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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 18th December 2013

No. 14198—IR (ID)-08/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th November 2013 in Industrial Dispute Case No. 07 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s BPTCL & Dream Team Sahara, Nayapalli, Bhubaneswar and its Workman Shri S. K. Sarif was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 07 OF 2012

Dated the 6th November 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 and 3rd Floor, Plot No. N-5/538,
IRC Village (SBI Building),
Nayapalli, Bhubaneswar. First Party—Management

And

Its workman
Shri S. K. Sarif,
At Qrs. No. VR-5/1,
Kharvela Nagar, Unit-3,
Bhubaneswar-3. Second Party—Workman

Appearances :

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

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 & Employment Department of the Government of Odisha under Section 12(5) of the Act vide its Letter No. 1369—IR(ID)-08/2012-LE., dated the 23rd 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 S. K. Sarif, Squad workman with effect from the 4th March 2011 without following the principles of natural justice and Section 25-G of ID Act, 1947 is legal and/or justified ? If not, what relief Shri Sarif is entitled to ?”

2. The case of the second party workman is that he being selected by the first party management joined as a Driver with effect from the 4th January 2011 with a monthly remuneration of Rs. 5,000. As the first party management violating the terms and service conditions engaged the workers for 14 to 16 hours without overtime wages and adopted various unfair labour practices, unrest developed amongst the workmen and they submitting a 13- point charter of demands went on strike on 10-2-2011. As the workmen formed a Trade Union and the present second party workman took active part in the said Union, the first party management refused him employment with effect from the 4th March 2011 without any reason and in gross violation of the principles of natural justice. Since the aforesaid termination is contrary to the provisions of Sections 25-F, 25-G, 33 and 2(ra) of the Industrial Disputes Act, 1947, he raised the dispute.

3. The first party management in its written statement refuting the allegation that the service of the second party workman has been terminated in violation of the provisions of the Industrial Disputes Act and the principles of natural justice has stated that since the date of his appointment on 4-1-2011 as a Driver he was involved in anti organizational activity and connived with the Conductor for pilferage of revenue. Even he left the organisation without any intimation and did not join in spite of repeated telephonic instructions. Since he was appointed as a Trainee and his performance was unsatisfactory his service has been terminated. Hence, it has prayed for dismissal of the claim 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 M/s BPTCL & Dream Team Sahara, Bhubaneswar in terminating the services of Shri S. K. Sarif, Squad workman with effect from the 4th March 2011 without following the principles of natural justice and Section 25-G of I.D. Act, 1947 is legal and/or justified ?
- (ii) If not, what relief Shri Sarif is entitled to ?”

5. In order to substantiate their respective case while the second party workman examined himself as well as one of his co-workmen and filed documents marked Exts.1 to 4, the first party management examined one witness and filed documents marked Exts. A to G.

FINDINGS

6. *Issue No. (i)*—The appointment letter, Ext. B filed by the first party management shows that he was appointed as a Driver (Trainee) with effect from the 4th January 2011. Ext. G, the statement showing the total number of days worked by the second party workman reveals that he has worked for a period of 43 days only. 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 view of the principle decided by the Hon'ble Supreme Court the second party workman, a Trainee Driver who stands in the same footing as that of a Probationer, has got no claim for his reinstatement in service or any compensation. Further the second party workman has served only for 43 days. So, he does not have any protection under Section 25-F of the I.D. Act. In view of the clear legal position and the undisputed factual aspects, the second party workman having no right to claim for any of the benefits there is no necessity to discuss any other points as raised by the second party workman.

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

Dictated and corrected by me.

P. K. RAY
6-11-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
6-11-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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