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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th December 2012

No. 10766—li/1(BH)-33/2003-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th July, 2012 in Industrial Dispute Case No. 19 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Bahanada Lampes, Bahanada, Mayurbhanj and its workman Shri Dusasan Hansdah was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 19 OF 2004

Dated the 25th July 2012

Present :

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

Between :

The Management of .. First Party—Management
M/s Bahanada Lampes, Bahanada,
Mayurbhanj.

And

Its workman .. Second Party—Workman
Shri Dusasan Hansdah

Appearances :

For the First party—Management .. Shri B.K. Patra

For the Second party—Workman .. Shri D. Hansdah

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. 1629—li/1(BH)-33/2003-LE., dated the 13th February 2004.

“Whether the termination of services of Shri Dusasan Hansdah, Ex-Peon by the Managing Director, Bahanada Lampcs with effect from the 31st December 2001 is legal and/or justified ? If not, what relief Shri Hansdah is entitled to ?”

2. The case of the workman in brief, as set out in his statement of claim is that he was appointed as a Peon during the year 1976 and continued till the 31st December 2001 under the management, but the management without any rhyme or reason had illegally terminated his service without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. The workman has further contended that the management has not paid his wages for the period from August 1996 to the 31st December 2001 on a plea of poor financial condition. On these averments, the workman has prayed for his reinstatement in service with full back wages and the arrear wages.

3. On the other hand, the management entered appearance and filed written statement admitting that the workman was working as Peon from 1976, but without any leave application he has absconded since September 1997. Therefore, the management has decided his unauthorised absence as “No work No pay”. According to the management, the workman was working as a Peon from 1976 to August 1997 and thereafter remained absent without any leave application. The management has neither retrenched nor terminated the services of the workman. So the workman is not entitled to any relief as prayed for.

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

ISSUES

- (i) Whether the termination of services of Shri Dusasan Hansdah, Ex-Peon by the Managing Director, Bahanada Lampcs with effect from the 31st December 2001 is legal and/or justified ?
- (ii) If not to what relief Shri Hansdah is entitled to ?

FINDINGS

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

During the course of hearing, though sufficient opportunities were given to both the parties and issued registered notices for their appearance, but both the parties remained absent and did not adduce any evidence on their behalf.

6. On perusal of the pleadings of the parties, it is an admitted fact that the workman was working as a Peon under the management since 1976. The workman has contended in his statement

of claim is that the management has not paid his wages for the period from August 1996 to the 31st December 2001 and thereafter illegally terminated from service without complying the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. On the other hand, the management has contended that the workman was remained unauthorised absence since September 1997 and did not turn up to resume his duty. Therefore, the workman is not entitled to get any relief as prayed for. But the management has not filed a single piece of paper to that effect.

7. The management has not shown to have served any notice on the workman called upon him to resume his duties or else he would be deemed to have abandoned his job. An inference that an employee has abandoned service is not easily drawn. It is to be determined from surrounding circumstances as to whether a workman has abandoned his job. In the case as hand, the management did not take any action, much less disciplinary action against the workman after he absented from duty with effect from September, 1997. It is not shown by the management that the name of the workman was struck off from the roll of the management in accordance with any service rules/Standing orders. Thereofe, the plea taken by the management on the above score is not accepted.

8. It is also an admitted fact that while the management terminated the services of the workman has not been given one month's prior notice or notice pay in lieu thereof and retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 which is a mandatory and precondition one. So, in view of the above pleadings of the parties, I am of the opinion that the termination of services of the workman by the managment with effect from the 31st December 2001 is neither legal nor justified. But at the same time the workman has not contested the present case and remained absent to proceed with this case. In view of his absence the plea taken by the management that the workman remained unauthorised absence since September 1997 cannot be ruled out in the facts & circumsatance of this case.

9. Law is well settled that :

“The relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration.”

Further law is well settled :

“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 of back wages is not justified.”

So in view of the settled position of law and on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting reinstatement and back wages, a lump sum amount of Rs. 25, 000 as compensation will meet the ends of justice in the instant case. Hence both the issues are answered accordingly.

10. Hence, ordered :

That the termination of services of Shri Dusasan Hansdah, Ex-Peon by the Managing Director, Bahanada Lampes with effect from the 31st December 2001 is illegal and unjustified. The workman

Shri Hansdah is also entitled to get a lump sum amount of Rs. 25,000 (Rupees twenty five thousand) only as compensation in lieu of reinstatement and back wages. The workman Shri Hansdah is also entitled to get his wages for the peiod from August, 1996 to 31st December 2001. 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

25-07-2012

Presiding Officer

Labour Court, Bhubaneswar

S. A. K.Z. AHAMED

25-07-2012

Presiding Officer

Labour Court, Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government