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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 9th January 2014

No. 222—IR(I.D.)-59/2013-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 7th December 2013 in Industrial Dispute Case No. 68 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of M/s Bajrangbali Alloys (P) Ltd., N.H. 5, Manguli Chhack, Choudwar, Cuttack and their Workman Abdul Rahim was filed by the above mentioned workman under Section 2A(2) of I.D. Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 68 OF 2012

Dated the 7th December 2013

Present :

Shri P. K. Ray, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
The Director,
Bajrangbali Alloys (P) Ltd.,
N.H. 5, Manguli Chhack,
Choudwar, Cuttack. . . First Party—Management

And

Its Workman, . . . Second Party—Workman
 Abdul Rahim,
 S/o Abdul Rahaman,
 Village Choudwar Muslim Sahi,
 (Near Hanuman Field)
 P.O./P.S. Choudwar,
 Dist. Cuttack.

Appearances :

None	. . . For the First Party—Management
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Abdul Rahim, Workman himself	. . . For the Second Party—Workman

AWARD

This case has been instituted under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short, the Act) for his reinstatement in service with full back wages and other consequential service benefits.

2. The case of the second party workman is that he was appointed as a Tuner by the first party management with effect from January, 1999 and discharging his duties to the best satisfaction of his authorities. He was covered under the E.S.I. and E.P.F. Schemes under the first party management with effect from the 1st July 2002. As he requested the first party management for bonus and after coming to know that the first party management deducted E.P.F. showing his salary as Rs. 4,000 against the actual salary of Rs. 7,100 per month enquired about the matter, the management out of grudge on the 18th August 2012 did not allow him to join in his duties and intimated that his service has been terminated with immediate effect. In spite of his request to reinstate him since the first party management did not pay any heed to it he raised an industrial dispute on the 5th October 2012 and sent a copy to the Labour Department on Dt. 31-10-2012. Since the labour machinery did not make any reference within a period of 45 days the second party workman filed this case under Section 2-A (2) of the Industrial Disputes Act, 1947.

3. The first party management did not contest the case and hence set *ex parte*

4. In the aforesaid premises the issues to be decided are as follows :—

ISSUES

- (i) "Whether the termination of service of the second party workman by way of refusal of employment with effect from the 18th August 2012 by the first party management is legal and/or justified ?
- (ii) Whether the second party workman is entitled to any relief ?"

5. In order to substantiate his case the second party workman has filed copy of his E.S.I. Card, E.P.F. Slip, Experience Certificate and copy of his complaint, dated the 5th October 2012 filed before the management which are marked as Exts. 1 to 4.

FINDINGS

6. *Issue No. (i)*—On perusal of the evidence in affidavit filed by the second party workman and the documents, Exts. 1 to 3 which remained unchallenged due to non-appearance of the first

party management there is no scope to disbelieve his claim. The second party workman is consistent that he joined his service in January, 1999 and covered under the E.S.I. and E.P.F. Schemes and when he claimed for bonus and confronted about the deduction of E.P.F. on a salary of Rs. 4,000 against payment of Rs. 7,100 he was refused employment with effect from the 18th August 2012. The aforesaid statement of the second party workman shows that he has worked continuously for a period of 240 days in the preceding year. In the circumstances his termination requires compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947. Section 25-F of the Industrial Disputes Act, 1947 prescribes as follows :—

"25-F. Conditions precedent to retrenchment of workmen—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the official Gazette)."

In the case in hand there is no such compliance. Therefore, the refusal of employment to the second party workman which amounts to termination of his service is illegal and is liable to be set aside.

7. *Issue No. (ii)*—The second party workman claims for his reinstatement in service with back wages. In view of the unchallenged testimony adduced on behalf of the second party workman it has been held that his termination is bad in law. Therefore, the second party workman is entitled to reinstatement in service. There is no evidence on record that since the date of termination the second party workman is engaged in any other work for his livelihood. His own statement is that he is unemployed. Taking into consideration the materials on record, it would be just and proper to reinstate him with full back wages. Accordingly, the first party management is directed to reinstate the second party workman in service forthwith and to pay him full back wages till his reinstatement.

The case is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
07-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
07-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
N. BEHERA

Under-Secretary to Government

