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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 18th July 2014

No. 5692—IR(ID)-139/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 30th June 2014 in Industrial Dispute Case No. 16 of 2013 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Kudremukh Iron Ore Company (Presently M/s KIOCL Ltd.) Bhubaneswar and their workman Shri Sukanta Bhoi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 16 OF 2013

Dated the 30th June 2014

Present :

Shri Saroj Kumar Sahoo, LL. B.,
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The Management of .. First Party—Management
(1) The General Manager (Personnel),
M/s KIOCL Ltd., II Block, Karamangala,
Bangalore - 34.
(2) The Branch Manager,
M/s KIOCL Ltd., Plot No. HIG - 15,
Pokhariput, Bhubaneswar.

And

Its workman .. Second Party—Workman
Shri Sukanta Bhoi,
At/P.O. Pratap Purusottampur,
Via. Chandanpur, Dist. Puri.

Appearances :

For the First Party No. 1—Management	..	Shri G. S. Ashok Kumar, DGM(HR)
For the First Party No. 2—Management	..	None
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For the Second Party—Workman himself	..	Shri Sukanta Bhoi

A W A R D

This is a case instituted on the reference made by the Government of Odisha vide its Order No. 2105—IR(ID)-139/2012-LESI., dated 2nd March 2013, in exercise of the powers conferred under 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) and the reference is as follows :

“Whether the action of the management of M/s Kudremuch Iron Ore Company Ltd. (Presently known as M/s KIOCL Ltd.), Bhubaneswar in terminating the services of Shri Sukanta Bhoi, Messenger Gr. II with effect from the 23rd June 2008 is legal and/or justified ? If not, what relief Shri Bhoi is entitled to ?”.

2. On receipt of the reference from the State Government notice was issued to the second party workman for filing of his claim statement and accordingly he has filed the claim statement on the 2nd May 2013. Thereafter notice was issued to the first party management for filing of its written statement. After receipt of the notice issued by this Court the first party management has submitted its written statement before this Court on the 13th June 2013.

3. The case of the second party workman is that he belongs to a scheduled caste community and passed Bachelor Degree in Arts. In pursuance of a letter of appointment bearing No. 1616—Pers-03-603/1994, dated the 29th January 2004 the second party workman got his appointment as a Messenger, Grade - II under the management of Kudremukh Iron Ore company Ltd., on a consolidated pay of Rs. 3,000 per month for a period of six months from the date of reporting for his duty before Dy. Manager (Liason) of branch office at Bhubaneswar. After receipt of such appointment letter the second party workman joined in the branch office at C/23, Palaspalli, Bhubaneswar on the 16th February 2004. Thereafter his appointment was extended from the 16th August 2004 to 16th February 2005, 16th February 2005 to the 16th May 2008, 16th August 2005 to the 16th February 2006, 16th February 2006 to the 16th August 2006 and from the 16th August 2006 till the 16th February 2007 through letters. On the 16th February 2007 another letter of appointment was issued to the second party workman for his appointment as a Messenger, Grade - II under the company on a consolidated pay of Rs. 3,000 per month for a period of three months from the 17th February 2007. Again on the 23rd May 2007 he was appointed for a period of six months with a consolidated pay of Rs. 4,000 with effect from the 18th May 2007. Again on the 16th November 2007 he was appointed for a period of six months with a consolidated pay of Rs. 4,500 from the 20th November 2007. At last on the 19th June 2008 a letter of appointment was issued to the second party workman to

work as Messenger, Grade - II for a period of four months with effect from the 23rd June 2008 on a consolidated pay of Rs. 4,500 per month. The second party workman rendered his service as a Messenger, Grade - II under the first party management from the 16th February 2004 till the 22nd October 2008 i. e. for a period of four years seven months in toto as a temporary employee. He has rendered his service to the best of his satisfaction under the first party management without any adverse remark or blemish. Surprisingly, the first party management without assigning any reason and without adopting proper procedure terminated his service. The approach of the second party workman to the first party management to consider his case was in vain. Thereafter the second party workman had approached the D.L.O., Khurda at Bhubaneswar for settlement of the dispute. The attempt for conciliation made by the D.L.O., Khurda failed for which the matter has been referred to this Court for proper adjudication. The second party workman has prayed for an Award that the action of the first party management terminating his service is illegal and in violation of Section 25-F and 25-H of the Industrial Disputes Act, 1947 with a direction to the first party management to regularise his service after reinstatement and to award cost.

