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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 15th October 2014

No. 8069—IR(ID)-10/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th August 2014 in Industrial Dispute Case No. 26/2012 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Capital Hospital, Unit-6, Bhubaneswar and their workman Shri Alekha Sethi was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 26 OF 2012

Dated the 20th August 2014

Present :

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

Between :

The management of Capital Hospital, Bhubaneswar . . . First Party—Management

And

Its workman Shri Alekha Sethi,
S/o Late Natabar Sethi,
At Kakarudrapur, P.O. Kakarudrapur, . . . Second Party—Workman
P.S. Baliana, Dist. Khurda.

Appearances :

Shri Bhimsen Khati, Authorised Representative. . . For the First Party—Management

Shri Sanjay Kumar Das, Advocate . . . For the Second Party—Workman

AWARD

This is a case instituted on the reference made by the Government of Odisha vide its Order No. 5389—IR (ID)-10/2012-LESI., dated the 11th July 2012, 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 Capital Hospital, Bhubaneswar in terminating the services of Shri Alekha Sethi with effect from the 1st March 2011 is legal and/or justified ? If not, what relief Shri Sethi is entitled to ?"

2. The case of the second party workman is that he joined under the first party management on the 14th August 1997 and continuously worked under it till the 28th February 2011 without any break. During his service his wage was enhanced to Rs. 103.00 per day with effect from the 27th November 2010. After working continuously for a period of 14 years or so when the second party demanded for his regularisation in service the first party was annoyed and refused him employment with effect from the 1st March 2011. The second party has not received his salary for the month of February 2011. No notice was served on the second party by the management although he had worked for more than 240 days in each calendar year. The first party has engaged some other persons to perform the duties of the second party. The second party is unemployed since the date of his termination. He was illegally terminated by the first party management. In his claim statement he has prayed for his reinstatement in service with full back wages.

3. In pursuance of notice issued by this court the first party management entered his appearance before this court and filed its written statement. The case of the first party management is that the second party workman was never engaged by the first party at any point of time and therefore, the question of his joining, continuance in service and termination by the first party does not arise. The Matron of the first party hospital was entrusted for cleaning of the linens by engaging daily labourer on daily wage basis. The Matron of the first party used to engage the daily labourers for cleaning and as the record reveals the second party who was a daily labourer engaged by the Matron has already received his dues from the Matron as per the vouchers. The engagement of the second party by the Matron is not an appointment by the first party. So there is no question of regularisation of his service of by the first party. As the second party was not appointed by the first party no termination notice was required. Now the cleaning works of the linens of the first party management is done through out-source agency. The first party had also informed about the same to the A.L.O., Khurda by his letter No. 3524, dated the 30th June 2011. In the aforesaid background, the first party management has prayed to reject the claim of the second party.

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

ISSUES

- (i) "Whether the action of the management of Capital Hospital, Bhubaneswar in terminating the services of Shri Alekha Sethi with effect from the 1st March 2011 is legal and /or justified ?
- (ii) If not, to what relief Shri Sethi is entitled ?"

5. The second party is examined W.W. 1 and Exts. 1 to 4 are marked on his behalf. Ext. 1 is the photo copy of the letter addressed to the first party by the second party dated the 17th August 1990. Ext. 2 is the photo copy of the letter issued to the first party by the second party dated the 20th November 2010. Ext. 3 is the photo copy of the office order No. 8274, dated the 30th November 2010 of the first party. Ext. 4 is the photo copy of the list of items received from the second party dated the 11th November 2012.

6. In his evidence the second party workman deposed that he was working as a Washerman under the first party management from the 14th August 1997 till the 28th February 2011 when he was refused employment. He further deposed that he was continuously serving under the first party management without any break. On perusal of Ext. 1 it transpires that in his application to the first party he has mentioned that he worked under the first party management for some months. He has also clearly mentioned that orally he was engaged as a Washerman and his name does not find place in any register of the first party management. Admittedly no appointment order was issued to the second party nor there is any joining report. It is also not the case of the second party that he was selected in any interview. On perusal of Ext. 3 it is clear that the Matron of the second party was entrusted to engage semi-skilled labourer on daily wage basis. It is also clear from Ext. 3 that the wages of the labourers engaged by the Matron was being paid from the contingency and if no fund is available under that head the amount was being procured from Rogi Kalyan Samity on loan basis. At Paragraph 8 of his affidavit evidence the second party has clearly deposed that for Sundays and other holidays the bills were prepared in the name of others but he used to received the payment. From his own admission it appears that he was not working under the first party management continuously. From the ocular testimony of W.W. 1 and the documents available on record it is clear that the second party was not engaged as worker by the first party at any point of time.

7. In this case the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for him to adduce evidence apart from examining himself to prove the factum of being in employment under the first party. For the aforesaid view I have relied on a decision rendered by the Apex Court in Civil Appeal No. 4468 of 2005, dated the 23rd November 2007, (*Rani Nagar Palika Vrs. Babuji Gabhaji Thakore and others*). In view of the evidence on record I hold that the second party workman failed to prove his case and consequently he is not entitled to any relief in the present proceeding.

The reference is answered accordingly

Dictated and corrected by me.

SAROJ KUMAR SAHOO
20-8-2014
Presiding Officer,
Labour Court, Bhubaneswar

SAROJ KUMAR SAHOO
20-8-2014
Presiding Officer,
Labour Court, Bhubaneswar

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