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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 10th June 2014

No. 4387—li/1(S)-31/1999-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. 40 of 1999 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Deepak Minerals Industries Pvt. Ltd., At/P. O. Barbil, Dist. Keonjhar and their workman represented through the General Secretary, North Odisha Workers Union, Barbil, Dist. Keonjhar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE NO. 40 OF 1999
Dated the 23rd March 2013

Present :

Shri Srikanta Mishra, LL. M.,
Presiding Officer, Labour Court, Sambalpur.

Between :

The Management of . . . First Party—Management
M/s Deepak Minerals Industries Pvt. Ltd.,
At/P.O. Barbil, Dist. Keonjhar.

And

Their workman represented . . . Second Party—Workman
through the General Secretary, North Odisha
Workers Union, Barbil, Dist. Keonjhar.

Appearances :

For the First Party—Management . . . None

For the Second Party—Workman . . . Shri M. S. Pati, General Secretary

AWARD

This Award arises out of a reference made by the Government of Odisha in Labour & Employment Department under the powers conferred by sub-section (5) of Section 12, read with Clause (C) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the 'Act') vide Order under Memo. No. 16349(5), dated the 22nd December 1999. The dispute involved under the Schedule of reference is as follows :—

“Whether the refusal of employment to Shri B. B. Naik, by the Management of M/s Deepak Minerals Industries Pvt. Ltd., Barbil with effect from the 19th September 1997 is legal and/or justified ? If not, what relief Shri B. B. Naik is entitled to ?”.

2. The claim of the workman (second party) as per his statement of claim is that the first party employed him as a Crusher Operator on the 1st May 1995 on a consolidated salary of Rs. 1,500 per month along with other privileges and benefits entitled to similarly placed workman. He discharged his responsibilities to the satisfaction of the first party but on the 19th September 1997 he was refused employment by the first party without any rhyme and reason. The second party though requested his superiors to allow him to work, the same was in vain. The workman then approached the General Secretary, North Odisha Workers Union who informed the D.L.O., Keonjhar and the dispute was admitted into conciliation. The workman alleges that due to non-co-operation and adamant attitude of the first party, the conciliation ended in failure. On the basis of the failure report submitted by the Conciliation Officer-*cum*-D.L.O., Keonjhar, the Government made the reference as noted above and hence this case.

3. The first party filed written statement wherein he did not deny the fact of appointment of the second party on the 1st May 1995 as a Crusher Operator and his continuance in the said post till the 18th September 1997. According to the first party, the second party was never sincere in his duty and he was remaining absent without intimation. Though the management intimated him to join, he did not turn up. It is specifically narrated in the written statement that the second party unauthorisedly took the Company Vehicle Bearing No. OR-09-3824 and met on accident which caused heavy loss to the first party. When the second party did not turn up for duty, the first party made an enquiry and came to know that he was working under M/s N. K. Bhujani (P) Ltd., Ultimately the management appointed another person in the said post. With such averments, the management prayed to drop the proceeding.

4. In reply to the written statement, the second party filed a counter wherein he submitted that the contents of the written statement were false. He submitted that he has not received any message from the first party asking him to join in duty. According to him, the first party has not served any notice upon him nor paid him notice pay and his termination from service is violative of Section 25-F of the Industrial Disputes Act, 1947 and as such he is entitled to reinstatement with full back wages and all other consequential benefits.

5. It reveals from the record that on the 15th February 2001 a no dispute award was passed. The said award was however set aside by the Hon'ble High Court vide Order, dated the 9th February 2012 in OJC No. 15564 of 2001. After receipt of original case record from the Hon'ble High Court on dated the 6th August 2012, the parties were informed to appear for hearing. But though the workman appeared through his representative, the management did not turn up. Before hearing was taken up, a correction was made in the schedule of reference by the Government of Odisha, Labour & ESI Department vide their corrigendum No. 8491, dated the 5th October 2012. Both parties were again directed to get ready for hearing. The workman thereafter filed a fresh statement of claim on the 12th December 2012 and the copy of the same was sent to the management along with notice for appearance. Since, the management neither appeared nor filed any written statement, it was set *ex parte* vide Order, dated the 14th February 2013.

