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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 16th August 2014

No. 6446—IR(ID)-87/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th July 2014 in Industrial Dispute Case No. 9 of 2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Bata India Ltd., At Kalpana Square, Bhubaneswar and its Workman Shri Prasanta Kumar Patra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 9 OF 2011

Dated the 4th July 2014

*Present :*

Shri S. K. Sahoo, o.s.j.s. (Jr. Branch),  
Presiding Officer, Labour Court, Bhubaneswar.

*Between :*

The Management of . . . First Party—Management  
M/s Bata India Ltd.,  
At Kalpana Square, Bhubaneswar.

*And*

Its Workman . . . Second Party—Workman  
Shri Prasanta Kumar Patra,  
C/o Shri Natabar Patra, At Plot No. 250, Unit - 4,  
Shastri Nagar, Bhubaneswar.

*Appearances :*

Shri Ankit Anand, Auth. Rept. . . For the First Party—Management

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Shri P. K. Patra . . . For the Second Party—Workman himself

## AWARD

The Government of Odisha in the Labour & Employment Department, in exercise of powers conferred upon it by sub-section (5) of Section 12 read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act'), have referred the following dispute for adjudication by this Court vide their Letter No. 8527—ID-87/2011-LE., dated the 19th September 2011 :—

“Whether the action of the management of M/s Bata India Ltd., At Kalpana Square, Bhubaneswar in refusing employment to Shri Prasanta Kumar Patra, Skilled Salesman with effect from the 7th December 2010 is legal and/or justified ? If not, what relief Shri Patra is entitled to ?”.

2. The case of the second party workman, in brief is that he was employed under the first party management since 1996 and served under it till the 7th December 2010 when he was refused employment without there being any reason and rhyme. It is stated by the second party workman that during his continuance under the first party management since he along with others claimed benefits/privileges like that of the permanent employees and in that regard ventilated their grievances to the District Labour Officer as also to the first party management, he was victimised and thrown out of employment despite the fact that he had rendered continuous service under the management for a period of more than 14 years and no disciplinary action was ever initiated against him for any misconduct. According to him, his refusal of employment amounts to 'retrenchment' and such retrenchment is illegal and unjustified on account of non-compliance of the provisions of the Industrial Disputes Act, 1947. In the premises, the second party workman while claiming for his reinstatement in service with full back wages has stated that during the period of his unemployment he was not gainfully employed elsewhere.

3. The first party management entered contest in the case and filed its written statement stating therein, *inter alia* that the case is not maintainable both in law as well as on facts on the ground that the second party workman was employed by the Shop Manager as a temporary hand as per the requirement on daily wage basis and as such the management is in no way concerned with his employment or non-employment. The further stand taken by the management on maintainability of the reference is that the cause espoused by the workman is not an 'industrial dispute' and as such the same is liable to be dismissed.

Adverting to the claim advanced by the second party workman, the first party management has stated in its written statement that the plea of engagement of the workman under it since 1996 is not correct. The specific stand of the management is that the performance of the second party workman was detrimental/prejudicial to the interest of the company and further his employment being not continuous one it was not at all necessary to comply with the provisions of the Industrial Disputes Act, 1947 nor it was necessary to conduct an enquiry against the second party workman while disengaging him from service. The first party management, in the premises, has prayed to answer the reference as against the second party workman.

4. On the basis of the pleadings of the parties, the following issues have been framed by this Court :—

#### ISSUES

- (i) “Whether the action of the management of M/s Bata India Ltd., At Kalpana Square, Bhubaneswar in refusing employment to Shri Prasanta Kumar Patra, Skilled Salesman with effect from the 7th December 2010 is legal and/or justified ?
- (ii) If not, what relief is Shri Patra entitled to ?”.

5. To substantiate their respective stand, while the second party workman has examined himself as W. W. No. 1 and proved documents which have been marked as Exts. 1 to 9/9, the first party management examined its District Manager as M. W. No. 1 to be its sole witness and did not adduce any documentary evidence.

#### FINDINGS

6. *Issue No. (i)*—At the outset, it may be stated that although the first party management has taken certain grounds on the maintainability of the reference, yet it has not been able to substantiate the same either by way of oral or documentary evidence.

7. Now, coming to the claim of the second party workman, it reveals from his evidence that being employed under the first party management from 1996 he worked under it with utmost satisfaction of his authorities till he was disengaged from service and during such period no disciplinary action of any kind was taken against him. It is in his evidence that on his ventilating grievance along with others to get the benefits/privileges of regular employees, the management all of a sudden denied him employment with effect from the 7th December 2010 and while taking such action it did not comply with the provisions of the Industrial Disputes Act, 1947 even though by that time he had rendered continuous employment under it for a period of more than fourteen years. It further reveals from his evidence that while continuing under the management he was a member of the ESI and contribution towards Provident Fund was also being deducted from his salary. According to the workman after his refusal of employment he is unemployed now. In cross-examination though the workman fairly admitted to have not filed any appointment letter and to the fact of his engagement as a temporary employee, yet he denied the suggestion of the management that he was engaged casually and not for more than 14 days at a time. When the second party workman deposed that he has worked continuously from 1996 till refusal of service by the first party management and produced some documents in his possession burden of proof shifts to the employer to prove that the second party workman did not complete 240 days of service in the