4. On the other hand, the case of the first party management is that M/s KIOCL Ltd. is a Central Public Sector Undertaking (CPSU) under the Ministry of Steel (a Government of India enterprises). The reference made by the Government of Odisha is not maintainable before this Court. The appropriate Government in this case is the Central Government (CGIT). The claim of the second party workman that he belongs to Scheduled Caste community and a Graduate is no way relevant for this case. The submissions of the second party workman under paragraphs 3 to 10 in his claim statement are partly true. The appointment of the second party workman under the first party management was purely on temporary basis and for a fixed period. It was extended periodically basing on the requirement of the work in the temporary office of the first party company situated at Bhubaneswar. The second party workman has cleverly suppressed the fact that his appointment was purely on temporary basis. Depending upon the requirements of works the employment of the second party workman was extended from time to time for a particular period mentioned in the appointment letter. The second party workman had also acknowledged the letters of appointment. As the appointment of the workman was purely on temporary for a particular period and his appointment was terminated automatically after the expiry of the particular period mentioned in the appointment letter no separate reason is required for not extending the period of appointment of the second party workman. The conciliation Officer appointed under the State Government has no jurisdiction to conciliate the dispute and it is only the Central Government who is competent to conciliate the dispute between the parties. The first party management is not bound to follow the provisions of Section 25-F and 25-H of the Industrial Disputes Act, 1947. The second party workman was not entitled for notice, compensation or any other relief from the first party management.

5. In view of the rival claims of the parties the following issues are settled :—

ISSUES

- (i) “Whether the action of the management of M/s Kudremukh Iron Ore Company Ltd. (Presently known as M/s KIOCL Ltd.), Bhubaneswar in terminating the services of Shri Sukanta Bhoi, Messenger, Gr. - II with effect from the 23rd June 2008 is legal and/or justified ?
- (ii) If not, what relief Shri Bhoi is entitled to ?”.

6. The second party workman is examined as W. W. No. 1 and Exts. 1 to 10 are marked on his behalf. Exts. 1 to 10 are the appointment letters issued by the first party management to the second party workman on different dates. One Chinmay Patra who is working as Deputy Manager, Materials at District Centre, Chandrasekharpur, Bhubaneswar of the first party management is examined as M. W. No. 1.

FINDINGS

7. *Issue No. (i)*—The second party workman who has been examined as W. W. No. 1 in his evidence deposed that he was appointed as a Messenger, Grade - I under the first party management for the first time on the 29th January 2004 and thereafter his appointment was extended from time to time through separate appointment letters at different point of time. Exts. 1 to 10 are the appointment letters issued by the first party management on the 29th January 2004, 3rd August 2004, 15th February 2005, 27th July 2005, 30th January 2006, 1st August 2006, 16th February 2007, 23rd May 2007, 16th November 2007 and 19th June 2008 respectively. After perusing all those aforesaid appointment letters it is clear that the first party management has clearly mentioned in those appointment letters that the appointment of the second party workman was purely on temporary basis for a particular period and on consolidated monthly pay basis. It was also clearly mentioned in those appointment letters that the service of the second party workman shall automatically stand terminated without any notice/communication whatsoever on expiry of the period of employment indicated in the said appointment letters. In his cross examination W. W. No. 1 admitted that in clause (2) of all the appointment letters it has been mentioned that his service shall automatically stand terminated without any notice/communication whatsoever on expiry of the period of engagement as per the appointment letters. He also admitted in clear terms that it is mentioned in those appointment letters that his service is purely temporary. The Deputy Manager (Materials) who has been examined as M. W. No. 1 also deposed that the appointment of the second party workman was on purely temporary basis for particular period. In his affidavit evidence he further deposed that the appointment of the second party workman was purely on temporary basis as the company’s mining unit at Kudremukh was closed in view of the judgment passed by the Hon’ble Supreme Court and the company had to look for alternative business ventures in other States of

the Country. It is also clear from his evidence that the first party management had opened a small office to explore new mining ventures in the State of Odisha and since nothing fruitful has taken place the company is going to wind up its office situated at Bhubaneswar shortly. The first party management has no requirement of permanent staffs for its business.

8. From the evidence on record it is clear that the second party workman was fully aware that his appointment was purely contractual and for a specified period. He was also aware that his appointment was purely temporary with a consolidated monthly pay and he was not eligible to any other benefits as a regular employee and liable for termination without any notice and without payment of any compensation. He was also aware that his appointment stood automatically terminated on the completion of the stipulated period. In view of such facts the present claim of the second party workman does not become an industrial dispute. The second party workman is not a worker for the purpose of Section 25-F of the Industrial Disputes Act but employed on contract basis only. The termination of his contract by not renewing the same does not amount to retrenchment for which it does not attract compliance of Section 25-F of the Industrial Disputes Act, 1947 at all. For my aforesaid view I have relied on a decision reported in 2007 (1) LLI 696, M. D. Karnataka Handloom Development Corporation Ltd. *Vrs.* Mahadeva Laxman Raval. In view of my aforesaid analysis of evidence on record. I am constrained to hold that the termination of service of Shri Sukanta Bhoi, Messenger, Grade - II with effect from the 23rd June 2008 is legal and justified. This issue is answered accordingly.

9. *Issue No. (ii)*—In view of my finding on Issue No. (i) the second party workman is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

SAROJ KUMAR SAHOO
30-06-2014
Presiding Officer
Labour Court, Bhubaneswar

SAROJ KUMAR SAHOO
30-06-2014
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government
