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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 15th October 2014

No. 8064—IR(ID)-144/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th July 2014 in Industrial Dispute Case No. 20 of 2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer, (R&B) Division No. III, Bhubaneswar and their workman Shri Ramesh Behera, ex D.L.R. was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 20 OF 2012

Dated the 25th July 2014

Present :

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

Between :

The Management of
The Executive Engineer,
(R&B) Division No. III, Bhubaneswar. First Party—Management

And

Its workman Second Party—Workman
Shri Ramesh Behera,
S/o Shri Rabindranath Behera,
Plot No. 854, Laxmisagar,
Bhubaneswar, Dist. Khurda.

Appearances :

None For the First Party—Management

Shri Ramesh Behera 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 (d) 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. 4858—IR(ID) 144/2011-LESI., dated the 23rd June 2012 :—

“Whether the action of the Executive Engineer, (R&B) Division No. III, Bhubaneswar terminating the services of Shri Ramesh Behera, D.L.R. by way of refusal of employment with effect from the 9th July 1998 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?”.

2. The case of the second party workman, in brief, is that he was working as a D.L.R. under the control of the Executive Engineer, (R&B) Division No. III, Bhubaneswar, Capital Construction Division No. I for the period from the 1st December 1992 to the 8th July 1998. He has stated that during the said period he has rendered service continuously for a period of more than 240 days in a twelve calendar month. According to him, during his tenure of employment though 72 D.L.Rs./ N.M.Rs. were employed under the first party management, yet the management in gross violation of the provisions of Section 25-F and 25-G of the Act terminated his employment with effect from the 9th July 1998 without taking into consideration regularisation of his service like his counterparts. It is averred in the claim statement that despite filing of an O.A. before the Odisha Administrative Tribunal and submission of representations to the management when the management did not consider his grievance ultimately he raised the present dispute claiming his reinstatement in service with full back wages on the ground that from the date of his termination of employment he has not been gainfully employed elsewhere.

3. Controverting the assertions of the second party workman, the first party management has filed its written statement stating therein, *inter alia* that at no point of time the second party workman was employed under it. The specific stand of the management is that he was employed by a Contractor and therefore, the question of his termination by the first party management does not arise at all. It has therefore, prayed to answer the reference in the negative as against the second party workman.

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

ISSUES

- (i) “Whether the action of the Executive Engineer, (R&B) Division No. III, Bhubaneswar in terminating the services of Shri Ramesh Behera by way of refusal of employment with effect from the 9th July 1998 is legal and/or justified ?
- (ii) If not, what relief Shri Behera is entitled to ?”

5. In the hearing, the second party workman filed his affidavit evidence and so also the affidavit evidence of one Shri Laxmidhar Pujapanda. Though the management filed its written statement, it did not chose to participate in the hearing as a result of which it was set *ex parte* vide order dated the 5th June 2014.

FINDINGS

6. *Issue Nos. (i) & (ii)*—The second party workman in his affidavit evidence has reiterated his stand taken in the claim statement and also tried to substantiate his plea through W.W.No. 2, a retired employee of the first party management, who claims to have seen the second party working under the first party management. Though the second party has annexed a number of photo copies of documents alongwith his claim statement but the original thereof were neither produced nor exhibited in the proceeding to place reliance on them. Even the second party workman during the pendency of the proceeding has not called for the relevant documents from the custody of the management to substantiate his stand. In absence of documents such as Attendance Register, Payment vouchers, etc. which could have indicated the employment of the second party workman under the first party management for a continuous period of more than five years, this Court is not able to come to a conclusion that the second party workman was employed under the first party management as a D.L.R. during the relevant period and that during the said period he had rendered continuous service for more than 240 days in the calendar years so as to claim protection of the provisions of either Section 25-F or Section 25--G of the Act.

7. In the aforesaid background, even if the evidence tendered on behalf of the second party workman remained unchallenged but in absence of any documentary evidence corroborating his stand the issues cannot be answered in his favour.

Accordingly, the reference is answered against the second party workman.

Dictated and corrected by me.

S. K. SAHOO
25-7-2014
Presiding Officer
Labour Court, Bhubaneswar

S. K. SAHOO
25-7-2014
Presiding Officer
Labour Court, Bhubaneswar

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