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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 7th November 2013

No. 12831—IR(ID)-7/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th September 2013 in Industrial Dispute Case No. 05 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s BPTCL & Dream Team Sahara, Bhubaneswar and its Workman Shri Somnath Mansingh was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 5 OF 2012

Dated the 15th September 2013

Present :

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

Between :

The Management of
The Chief Executive Officer,
M/s BPTCL & Dream Team Sahara,
2nd & 3rd Floor, Plot No. N-5/538,
IRC Village (SBI Building),
Nayapalli, Bhubaneswar. First Party—Management

And

Its Workman,
Shri Somnath Mansingh,
At Qrs. No. VR-5/1,
Kharavela Nagar, Unit-3,
Bhubaneswar. Second Party—Workman

Appearances :

For the First Party—Management	. . . Shri N. C. Pal, Authorised Representative
For the Second Party—Workman	. . . Shri S. Behera, Authorised Representative

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 & E.S.I. Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 1334—IR(ID)-7/2012-LE., dated the 22nd February 2012 with the following Schedule:—

“Whether the action of the management of M/s BPTCL & Dream Team Sahara, Bhubaneswar in terminating the services of Shri Somnath Mansingh, Squad Workman with effect from the 1st February 2011 without following principles of natural justice under Section 25-G of I.D. Act, 1947 is legal and/or justified ? If not, what relief Shri Mansingh is entitled to?”

2. The case of the second party workman is that he being one experienced Conductor duly selected was appointed as such by the first party management with effect from the 1st November 2010 with a monthly salary of Rs. 4,500 as a Probationer for a period of two years. The first party management violating the provisions of law forced the second party workman to work for 14 to 16 hours per day without any extra remuneration. Besides, it has also not paid his monthly wages in time. Being aggrieved by such action when the workers constituted a Union namely, City Bus Karmachari Sangha and submitted a charter of demands, in which the second party workman had taken active part, the first party management resorted to large scale termination of service including the workman with effect from the 1st February 2011 on fake ground that he was involved in anti-organisational activities and collecting fare from the passengers without issuing them tickets. Hence, he filed a complaint before the labour machinery on the basis of which this reference has been made for adjudication.

3. The first party management in its written statement admitting the appointment of the second party workman as a conductor has stated that during the training period there were number of allegations against the second party workman for which he was repeatedly warned. Besides, he was also involved in anti-organisational activities. Since the second party workman was not attending to his duties regularly, remaining unauthorised absent from duties and collecting fare without issuing tickets to the passengers and in spite of repeated warnings he did not rectify his defect, his service was terminated with effect from 1st February 2011. As the second party workman was under probation, in the aforesaid circumstances he did not have any right to claim for reinstatement and his termination has been made accordance with law.

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

ISSUES

- (i) “Whether the action of the management of M/s BPTCL & Dream Team Sahara, Bhubaneswar in terminating the services of Shri Somnath Mansingh, Squad Workman with effect from the 1st February 2011 without following principles of natural justice under Section 25-G of I.D. Act is legal and/or justified ?
- (ii) If not, what relief Shri Behera is entitled to ?
- (iii) Whether the second party workman has voluntarily abandoned the service ?”

5. In order to substantiate their respective case, while the second party workman has examined himself and filed documents marked Exts. 1 to 4, the first party management examined one witness on its behalf and filed documents marked Exts. A to F.

FINDINGS

6. *Issue Nos. (i) & (iii)*—Admittedly, the second party workman was engaged as a Conductor with effect from the 1st November 2010 as a probationer and his service has been terminated with effect from the 1st February 2011. The aforesaid tenure of service being less than 240 days, the second party workman is not entitled to the benefit under Section 25-F of the Industrial Disputes Act.

Though the second party workman claims that he was not given reasonable opportunity to explain his conduct, the documents marked Ext. B, the show cause issued to the workman and the reply furnished thereto vide Ext.4 show that he was given ample opportunity to explain his conduct.

In the case of *Om Prakash Mann Vrs. Director of Education (BASIC) and others*, reported in AIR 2006(SC) 3096, the Hon'ble Supreme Court has clearly held that—“if a probationer is dismissed or terminated during the period of probation no opportunity is required to be given. Therefore, the question of violation of the principle of natural justice does not arise”. In the aforesaid background sine the second party workman is a probationer and his service has been terminated during the period of probation even after giving him show cause vide Exts. B and in spite of his reply the first party management is not satisfied with the performance of the second party workman and on such ground terminated his service, the second party workman has got no right of protection under law.

7. *Issue No. (ii)*—In view of the findings arrived at on issue Nos.i and iii, the second party workman is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
15-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
15-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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