exporters Ltd. Due to the adamant attitude of both the parties there could not be any settlement and ultimately this case has been instituted at the instance of the workmen claiming it to be a case of retrenchment whereas the management claims it to be a case of voluntary abandonment of job. In the aforesaid background it would be just and proper if the first party management will be directed to engage the second party workmen in the post within the purview of the terms and conditions of the transfer from 100% Export Unit to Libra Exporters Ltd., vide Ext. 2 within a period of one month hence :

8. *Issue No. (iii)*—In view of the discussions in *Issue Nos. (i) and (ii)* since the second party workmen have not rendered any service under the first party management during the disputed period, they are not entitled to any remuneration for the same.

Dictated and corrected by me.

P. K. RAY
23-8-2013
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

P. K. RAY
23-8-2013
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

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