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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 30th October 2013

No. 12557—IR(ID)-88/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th September 2013 in Industrial Dispute Case No. 2 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Hare Krushna Mahatab Library, Bhubaneswar and their Workman Shri Prasanna Kumar Sethi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 2 OF 2012
Dated the 19th September 2013

Present :

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

Between :

The Management of
M/s Hare Krushna Mahatab
Library, Bhubaneswar. First Party—Management

And

Their Workman
Shri Prasanna Kumar Sethi,
S/o Lokanath Sethi,
At Khiri Khaia, P.O. Pubasasan,
Dist.Puri. Second Party—Workman

Appearances :

For the First Party—Management Shri P. K. Rath, Dy. Director

For the Second Party—Workman Shri N.C. Das & Associates, Adv.

AWARD

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 & E.S.I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 1161—IR(ID)-88/2011-L.E., dated the 21st February 2012 with the following Schedule:—

“Whether the action of the management of H. K. Mahatab State Library, Bhubaneswar in terminating the services of Shri Prasanna Kumar Sethi, Choukidar by way of refusal of employment with effect from the 20th August 2010 without following provisions under Section 25 (F) of the I.D. Act, 1947 is legal and /or justified ? If not, what relief Shri Sethi is entitled to ?”

2. The case of the second party workman is that he was working as an unskilled DLR in Hare Krushna Mahatab State Library, Bhubaneswar under the Department of Culture against the vacancy of Choukidar as per the order of the ex Minister, Dr. Damodar Rout with effect from the 2nd August 2004 and getting his wages since his engagement till his termination on 20-8-2010. Though the post of Choukidar was abolished in the year 2007 as there are nine other DLRs in HKM State Library without any sanctioned post he claims for his continuance like other nine DLRs. In spite of said termination, the second party workman was allowed to work and draw his wages till February 2009. Accordingly, he raised a dispute basing on which this reference has been made for adjudication of the dispute.

3. The first party management in its written statement admitting the engagement of the second party workman with effect from the 2nd April 2004 to the 29th October 2008. Due to abolition of the post of Choukidar vide Government Order No. 2650-TC, Dt. 25-6-2007. But the second party workman was allowed to work as unskilled DLR till February, 2009. On the clarification about release of wages of the second party workman up to February 2009, as per the instruction of the Joint Secretary to the Government in Culture Department, the first party management terminated the service of the second party workman.

4. In the aforesaid premises the issues framed are as follows :—

ISSUES

- (i) Whether the action of the management of Hare Krushna Mahatab State Library, Bhubaneswar in terminating the services of Shri Prasanna Kumar Sethi, Choukidar by way of refusal of employment with effect from the 20th August 2010 without following provisions under Section 25(F) of the I.D. Act, 1947 is legal and/or justified ?
- (ii) If not, what relief Shri Sethi is entitled to ?

5. In support of their respective stand, while the second party workman examined himself as W.W. No.1 and filed and proved Exts.1 to 6, the first party management examined the Officer-in-Charge of Hare Krushna Mahatab State Library and filed and proved Exts. A to H.

FINDINGS

6. *Issue No. (i)*—On behalf of the second party workman, it is alleged that his service has been terminated in violation of Section 25-F of the Industrial Disputes Act, 1947 and he has not been paid wages from 1-3-2009 till 20-8-2010. It is admitted by the first party management witness that the second party workman was engaged as an unskilled DLR with effect from the 2nd April 2004, terminated with effect from the 20th August 2010 i.e., worked more than 240 days in continuous

service in a calendar year and he was not paid wages from 1-3-2009 to 20-8-2010. Section 25-F of the Industrial Disputes Act, 1947 envisages as follows :

“25F. Conditions precedent to retrenchment of workman—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until —

(a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days’ average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette.)”

In the circumstances, since the termination of the second party workman has been made without giving one month prior notice and compensation as envisaged under Section 25-F(a) and (b) of the Industrial Disputes Act, 1947 such termination is in violation of the aforesaid provisions and is thus illegal.

7. *Issue No. (ii)*—Admittedly, the second party workman was engaged as an unskilled DLR with effect from the 2nd April 2004 and terminated with effect from the 20th August 2010 which is illegal. The management witness No.1 admits that the wages of the workman from 1-3-2009 to 20-8-2010 has not been paid. The second party workman has prayed for reinstatement and release of his arrear dues. There is also no dispute that nine other workman are still working without any sanctioned posts. In the aforesaid circumstances considering the termination of the second party workman which is illegal and there being no dispute that he was not paid his dues with effect from the 1st March 2009 to the 20th August 2010, the first party management is directed to reinstate him against a similar post in which the second party workman was serving at the time of his termination and to release his unpaid wages with effect from the 1st March 2009 to the 20th August 2010 which has been admitted by the first party management to have not been paid to the second party workman.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
19-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
19-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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