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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th February 2013

No. 1922—li/1(B)-12/2006-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st November 2012 in Industrial Dispute Case No. 28 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Rural Water and Sanitation Division No.I, Cuttack and their workman Shri Prasanta Kumar Naik was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 28 OF 2006

Dated the 1st November 2012

*Present :*

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

*Between :*

The Management of M/s Rural Water Supply and Sanitation Division No. I, Cuttack. . . . . First Party—Management

*And*

Their workman Shri Prasanta Kumar Naik . . . . . Second Party—Workman

*Appearances :*

Shri B. C. Das, Head Clerk . . . . . For the First Party—Management

Shri P. K. Naik . . . . . Second Party —Workman himself

## 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 for adjudication to this Court vide Order No. 2877—li/1(B)-12/2006-LE., dated the 31st March 2006 :

“Whether the verbal disengagement of services of Shri Prasant Kumar Naik, Ex-Watchman, Tigiria Section with effect from the 1st October, 2004 and non-payment of his wages from April 2003 to October 2004 by the management of Executive Engineer, Rural Water Supply and Sanitation Division No. I, Cuttack is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. The case of the workman, in brief, as set out in his statement of claim is that he was engaged to work as a ‘NC worker’ under the management from the month of February 2002 and discharging his duties of Watchman under the Junior Engineer, Rural Water Supply and Sanitation Section, Tigiria under the direct control of the management. He was paid wages by the management as per the minimum wages fixed by the State Government from time to time and his work was supervised by the Junior Engineer, Shri Kalandi Charan Patra of the above Section. According to the workman, his last wage was 1,040 per month. The workman has further contended that the management has not paid his monthly wages for the period from April 2003 to October 2004. According to the workman, he has worked continuously from February 2002 to 14-10-2004 without any break. But all of a sudden, the service of the workman was terminated with effect from the 14th October 2004 by way of refusal of employment by the management without any notice or notice pay and retrenchment compensation as required under the Industrial Disputes Act, 1947. Further, according to the workman in which he was engaged is a permanent in nature and also available throughout the year, but the management engage new workers who are juniors to him ignoring the rightful claim of the workman. Therefore, the management has also violated the provisions of Sections 25-F, G and H of the Industrial Disputes Act, 1947. Therefore, according to the workman, the action of the management in retrenching the workman with effect from 14-10-2004 be declared as illegal and unjustified and also in cross violation of the principles of natural justice. So also non-compliance of the statutory provisions of the Industrial Disputes Act, 1947. In these back-grounds, the workman has prayed for his reinstatement in service with full back wages and all other consequential service benefits.

3. On the other hand, the management appeared and filed written statement denying the claim of the workman. According to the management, the question of disengagement of the service of the workman and non-payment of his wages as claimed by him does not arise at all. According to it, the workman was not in service as ex Watchman nor his wages over been paid. No wages is outstanding to get from the management by the workman. The management has further pleaded

that as per the letter No. 452, dated 8-2003 of Rural Development Department, it has been decided not to engage any N.M.R./D.L.R./H.R./ Job contract by the management without approval of the above Department. On these averments, the management has stated that the statement of claim filed by the workman being devoid of any merit and is liable to be dismissed with cost.

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

#### ISSUES

- (i) “Whether the verbal disengagement of services of Shri Prasanta Kuma Naik, Ex-Watchman, Tigiria Section with effect from the 14th October 2004 and non-payment of his wages from April 2003 to October 2004 by the management of Executive Engineer, Rural Water Supply and Sanitation Division No.I, Cuttack is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?”

5. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved the copy of letter No. 162, dated 17-7-2003 and No. 1172, dated 18-7-2003 of the management, copy of letters dated 13-12-2004 and 11-4-2005 of the workman, copy of Voter Identity Card and the copy of transfer certificate under the cover of Exts.1 to 6 respectively. On the other hand, the management has examined its Head Clerk as M.W.1 and proved the copy of letter No. 452/RD, dated 8-1-2003 of Rural Development Department under the cover of Ext.A.

