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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 26th November 2013

No. 13371—IR(ID)-6/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th October 2013 in Industrial Dispute Case No. 6/2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar, to whom the industrial dispute between the Management of M/s BPTCL and Dream Team Sahara and its Workman Shri Ashok Kumar Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 6 OF 2012

Dated the 26th October, 2013

Present :

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

Between :

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

And

Its Workman

Shri Ashok Kumar Patra, . . . Second Party—Workman
 At Qrs. No. VR-5/1,
 Kharavel Nagar, Unit 3,
 Bhubaneswar.

Appearances :

Shri N. C. Pal, Authorised Rept.	. . .	For the First Party.
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Shri S. Behera, Authorised Rept.	. . .	For the 2nd Party

AWARD

This case has been instituted u/s 10(1) (d) of the Industrial Disputes Act, 1947(for short, the Act) on a reference made by the Labour & Employment Department of the Government of Odisha u/s 12(5) of the Act vide its Letter No. 1339—IR(ID)-6(1)-2012-LE., dated the 22nd February, 2012 with the following schedule:—

"Whether the action of the management of M/s BPTCL and Dream Team Sahara, Bhubaneswar in terminating the services of Shri Ashok Kumar Patra, squad workman w.e.f. the 6th April 2011 without following principles of Natural Justice is legal and/or justified ? If not, what relief Shri Patra 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 w.e.f. the 15th October 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 w.e.f. the 6th April 2011 on fake ground that he was involved in anti organisational activities and collecting fare from the passengers without 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 w.e.f. the 5th April 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 in accordance with law.

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

ISSUES

(1) "Whether the action of the management of M/s BPTCL and Dream Team Sahara, Bhubaneswar in terminating the services of Shri Ashok Kumar Patra, Squad Workman w.e.f. the 6th April 2011 without following the principles of natural justice is legal and/or justified ?

(2) If not, what relief Shri Patra is entitled to ?"

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

FINDINGS

6. *Issue Nos.(1) & (2)* Admittedly, the second party-workman was engaged as a Conductor with effect from the 15th October 2010 as a Probationer and his service has been terminated with effect from the 5th April 2011. The aforesaid tenure of service being less than 240 days, the second party-workman is not entitled to the benefit u/s 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 Exts. D and G, the showcause notices issued to the workman 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 back ground since 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. D & G and in spite of undertaking 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. Accordingly, he is not entitled to the reliefs claimed.

The reference is answered accordingly.

Dictated and Corrected by me

P. K. RAY
26-10-2013
Presiding Officer
Industrial Tribunal,
Bhubaneswar

P. K. RAY
26-10-2013
Presiding Officer
Industrial Tribunal,
Bhubaneswar

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