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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 4th May 2013

No. 4340—IR (ID)-90/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd March 2013 in Industrial Dispute Case No. 12 of 2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha State Bureau of Text Book Preparation & Production, Odisha, Bhubaneswar and their workman Shri Bhubaneswar Behera was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 12 OF 2011

Dated the 23rd March 2013

Present :

S.A.K.Z. Ahamed, O.S.J.S. (Jr. Branch),
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The Director,
M/s Odisha State Bureau of Text Book
Preparation & Production, Odisha,
Pustak Bhawan,
Bhubaneswar-751 022.

.. First Party—Management

And

Shri Bhubaneswar Behera,
S/o Manguli Behera,
At -Qrs. No. II-R-8, Unit-6,
Bhubaneswar.

.. Second Party—Workman

Appearances :

For the First Party—Management	. . . Shri Dhaneswar Mohanty, Advocate.
For the Second Party—Workman	Shri Dillip Kumar Panda, Advocate and his Associates.

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. 8961—IR (ID)-90/2011-LE., dated the 1st October 2011.

“Whether the action of the management of M/s Odisha State Bureau of Text Book Preparation & Production, Bhubaneswar in terminating the services of their workman Shri Bhubaneswar Behera, *Ex-D.L.R.* Peon with effect from the 20th September 2000, without following any principle of law, is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

2. The back ground facts as narrated in the claim statement of the workman, in a nutshell, may be stated thus :

The second party workman initially entered into services of the first party management in the month of July 1995 as a D.L.R. Peon and continued to work as such till 10-5-1999 continuously without any break. Thereafter the management appointed him for 44 days on *ad hoc* basis with effect from 11-5-1999 and extended such appointment from time to time by giving one day artificial break between each spell of appointment till 19-9-2000. It is alleged that on and from 20-9-2000 the first party did not allow him to put his signature in the Attendance Register and thereby refused him employment.

It is further alleged that Shri Gayadhar Ghadei and Shri Bhubanananda Jena who are junior to the second party, were also engaged as D.L.R. peons and subsequently they were regularised in service ignoring the seniority of the second party workman. According to the second party, the management having violated the provisions of Section 25-F and 25-G of the Industrial Disputes Act, he is entitled to reinstatement in service with all consequential financial benefits.

3. The first party management entered appearance in the proceeding and filed its written statement stating, *inter alia*, that the reference is not maintainable mainly in absence of the two persons named in the claim statement as parties to the reference. It is averred that since there was no sanctioned post of Peon in the year 1995 it is false to plead that the second party was appointed as a D.L.R. Peon and he was continued as such till 10-5-1999 continuously without any break or interruption. The specific stand of the management is that the workman was engaged on daily wage basis by the Minister of Education, who was also the President of the Management's organisation at the relevant time. It is stated that the Executive Committee of the management in its 34th Resolution dt.24-9-1978 had authorised the President and Secretary to engage orderly on daily wage basis as long as they continue to hold office for the management.

The management admits in its written statement that since the President and Secretary had engaged orderly Peons of their own choice, the services of Shri Bhubanananda Jena though discontinued along with the second party, but Shri Jena was again engaged on daily wage basis without any claim for regular absorption. So far the other workman, namely Shri Gayadhar Ghadei is concerned, it is stated that he was quite senior to the workman, inasmuch as, his *ad hoc* appointment was made on 5-12-1997 and therefore it cannot be said that there has been violation of the provisions of Section 25-G of the Industrial Disputes Act in the matter of engagement of Shri Ghadei. It is further averred in the written statement that since the engagement of the second party was casual and temporary, there was no necessity of issuing any notice as provided under the Industrial Disputes Act. In the premises the management has prayed to answer the reference in the negative.

4. In terms of the reference the following two issues have been settled :—

ISSUES

- (i) Whether the action of the management of M/s Odisha State Bureau of Text Book Preparation & Production, Bhubaneswar in terminating the services of their workman Shri Bhubaneswar Behera, *Ex-D.L.R.* Peon with effect from the 20th September 2000, without following any principle of law, is legal and/or justified ?
- (ii) If not, what relief Shri Behera is entitled to ?

5. To substantiate their respective stand, the second party workman examined himself as W.W. No.1 and relied on documents which have been marked Exts.1 to 24. On the otherhand, the management examined its Secretary as M.W. No.1 but did not adduce any documentary evidence.

FINDINGS

6. *Issue No. (i)*—It is not in dispute that the workman was employed under the management as daily wager for the period from 1-7-1995 to 30-4-1999 and thereafter he was employed on *ad hoc* basis from 11-5-1999 to 19-9-2000 with breaks. The workman alleges that on and from 20-9-2000 he was not allowed to discharge duty and according to him such refusal amounts to illegal termination of his service due to non-compliance of the provisions of Section 25-F of the Industrial Disputes Act. It is further alleged that while terminating his service juniors to him were retained in service and thereby the management also violated the provisions contained in Section 25-G of the Industrial Disputes Act. The management, however, opposes to the pleas of the workman and contends that it has not at all violated the provisions of the I.D. Act, as alleged by the workman. In view of the contentions advanced, it is to be determined first as to whether the workman has rendered “continuous service” for a period of one year under his employer so as to attract the provisions of Section 25-F of the Industrial Disputes Act.

