The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 1481 CUTTACK, THURSDAY, SEPTEMBER 25, 2014/ASWINA 3, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 15th September 2014

No. 7274—IR(ID)-55/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th August 2014 in Industrial Dispute Case No. 34 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Bhubaneswar Development Authority, Bhubaneswar and its Workman Shri Ananta Kumar Biswal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 34 OF 2012

Dated the 5th August 2014

Present :

Shri S. K. Sahoo, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The Management of
M/s Bhubaneswar Development
Authority, Bhubaneswar. . . First Party—Management

And

Its Workman
Shri Ananta Kumar Biswal,
C/o Shri Bansidhar Senapati,
At 19/A, Madhusudannagar,
Unit - IV, Bhubaneswar. . . Second Party—Workman

Appearances :

Shri Budhadev Tripathy, Asst. Law Officer . . For the First Party—Management

Shri Ananta Kumar Biswal . . For the Second Party—Workman himself

AWARD

The Government of Odisha in the Labour & E. S. I. 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. 5886—IR(ID)-55/2012-LESI., dated the 30th July 2012 :—

> "Whether the action of the management of M/s Bhubaneswar Development Authority, Bhubaneswar in terminating the services of Shri Ananta Kumar Biswal, Ex-DLR, Horticulture Wing with effect from the 20th May 1993 is legal and/or justified ? If not, what relief Shri Biswal is entitled to ?".

2. To state in brief, the case of the second party workman is that he was engaged as a DLR in the Horticulture wing of the first party management since 1988 and he was paid his wages on monthly basis. It is further averred in the claim statement that after rendering service for more than five years when he requested the management for his regularisation in service, he was removed from employment with effect from the 20th May 1993 in gross violation of the provisions of Section 25-F of the Act. According to him, when all his representations made to the management proved futile, he raised the present dispute before the labour machinery and on failure of conciliation, the Government has referred the dispute for adjudication. Admitting about delay in raising the present dispute, the workman has stated in his claim statement that as the Authorities of the management did not consider his grievance the delay is liable to be condoned. He has claimed for his reinstatement in service with back wages and all other service benefits.

3. The first party management in its written statement while taking the stand of non-maintainability of the reference on the ground of raising of the dispute by the workman after 18 years of his alleged termination, has admitted about the engagement of the workman under it but not continuously in any calendar year prior to the 20th May 1993. The specific stand of the management is that while working on daily wage basis the workman was involved in misappropriation of official money and tampering of official records in connection with mowing of 242 Sq. ft. Lawn area. It is stated that the workman collected Rs. 21 from the beneficiary against the money receipt of Rs. 36.30 and on being confronted with the misappropriation and tampering of official record he voluntarily deposited the residue amount of Rs. 15.30 per Sq. ft. The case of the management is that for such act of the workman he was not engaged under the management any more. The management has pleaded that in the aforesaid background while terminating the services of the workman it was not at all incumbent upon it to comply with the provisions of Section 25-F of the Act. With the assertions, as aforesaid, the management has paryed to answer the reference in the negative as against the workman.

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

ISSUES

(i) "Whether the action of the management of M/s Bhubaneswar Development Authority, Bhubaneswar in terminating the services of Shri Ananta Kumar Biswal, Ex-DLR, Horticulture Wing with effect from the 20th May 1993 is legal and/or justified ?

(ii) If not, what relief is Shri Biswal entitled to ?".

5. In order to substantiate his case the second party workman has examined himself as W. W. No. 1 and proved two documents which have been marked as Exts. 1 and 2. On the other hand, though the management filed affidavit evidence of Shri Ashokanan Dhar but for his failure to apper in the Court to face cross-examination, his affidavit containing examination in-chief could not be accepted and vide order the 24th June 2014 his examination in-chief was dispensed with.

6. *Issue Nos. (i) and (ii)*— For the sake of convenience both the isues are taken up together for consideration.