#### FINDINGS

6. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

Both the parties by filing affidavit evidence have reiterated the facts stated in their statement of claim and written statement respectively.

7. The M.W.1 in his affidavit evidence has taken the sole plea that the workman was not at all in service as Watchman and his wages was not unpaid. Ext.A filed and proved by M.W.1 does not disclose regarding the disengagement of the workman from service, rather, the Rural Development Department vide its letter No. 452/RD., dated 8-1-2003 has called for the detailed list of N.M.R./D.L.R./H.R. workers along with their names, date, month and year of first engagement from the office of the Chief Engineer, R.W.S.S., Odisha, Bhubaneswar for taking final decision. So this document is not at all helpful to the management for the present case. On the other hand, the W.W.1 in his affidavit evidence has dated that he was working under the management as Watchman from February 2002 to October 2004 continuously. To substantiate the above plea, the workman has filed and proved certain documents such as, Ext.1 is the letter, dated 17-7-2003 written by the Junior Engineer addressed to the Assistant Engineer wherein the name of the workman finds place at Sl. No. 10. Similarly Ext.2 is another letter dated 18-7-2008 written by the Assistant Engineer addressed to the management wherein the name of the workman also finds place at Sl. No. 10 under the Head “RWSS SECTION TIGIRIA”. Moreover Exts.1 and 2 were issued by the management after receipt of Ext.A. So the management was full aware of fact of engagement of the workman in

service as Watchman. Therefore, the plea taken by the management that the workman was not at all in service as Watchman cannot be believable. The workman has further stated in his affidavit evidence that his wages for the period from April 2003 to October 2004 has not been paid by the management. Although M.W.1 in his affidavit evidence has stated that no wage was due to get by the workman, but at the same time, the management has not filed a single piece of proper to show that the workman has already been paid all his dues. The workman has deposed that he had worked for more than 240 days in twelve calendar months preceding to the date of his disengagement from service, but the management at the time of disengagement has not paid one month 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 same, the management has neither uttered a single word nor filed any document to that effect. Law is well settled that :

“When the workman claimed and deposed that he had worked for 240 days, the burden of proof shifts to employer/management to prove that he did not complete 240 days of service in requisite period to constitute continuous service.”

8. In the case at hand, the management has miserably failed to discharge its burden and did not adduce any documentary evidence to prove that the workman had not worked under the management. So from the documentary evidence adduced by the workman, it is presumed that the workman was working under the management from February 2002 to October 2004 and at the time of disengagement of his service, the management has not followed the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 and also not paid his wages for the period from April 2003 to October 2004.

Therefore, in view of the discussions made above, I am of the considered view that the verbal disengagement of service of the workman with effect from the 14th October 2004 and non-payment of his wages from April 2003 to October 2004 by the management is neither legal nor justified. The workman is entitled to be reinstated in service and also entitled to get his arrear wages for the period from April 2003 to 14-10-2004.

9. Regarding back wages, admittedly the workman had not worked under the management for the period of his unemployment. Law is well settled that :

“When the workman 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 back wage is not justified .”

So, in view of the above settled principle of law, this Court considered it proper to grant him some compensation in lieu of back wages and accordingly a lump sum amount of Rs. 20,000 is awarded in favour of the workman as compensation in lieu of back wages. Both the issues are answered accordingly.

10. Hence Ordered :

That the verbal disengagement of service of Shri Prasanta Kumar Naik, Ex Watchman, Tigiria Section with effect from the 14th October 2004 and non- payment of his wages from April 2002 to October 2004 by the Executive Engineer, Rural Water Supply and Sanitation Division No.I, Cuttack is illegal and unjustified. The workman Shri Naik is entitled to be reinstated in service with a lump sum amount of Rs. 20,000 as compensation in lieu of back wages and also entitled to get his arrear wages for the period from April 2003 to October 2004 i.e. 14-10-2004. The management 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  
1-11-2012  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED  
1-11-2012  
Presiding Officer  
Labour Court, Bhubaneswar

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