6. During *ex parte* hearing, the workman examined himself and filed the copy of one appointment letter which was marked Ext. 1. The following questions are to be determined :—

1. "Whether the refusal of employment to Shri Bipin Bihari Naik (second party) by the management of M/s Deepak Minerals Industries Pvt. Ltd., Barbil with effect from the 19th September 1997 is legal and/or justified ?
2. To what relief, if any, the second party entitled ?".

7. In his *ex parte* evidence, the workman deposed that M/s Deepak Minerals Industries Pvt. Ltd. is a factory which is engaged in crushing of Iron Ore and the same is supplied to different plants for production of Steel and its allied by-products. He deposed that he is one of the workman under first party industry and joined as Crusher Operetor on the 1st May 1995 on a consolidated salary of Rs. 1,500 per month. The management in their written statement have not disputed such fact. The copy of the appointment order of the workman issued by the management has been marked as Ext. 1. As per this document, the service of the second party was for the full time with effect from the 1st May 1995 and his salary was also fixed at Rs. 1,500. It is specifically stated in the appointment letter that the said salary is consolidated one, i. e. inclusive of D.A., H.R.A. and other allowances.

8. The workman deposed that on the 19th September 1997 without any rhyme and reason he was refused employment by the first party management without any written order. In their written statement, the management pleaded that the workman was insincere and he did not report joining despites messages sent to him but such fact is not proved by any evidence. The evidence of the workman that without any written order, he was refused employment with effect from the 19th September 1997 goes unchalanged and therefore the same must be believed to be true. From the 1st May 1995 till the 18th September 1997 the second party worked on regular basis under the first party and his termination from service without notice and without any compensation is violative of Section 25-F of the Industrial Disputes Act, 1947. Such refusal of employment to the second party by the first party is therefore held to be illegal and unjustified.

9. When the termination of service of the second party by the first party is held to be illegal, the second party is entitled to reinstatement in service. As regards back wages claimed by the second party I find after the case was registered the workman himself remained absent for which a no dispute award was passed on the 15th February 2001. His application for restoration registered as Misc. Case No. 2/2001 was also dismissed by Order dated the 5th July 2001. The workman preferred a writ before the Hon'ble High Court against the no dispute award in the year 2001 vide OJC No. 15564 of 2001 but the same was disposed of in the year 2012 vide Order No. 5, dated the 9th February 2012. It does not reveal from the materials on record that the management had any fault for the delay in disposal of the writ application. In the written statement, the management narrated that the second party is working under another Company, i. e., M/s N. K. Bhujani Pvt. Ltd. Though such fact was denied by the workman in his rejoinder, he has specifically deposed that he was engaged by M/s N. K. Bhujani for a temporary period, i. e. for one month only. He has not examined any person of M/s N. K. Bhujani to corroborate his stand of temporary work under the said company. Under the aforesaid circumstances, I feel when the management was sure about the engagement of the workman in some other company, they might not have waited for resumption of the workman in duty and therefore they appointed another person in his place. Considering the facts and circumstances, I feel the second party is not entitled to back wages on the basis of principle of "No work No pay". However since the termination of services of the second party has been held to be illegal, he is entitled to some compensation. Under the facts and circumstances of the present case, the first party should be directed to reinstate the second party in service and pay him compensation to the tune of Rs. 10,000. Hence the following award :—

AWARD

The reference is answered *ex parte* against the first party without any cost. The refusal of employment to Shri B. B. Naik, by the management of M/s Deepak Minerals Industries Pvt. Ltd., Barbil with effect from the 19th September 1997 is held illegal and unjustified. The first party is directed to reinstate the second party in service within one month of publication of the award. The first party is further directed to pay a compensation of Rs. 10,000 (Rupees ten thousand) only to the second party within the aforesaid period, failing which the same shall carry interest a10% per annum.

Dictated and corrected by me.

SRIKANTA MISHRA
23-03-2013
Presiding Officer
Labour Court, Sambalpur

SRIKANTA MISHRA
23-03-2013
Presiding Officer
Labour Court, Sambalpur

By order of the Governor

M. NAYAK

Under-Secretary to Government