The workman has categorically pleaded as well as stated in his examination in-chief that he had rendered continuous service under the management for more than 240 days in preceding twelve calendar months prior to his termination of service with effect from the 20th May 1993. It is well settled in a catena of decisions of the Hon'ble Apex Court that the burden of proving 240 days continuous service under an employer rests on the workman. In this connection, the observations of the Hon'ble Supreme Court in the case of R. M. Yellatty *Vrs.* Assistant Executive Engineer, reported in (2006) 1 SCC 106 may be seen wherein it has been observed as follows :

> "However, applying general principles and on reading the aforesaid judgements, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earlier there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus, in most cases the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case."

In the case in hand, the management has simply denied that the workman has not rendered continuous service under it and he was being engaged occasionally on need basis. Except taking such a stand, neither it has produced the muster roll nor the payment register wherefrom it could have been ascertained that the claim of the workman is false one. When the workman has pleaded as well as stated in his affidavit evidence to have worked under the management continuously for

a period of 240 days preceding the date of his termination, the management ought to have placed records refuting such assertion. For non-production of relevent documents in connection with the employment of the workman, who was a daily wager, an adverse inference is bound to be drawn against the management to the effect that had the documents/records been produced in the Court the same would have established the stand of the workman. In this connection, it is profitable to refer to a decision of the Hon'ble Apex Court in the Case of Director, Fisheries Terminal Division *Vrs.* Bhikubhai Meghajibhai Chavda, reported in Air 2010 (SC) 1236 wherein their Lordships of the Hon'ble Apex Court have observed thus :

> "xx The appellants 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"

Keeping in view the observations of the Hon'ble Supreme Court and the fact that the management, who is the custodian of all records, has failed produce the relevant records/documents in connection with the employment of the workman despite the workman's consistent stand as well as evidence that he had worked continuously for a period of more than 240 days under it, this Court is constrained to presume that the workman was employed under the management for a continuous period of 240 days in every calendar year preceding the date of his termination and in that view of the matter the management having admitted to have not complied with the provisions of Section 25-F of the Act while effecting such termination, its action is neither legal nor justified.

7. It is not out of place to mention here that the management has also alleged certain acts of misconduct against the workman during his continuance under it. Even if it is conceded for a moment that the workman was involved in any misconduct, but in absence of any documentary proof with regard to calling for an explanation from the workman or causing an enquiry into such misconduct such a stand is not tenable. Law is well settled that even if one is a daily wager/NMR, the principles of natural justice is required to be adhered to while imposing on him any punishment.

8. Another stand taken by the management on maintainability of the reference is with regard to the delay in raising the dispute by the workman. It is the specific assertion of the management that the workman having raised the dispute after 18 years, the same is not maintainable. Although such a stand is taken by the management in its written statement, yet it has not explained as to how the same caused any prejudice to it when admittedly the workman has worked under it. In this connection, it is profitable to refer to a decision of our own Hon'ble High Court in the case of Divisional Manger, Boudh Commercial Division, Orissa Forest Development Corporation Ltd. *Vrs.* Shri Godabarish

Badajena and Another, reported in 110 (2010) CLT 380, wherein their Lordships have held that the plea of delay if raised by the employer is required to be proved, as a matter of fact, by showing the real prejudice and not as a merely hypothetical defence. In the case in hand, the management having not proved the real prejudice caused to it due to the delay in raising the dispute by the workman, the same cannot be accepted as a ground to deny relief to the workman.

9. In view of my finding that the action of the management is neither legal nor justified, the workman is entitled to some relief. Considering the status of the workman, his mode of induction into the employment and the fact that he has contributed nothing for the management from the date of his termination till aising of the dispute this Court while declining to award reinstatement and back wages in favour of the second party workman feels it appropriate to award a compensation of Rs. 50,000 (Rupees fifty thousand only) in his favour in lieu of his reinstatement and back wages. Accordingly, the first party management is directed to pay the aforesaid compensation to the second party workman within a period of two months of the date of publication of this Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. SAHOO
5-8-2014
Presiding Officer
Labour Court, Bhubaneswar

S. K. SAHOO
5-8-2014
Presiding Officer
Labour Court, Bhubaneswar

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

Printed and published by the Director, Directorate of Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 849—173+11