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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 5th November 2013

No. 12714—IR (ID)-45/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th September 2013 in I. D. Case No. 40 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Samantaray Agency, a Contractor under M/s Cargil India Pvt. Ltd., Paradeep and its Workman Shri Bijay Kumar Lenka represented through Paradeep Progressive Construction Workers & Employees Union, Paradeep was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 40 OF 2012

Dated the 18th September 2013

Present :

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

Between :

The Management of .. First Party—Management
M/s Samantaray Agency, a Contractor
under M/s Cargil India Pvt. Ltd., Paradeep.

And

Its Workman .. Second Party—Workman
Shri Bijay Kumar Lenka,
Represented through Paradeep Progressive
Construction Workers & Employees Union,
Paradeep.

Appearances :

None	.. For the First Party
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Shri N. Swain, General Secretary of the Union.	.. For the Second Party

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. 5866—IR (ID)-45/2012-LESI., dated the 28th July 2012 with the following schedule :—

“Whether the dismissal of Shri Bijay Kumar Lenka, ex contract workman from services with effect from the 27th June 2011 by the employer of M/s Samantaray Agency, a Contractor of M/s Cargil India Pvt. Ltd., Paradeep is legal and/or justified ? If not, what relief Shri Lenka is entitled to ?”

2. The case of the second party workman is that he was engaged in the factory of M/s Cargil India Pvt. Ltd. continuously from December, 2004 being engaged through different labour contractors namely, Maa Mangala Construction, M/s Gajendranath Das & M/s Samantaray Transport Agency Pvt. Ltd., M/s Samantaray Transport Agency Pvt. Ltd. has changed its name to M/s Samantaray Agency. The present workman including others numbering about 150 workers working in M/s Cargil India Ltd. at Paradeep have become members of the Paradeep Progressive Construction Workers and Employees Union. In the meantime the second party workman was elected as the Vice-President of the Union. On 10-4-2011 about 6-30 A.M. when he was going to the factory at the main gate he was prevented entry into the factory premises and was informed by the Personnel Supervisor that he was put under suspension. In spite of all his efforts to contact his authorities when he failed, he raised the dispute with the DLO, Jagatsinghpur on 8-6-2012. The claim of the second party workman is that termination of his service is tainted with *mala fide* and is an unfair labour practice under the ID Act, 1947. Hence, claims for reinstatement with full back wages.

3. The first party management did not contest the case, hence set *ex parte*.

4. The issues in this case are as follows :

ISSUES

- (i) “Whether the dismissal of Shri Bijay Kumar Lenka, ex contract workman from services with effect from the 27th June 2011 by the employer of M/s Samantaray Agency, a Contractor of M/s Cargil India Pvt. Ltd., Paradeep is legal and/or justified ?
- (ii) If not, what relief Shri Lenka is entitled to ?”

5. To substantiate his case the second party workman has examined himself and filed documents marked Exts. 1 to 7.

6. The unchallenged testimony of the second party workman is that in the year 2005 when he became the Vice-President of the Union and demanded some minimum basic necessity of the workman before the management and lodged complaint before the District Labour Officer, Jagatsinghpur as well as the State Authorities, he was not allowed entry into the factory which amounts to termination. Even his representations were not received by the first party management. As there is no material on record contrary to the aforesaid unchallenged statement, there is no alternative for this tribunal than to conclude that the service of the second party workman has been illegally terminated. Therefore, in the aforesaid background he is entitled to reinstatement in service with all back wages. Accordingly, the first party management is directed to reinstate him and pay full back wages within a period of three months hence.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
18-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
18-9-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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