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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 6th March 2013

No. 2323—li/1(BH-I)-8/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th August 2012 in I. D. Case No. 18 of 2008 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Employer of M/s Kallani Konark, Industrial Estate, Balasore and their workman Shri Anjan Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 18 OF 2008

Dated the 4th August 2012

Present :

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

Between :

The employer of M/s Kallani Konark, . . . First Party—Management
Industrial Estate, Balasore.

And

Their workman . . . Second Party—Workman
Shri Anjan Mohapatra

Appearances :

Shri S. S. Alli, Advocate . . . For the First Party—Management
Shri P. K. Swain, Advocate . . . For the Second Party—Workman

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. 8419—li/1(BH-I)-8/2008-LE., dated the 5th August 2008.

"Whether the termination of services of Shri Aanjan Mohapatra, workman with effect from the 23rd February 2007 by way of refusal of employment by Shri Gopal Kallani, employer of M/s Kallani Konark, D-2/10, Industrial Estate, Post/Dist. Balasore is legal and/or justified ? If not, to what relief he is entitled to get ?".

2. The case of the workman, in brief, as set out in his statement of claim is that he joined under the management on the 1st August 2000 as a Printing Machine Operator and worked continuously till his service was terminated illegally with effect from 23rd February 2007. He was issued with E. S. I. Card in his favour with effect from the 2nd May 2001. According to the workman, the management was not giving his wages according to the minimum wages fixed by the State Government. Further according to the workman, at the time of termination, no one month's prior notice or notice pay in lieu thereof and retrenchment compensation was paid to him as per Section 25-F of the Industrial Disputes Act, 1947. No explanation was issued against him and no charge was framed against him. No domestic enquiry was initiated against him for any misconduct. From the date of his illegal termination, the workman has not been gainfully employed elsewhere. In these back grounds, the workman has prayed for his reinstatement in service with full back wages.

3. On the other hand, the management appeared and filed written statement admitting that the workman was engaged as casual unskilled worker on daily wage basis with effect from the 2nd May 2001 as and when his service was required by the management and he was paid his wages fixed by the State Government at that point of time. According to the management, the workman was not interested in his work as he was not satisfied with the wages given by the management. While the workman was continuing under the management, he voluntarily did not turn up in his work with effect from the 23rd February 2007 for long period for which he was repeatedly asked by the management to join in his work but the workman expressed his inability to work as he is unable to move on account of fracture in his left leg. The management has stated that at no point of time the workman was refused for work. Despite repeated advice of the management, the workman did not turn up to work. So, when the management has neither terminated the service of the workman nor refused employment at any point of time, the question of issuing of show cause notice, framing charges and conducted any domestic enquiry does not arise. Moreover, when the management has not terminated the service of the workman, the question of compliance of Section 25-F of the Industrial Disputes Act, 1947 does not arise. In view of the above facts and circumstances, the management has prayed that the relief sought for by the workman bears no merit and the same is liable to be dismissed.

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

ISSUES

- (i) "Whether the termination of services of Shri Aanjan Mohapatra, workman with effect from the 23rd February 2007 by way of refusal of employment by Shri Gopal Kallani, Employer of M/s Kallani Konark, D-2/10, Industrial Estate, Balasore is legal and/or justified ?
- (ii) If not, to what relief he is entitled to get ?"

5. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the copy of E. S. I. Card, Copy of E. S. I. contributory records and the copy of wage slip under the cover of Exts. 1 to 7 respectively. On the other hand, though the management cross-examined the W. W. 1 and contested the case, but did not choose to adduce any evidence and did not file any document in support of its case.

FINDINGS

6. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the issues are taken up together.

The workman, in his affidavit evidence has fully corroborated the facts stated in his statement of claim. During cross-examination, the workman (W. W. 1) has deposed that on the 23rd February 2007 he performed the duty for the last time. Thereafter he was not allowed to do any work. The workman has further deposed in his cross-examination that he has not filed any document to show that no order of refusal in writing was served on him and that he has not filed any document to show that at the relevant time he was working as Printing Machine Operator under the management. In the cross-examination the management has put the questions that he has not completed 240 days of work in any calendar year during the tenure of his service and that on his own accord attended the duty on the strength of daily wage and that from the 23rd February 2007, he voluntarily abandoned from duty to which the workman has categorically answered in negative.

7. So from the above evidence of the workman and cross-examination by the management, it is manifest that the management has taken two stands, i. e. firstly, the workman has not completed 240 days of service in any calendar year and secondly, the workman has voluntarily abandoned his job.

8. Though the management has put a question to the workman during his cross-examination that he had not completed 240 days of work in any calendar year during the tenure of his service to which the workman has given negative answer, but the management has not taken such a stand in its written statement. In the written statement, nowhere the management stated that the workman has not completed 240 days of service in any calendar year during his service period. So the plea taken by the management at this stage cannot be accepted. Moreover, law is well settled that—

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

But in the instant case, the management has not filed a single piece of paper to show that the workman had not completed 240 days of service in requisite period to constitute continuous service. Therefore, in view of the above settled position of law, it is presumed that the workman had completed 240 days of service in twelve calendar months preceding to the date of termination of service of the workman. So, the provisions of Section 25-F of the Industrial Disputes Act, 1947 is applicable on the workman and he is entitled to the reliefs.

9. Secondly, the Advocate for the management urged that on the 23rd February 2007 the workman voluntarily abandoned from duty and despite repeated advice of the management to join in his duty, the workman expressed his inability and did not turn-up to join in his duty. But surprisingly, the management has not shown to have served any notice on the workman calling 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 at hand, the management did not take any action, much less disciplinary action against the workman after he absented from duty with effect from the 23rd February 2007. It is not shown by the management that the name of the workman was struck off from the roll. On the other hand, the Advocate for the workman urged that the workman had never absconded from duty rather, he was terminated from service by the management by way of refusal of employment. Moreover, the workman in his cross-examination has admitted that he is agree to join in the management if the management will reinstate him in service. So the plea taken by the management that the workman had absconded and voluntarily abandoned his job also cannot be accepted.

10. It is an admitted fact that at the time of termination of service of the workman by way of refusal of employment, the management has not issued any prior one month's 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 pre-condition one. So, without compliance of Section 25-F of the Industrial Disputes Act, 1947, the termination of service of the workman by way of refusal of employment cannot be said to have been legal and just. So on careful consideration of all the materials available in the case record, as discussed above, I am of the considered view that the termination of services of the workman with effect from the 23rd February 2007 by way of refusal of employment by the management is neither legal nor justified. Therefore, the workman is entitled to be reinstated in service.

11. Regarding back wages, admittedly the workman had not worked for the management after the 23rd February 2007. 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 of back wages is not justified. The workman in his cross-examination has admitted that he is maintaining his family by driving the Auto Rickshaw for the last two years. So in view of the above settled principles of law and on consideration of all the materials available in the case record, as discussed above, I am of the opinion that instead of giving full back wages, a lump sum amount of Rs. 20,000 as compensation will meet the ends of justice in the instant case. Hence both the issues are answered accordingly.

12. Hence ordered :

That the termination of services of Shri Aanjan Mohapatra, workman with effect from the 23rd February 2007 by way of refusal of employment by Shri Gopal Kallani, employer of M/s Kallani Konark, D-2/10, Industrial Estate, Post/Dist. Balasore is illegal and unjustified. The workman Shri Mohapatra is entitled to be reinstatement in service with a lump sum amount of Rs. 20,000 (Rupees twenty thousand) only as compensation in lieu of back wages. 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
4-8-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
4-8-2012
Presiding Officer
Labour Court, Bhubaneswar

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