requisite period. Though the first party management seriously disputed the continuous engagement of the workman and in that regard examined M. W. No. 1, yet it did not chose to file either the Attendance Register or the Wage Register for relevant period which could have shown the period of engagement of the workman and the payment received by him. The first party management being the custodian of all the records/registers concerning the workman, it ought not have remained silent in a casual manner by examining a witness on its behalf. For non-production of the aforesaid documents an adverse inference is to be drawn against the first party management to the effect that had the documents been produced in this Court the same would have supported the stand of the second party workman. However, the first party management has not disputed the engagement of the second party workman since 1996 till his alleged refusal of employment, i. e. the 7th December 2010. Therefore in absence of any documentary evidence supporting the stand of the management that the engagement of the workman was sporadic in nature, the evidence adduced on behalf of the management can at best be termed as a self serving statement.

On the other hand, the documents exhibited on behalf of the workman, particularly, Ext. 2, which is a Statutory Form of the Provident Fund furnished by the first party management to the EPF Authorities, clearly indicates that the date of joining of the second party workman under the management was the 10th June 1996 and he was getting Rs. 43 per day from the management in the year 1999. Ext. 5 along with its enclosure is yet another document submitted by the first party management to the ESI Corporation which discloses that during the period from October, 2009 to March, 2010, the workman was paid wages for 175 days from which an inference can be drawn that the engagement of the second party workman was not at all sporadic one. The other annexure attached to Ext. 5 is the notice of daily hours of employees which reflects that with effect from the 1st January 2007 the second party workman was allotted duty from 9 a.m. to 2 p.m. and thereafter from 5-30 p.m. to 8-30 p.m. The second party workman also exhibited photo copy of some pay sheets of temporary hands but the same do not cover the entire period of his employment. All the documents proved by the second party workman are marked exhibits without objection from the side of the management.

8. The first party management having suppressed material documents to rebut the claim of the second party workman, this Court on the basis of the evidence adduced by the second party workman both oral and documentary comes to a conclusion that the second party workman had rendered continuous service under the first party management from the 10th June 1996 till the 7th December 2010 and in view of admitted non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 by the first party management, the refusal of employment of the workman with effect from the 7th December 2010, which amounts to retrenchment, is neither legal

nor justified. In the context, a decision of the Hon'ble Supreme Court in the case of Director, Fisheries Terminal Division Vrs. Bhikhubhai Meghajibhai Chavda, reported in 2010 AIR 2010 (SC) 1236 may be referred to wherein the Honble Apex Court have observed as follows :—

“xx xx The appellant claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So, it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls, etc., in connection with his service. He has come forward and deposed so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. xx xx xx.”

9. Apart from the above, the materials on record clearly show that the second party workman was engaged by the first party management since 1996 till refusal of his employment on the 7th December 2010. It is also the admitted case of the first party management that the second party workman was engaged on daily wage basis on rotation. The documents proved by the second party workman also support the plea of his continuous engagement under the first party management since 1996. The 5th Schedule of the Act contains a list of unfair labour practices as defined in Section 2 (ra) of the Act and Item No. 10 thereof reads as follows :—

“To employ workmen as ‘badlis’, casuals or temporaries and to continue them as such for years with the object of depriving them of the status and privileges of permanent workmen.”

So, when the second party workman was engaged for such a long period, i. e. for about 14 years it appears that the first party management has adopted unfair labour practice only to deprive the workman from his legitimate dues and to avoid the stringent provisions of the Act. There is also no evidence that at present no workman has been engaged in the post of the second party workman.

9. In the result, it is held that the action of the first party management in refusing employment to the workman with effect from the 7th December 2010 is neither legal nor justified.

10. *Issue No. (ii)*—In view of my finding on Issue No. (i), it is next to be seen as to what relief the second party workman is entitled. Since the action of the management has been held to be illegal and unjustified, an order of reinstatement with back wages in favour of the workman would have been the relief but taking into consideration the status of the workman which was temporary in nature and the mode of his induction into the employment, this Court while declining to grant an order of reinstatement feels it appropriate to award a lump sum compensation in favour of the second party workman. Accordingly, the first party management is directed to pay a lump sum compensation of Rs. 2,00,000 (Rupees two lakhs only) to the second party workman in lieu of his reinstatement in service within a period of two months of the date of publication of this Award in the official Gazette.

As regards back wages, it appears from the affidavit evidence filed by the workman that now he is aged about 38 years and therefore, it is not believable that being an able bodied man he is unemployed now. He does not dispute that he was a temporary employee under the management though his duty was continuous one. It is also a fact that he has not rendered any service to the management during the period he remained out of employment. Considering the above facts, this Court is not inclined to grant any back wages in favour of the second party workman.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. SAHOO  
4-7-2014  
Presiding Officer  
Labour Court, Bhubaneswar

S. K. SAHOO  
4-7-2014  
Presiding Officer  
Labour Court, Bhubaneswar

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