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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 20th February 2013

No. 1643—li-1(BH)-11/2002-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th August 2012 in Industrial Dispute Case No. 24 of 2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Jasoria Traders, the Contractor of M/s Birla Tyres, Chhanpur and their Workmen Shri Bijaya Kumar Panda and 10 others were referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 24 OF 2003

Dated the 28th August 2012

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Management of
M/s Jasoria Traders,
The Contractor of M/s Birla Tyres,
Chhanpur. . . First Party—Management

And

Their Workmen
Shri Bijaya Kumar Panda and
10 others. . . Second Party—Workmen

Appearances :

None	. . .	For the First Party—Management 1
Shri S. Behera	. . .	For the First Party—Management 2
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Shri B. K. Mohanty and Shri D. Patra.	. . .	For the Second Party—Workmen.

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the following dispute to this Court for adjudication vide Order No. 4949—li-1(BH)-11/2002-LE., dated the 19th May 2003.

"Whether the action of the management of M/s Jasoria Traders, a Contractor of M/s Birla Tyres, Chhanpur, Balasore in refusing employment to Shri Bijaya Kumar Panda and 10 others workmen (as per list) with effect from the 8th June 2000 is legal and/or justified ? If not, what relief are they entitled to ?"

2. The case of the workmen, in brief, as set out in their statement of claim is that they were engaged to do the work of painting in the year 1996 under M/s. Jasoria Traders, the Contractor (management No. 1) and M/s. Birla Tyres (management No. 2) was the principal employer. According to them, the workmen were signing in the attendance register regularly and were drawing their salary by signing the muster roll. Though they were working under the management No. 1 continuously from 1996 to 8-6-2000, i.e. the date of refusal of employment, at the time of refusal of employment, the management No. 1 had not issued any prior notice or notice pay in lieu thereof and retrenchment compensation as required under the Industrial Disputes Act, 1947. Therefore, the refusal of employment to the workmen is bad in law. Moreover, the management without showing any reason refused their employment with effect from the 8th June 2000. On these averments, the workmen have prayed for their reinstatement in service with full back wages.

3. In spite of valid notices, the management No. 1 neither appeared and filed written statement nor contested the present proceeding and ultimately vide Order, dated the 4th August 2011 the management No. 1 was set *ex parte*.

4. On the other hand, the management No. 2 appeared and filed written statement denying the claim of the workmen. According to it, the management No. 2 is neither the necessary nor the proper party in this case and as such, his name is required to be deleted. According to the management No. 2, the workmen were engaged and disengaged by the management No. 1 for the reasons best known to him. The management No. 2 had never employed the workmen under its establishment. Hence, there was no employer and employee relationship existed between the management No. 2 and the workmen. In these averments, the management No. 2 has prayed that the workmen are not entitled to get any relief from this management, i.e. management No. 2.

5. In view of the above pleadings of the parties, the following issues are settled :—

- (i) Whether the action of the management M/s. Jasoria Traders, a Contractor of M/s. Birla Tyres, Chhanpur, Balasore in refusing employment to Shri Bijaya Kumar Panda and 10 others workmen (as per list) with effect from the 8th June 2000 is legal and/or justified ?
- (ii) If not, what relief are they entitled ?

6. During the course of hearing of the present case, both the parties remained absent and have not adduced any evidence. Law is well settled that :—

"If a workman remains absent, it becomes the duty of the Tribunal to consider the claim statement filed by the workman as well as the written statement filed by the management and any other record which is made available to the Labour Court and it should answer the point of dispute referred to it on merit."

So, in view of the above settled principle of law, now I have to answer the point of dispute referred to this Court on merit.

7. In the statement of claim, the workmen have clearly stated that they were working under the management No. 1 since 1996 and without any reason the management No. 1 has refused their employment with effect from the 8th June 2000. They have also stated that at the time of refusal of employment, the management No. 1 has not given any prior notice or notice pay in lieu thereof and retrenchment compensation as required under Section 25-F of the Industrial Disputes Act, 1947. To rebut the above facts of the workmen, the management No. 1 has neither filed any written statement nor contested the present proceeding. Therefore, the plea taken by the workmen cannot be disbelieved. Admittedly, the management No. 1 has not followed the provisions of Section 25-F of the Industrial Disputes Act, 1947 while refusing their employment with effect from 8-6-2000. So without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and pre-condition one, the action of the management No. 1 in refusing the employment to the workmen with effect from 8-6-2000 cannot be said to have been legal and justified. Therefore, the workmen are entitled to be reinstated in service.

8. Regarding back wages, law is well settled that :—

"When the workmen had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified."

So in view of the above settled position of law, I am of the considered view that the workmen are not entitled to get any back wages on principle of "no work, no pay."

9. Hence, ordered :

That the action of the management of M/s. Jasoria Traders, a Contractor of M/s. Birla Tyres, Chhanpur, Balasore in refusing employment to Shri Bijaya Kumar Panda and 10 others workmen

(as per list) with effect from the 8th June 2000 is neither legal nor justified. The workmen are entitled to be reinstated in service but without any back wages. The management No. 1 is directed to implement this Award within a period of two months from the date of its publication failing, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
28-8-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
28-8-2012
Presiding Officer
Labour Court, Bhubaneswar

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