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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 2nd December 2013

No. 13597—IR(ID)-108/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th October 2013 in Industrial Dispute Case No. 20 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Integrated Child Development Project, Raikia, Dist. Kandhamal and its workman Shri Bhuleswar Pradhan, Ex-Night Watchman was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 20 OF 2013

Dated the 30th October 2013

Present :

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

Between :

The Management of
Integrated Child Development
Project, Raikia,
Dist. Kandhamal.

.. First Party—Management

And

Their workman,
Shri Bhuleswar Pradhan,
S/o Gaji Pradhan,
Via Budakia,
P.O. Bakingia, P.S. Raikia,
Dist. Kandhamal.

.. Second Party—Workman

Appearances :

For the First Party—Management	. . . None
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The Second Party—Workman himself	. . . Shri B. Pradhan

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. 1134-IR(ID)-108/2011-LESI., dated the 5th February 2013 with the following Schedule:—

“Whether the action of the Child Development Project Officer, Integrated Child Development Scheme Project, Raikia in terminating the services of Shri Bhuleswar Pradhan, Ex-Night Watcher with effect from the 13th April 2011 is legal and/or justified ? If not, to what relief Shri Pradhan is entitled ?”

2. The case of the second party workman is that he had joined in the office of Integrated Child Development Scheme Project, Raikia on 4-2-1996 vide office Order No. 97, Dt. 27-11-1996 as Night Watcher on daily wages basis. After completion of 15 years the management terminated his service vide office letter No.192, Dt. 13-4-2011 without any reason and appointed another person namely Shri Dasaratha Pradhan of village Luhuringia, Kumarama in his place. After the said termination though he requested the Child Development Project Officer, ICDS, Raikia for his reinstatement he did not consider his case. It is stated that the District Social Welfare Officer, Phulbani intimated to all CDPOs vide his letter No. 381, Dt. 28-2-2011 for regularization of service of the 4th grade employees who have completed ten years or more in their service but the management instead of taking into consideration for regularization terminated his service without any reason. Hence, he has raised the dispute on the basis of which this reference has been made for adjudication.

2. The first party management did not contest the case and it has been set *ex parte*.

3. The points to be determined in the case are as follows :—

ISSUES

- (i) “If the action of the Child Development Project Officer, Integrated Child Development Scheme Project, Raikia in terminating the services of Shri Bhuleswar Pradhan, Ex-Night Watcher with effect from the 13th April 2011 is legal and/or justified ?
- (ii) To what relief Shri Pradhan is entitled ?”

4. In support of the case the workman in addition to his oral statement has filed documents marked Exts. 1 to 9.

FINDINGS

5. *Issue No. (i)*—The second party workman in addition to his oral evidence about his engagement and termination has filed documents relating to his engagement and termination marked Exts.1 and 2. On perusal of the aforesaid documents it is found that he was appointed on daily wage basis and his service was terminated due to dereliction in his duties vide office letter, dated 13-4-2011 (Ext.2) with effect from the forenoon of the same day. In the absence of any challenge

there is nothing to dispute the aforesaid documents Exts.1 & 2 besides the representations filed by him vide Exts. 4, 5 and 6.

Section 25-F of the Industrial Disputes Act, 1947 prescribed as follows :

“25-F. Conditions precedent to retrenchment of workmen—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 case in hand, the unchallenged testimony of the second party workman is that he has worked as a daily wager for a period of about fifteen years. There is no document on record that there was compliance of the provisions of Section 25-F (a) & (b) of the Industrial Disputes. Therefore, the aforesaid termination is contrary to the provisions of law.

6. *Issue No. (ii)*—Admittedly the second party workman is one daily wager. In the case of *Jagbir Singh Vrs. Haryana State Agriculture Marketing Board*, reported in AIR 2009 (SC) 3004, the Hon’ble Supreme Court has held that it is not the rule of law to reinstate a daily wager as discussed in issue No.i there is violation of norms of Section 25-F (a) & (b) of the I.D Act at the time of his termination of service of the second party workman. Considering his tenure of engagement he is awarded a compensation of Rs. 30,000 in lieu of violation of the provisions of Section 25-F of the I.D. Act.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
30-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
30-10-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
B. PRADHAN
Additional Secretary to Government