“Continuous service” has been defined under Section 25-B of the Act which lays down that unless a workman continuously worked under an employer for a period of 240 days prior to his termination, the benefit under the provisions of Section 25-F of the Industrial Disputes Act cannot be extended in his favour. So, it is now to be examined as to whether the workman prior to his termination of service had rendered 240 days continuous service under the management so as to claim the benefit of Section 25-F of Industrial Disputes Act.

Documents marked Exts.1 to 24 relied on behalf of the workman have all been taken into record without any objection from the side of the management. Out of them Exts. 1 series relate to the continuous working of the workman with the management for the period from 1-7-1995 to 30-4-1999. Thereafter the status of the workman appears to have been changed from a daily wager to *ad hoc* Peon and he continued to work as such (as per letters marked Exts.11 to 21) from 11-5-1999 to 19-9-2000 with one or two days break and ultimately on expiration of his last terms (Ext.21) i.e. from 7-8-2000 to 19-9-2000 he was disengaged with effect from 20-9-2000. The documentary evidence placed on record on behalf of the workman, therefore clearly establishes that he was continuously working under the management for more than 240 days prior to his disengagement from service with effect from the 29th September 2000. The artificial break for one/two days shown between 11-5-1999 and 19-9-2000 can not be said to be interruption in his employment. He has also stated in Para. 1 of his cross-examination that though he has not received his salary for the break days but he has worked for the said days. Law is well settled that artificial breaks are not to be taken into account when it would reveal from the materials that such breaks were being shown to deny continuity of service to the workman. The materials available in the proceeding clearly show that with a view to avoid the rigours of Section 25-F of the Act the management had adopted such a tactics.

In view of the discussions made above, it is held that prior to his disengagement the workman had rendered more than 240 days continuous service under the management and therefore the management ought to have complied with the provisions of Sections 25-F of the Act while disengaging him from employment. There being admitted non-compliance of the aforesaid provision by the management, its action can not be held to be either legal or justified. That apart, it is also found from the materials available on record that the management has violated the provisions of Section 25-G of the Industrial Disputes Act, inasmuch as, junior to the workman has been retained in service while ousting him from employment. In this connection the evidence of M.W.1 may be taken note of wherein he has stated in Para. 3 of his cross-examination that one Gayadhar Ghadei, whose services have been regularised in the year, 1997, was also working as D.L.R. and he was junior to the second party workman. In view of such clear cut admission of the management through M.W. No.1 and in absence of any documentary evidence viz. Gradation/Seniority list of the D.L.Rs. engaged under the management during the relevant period, it is to be concluded that there has been violation of the provisions of Section 25-G of the Industrial Disputes Act by the first party management. So, viewing from any angle the action of the management in disengaging the workman with effect from the 20th September 2000, which is nothing but a retrenchment, cannot be said to be legal and/or justified.

7. *Issue No. (ii)*—Now, the question that falls for determination is as to what relief the workman is entitled. In a catena of decisions of the Hon'ble Supreme Court it has been held that upon break of Section 25-F of the Industrial Disputes Act, it is not proper to direct reinstatement of the concerned workman, who was either a daily wager or an N.M.R. It has been further held that for imparting such a direction several factors such as age, length of employment, status of the workman, etc., are to be looked into. Here in the present case, the workman (who is presently aged about 39 years) was engaged under the management when he was aged about 21 and continued to work under it for a period of five years and as revealed from the materials persons junior to him have been regularised whereas he has been ousted from employment. For the favouratism, which is apparent on record,

it is considered appropriate to impart a direction for reinstatement of the workman in service and accordingly the management is directed to reinstate the workman in service forthwith.

As regards back wages, there seems no materials wherefrom it can be ascertained that during the period of his unemployment the workman was not gainfully employed elsewhere. The workman has not whispered a single word to the effect that after his disengagement he has not been gainfully employed any where. It is also not believable that during the period the workman, who is a young and energetic person, remained idle and did not earn anything to sustain his livelihood. So, while disentitling him from any back wages, it is thought appropriate to grant him some compensation in lieu thereof. Accordingly, Rs. 25,000 is awarded as compensation in favour of the workman in lieu of back wages.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. A. K.Z. AHAMED
23-3-2013
Presiding Officer
Labour Court, Bhubaneswar

S. A. K.Z. AHAMED
23-3-2013
Presiding Officer
Labour Court, Bhubaneswar

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