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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 17th October 2014

No. 8147—IR(ID)-147/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th September 2014 in Industrial Dispute Case No. 1 of 2014 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Rajdhani Bus Owners Association, Bhubaneswar and its workman Shri Ballava Pattasahani was filed by the above mentioned workman under Section 2-A(2) of I. D. Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2014 [U/s 2-A(2)]

Dated the 16th September 2014

Present :

Shri B. C. Rath, O.S.J.S. (Sr. Branch)
Presiding Officer, Industrial Tribunal, Bhubaneswar.

Between :

The Management of . . . First Party—Management
Rajdhani Bus Owners Association, Bhubaneswar,
At Baramunda Bus Stand, P. O. Baramunda,
P. S. Khandagiri, Dist. Khurda.

And

Its workman Shri Ballava Pattasahani, . . . Second Party—Workman
S/o Alekha Pattasahani, At 516, Baramunda Village,
P. O. Baramunda, P. S. Khandagiri, Bhubaneswar,
Dist. Khurda.

Appearances :

None	.. For the First Party—Management
Shri B. Pattasahani	.. For the Second Party—Workman himself

AWARD

This is an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, the 'Act') filed by the second party workman praying to declare the termination of his employment as illegal and unjustified and to direct the first party management to reinstate him in service with full back wages, continuity of service and all other consequential service benefits.

2. The case of the second party workman, in short, is that he was engaged to work as a Supervisor under the first party management from January, 2001 and accordingly the management had issued an Identity Card in his favour. His assertion is that during his employment under the first party management he was being provided with fooding allowance only with an assurance that he would be paid the prescribed minimum wages after some years. It is alleged that even though with such assurance he worked under the first party management continuously for a period of more than twelve years, all of a sudden the first party management put him under suspension with effect from the 21st June 2013 and thereafter did not allow him to work under it. According to him, such action of the first party management amounts to termination of his service in gross violation of the provisions of the Industrial Disputes Act. Further allegation of the second party workman is that the first party management has not even complied with the principles of natural justice while doing away with his job.

It is also claimed by the second party workman that although he was a Supervisor under the first party management, yet on account of his discharging manual and clerical nature of duties he is coming within the meaning of 'workman' as defined under Section 2(s) of the Act and the first party management is an 'industry' within the meaning of Section 2(j) of the Act. With the aforesaid assertion, the second party workman has prayed for his reinstatement in service with full back wages, continuity of service and all consequential service benefits.

3. Despite registered notice served on the first party management, it neither appeared nor filed its written statement as a result it was set *ex parte* vide order No. 5, dated the 13th June 2014.

4. In order to substantiate his case the second party workman has examined himself as W. W. No. 1 and filed documents marked Exts. 1 to 5.

5. As to the maintainability of the reference, the second party has adduced evidence to the effect that though he was designated as a Supervisor, he was doing all sorts of manual and clerical work under the first party management and further the first party management is an 'industry' as defined under Section 2(j) of the Act. In view of the unchallenged testimony of the second party and in absence of any contrary evidence that the second party was performing managerial nature of work under the first party management and further the establishment of the first party management is not coming within the definition of an 'industry', the reference is held to be maintainable.

6. It has been asserted by the second party workman that he was under employment in the establishment of the first party management from January, 2001. No documentary evidence is filed in support of such assertion except copy of the Identity Card and copy of the suspension order alleged to have been issued by the Secretary of the first party management. Both the above documents are silent as to the period of his employment or the date of joining of the workman in the said organisation. On the basis of the uncontroverted assertion of the workman and the above two documents marked as Exts. 1 and 2 it can safely be inferred that the second party was under the employment of the first party management. Had it been not so no occasion arose for the first party management to issue a suspension order under Ext. 2. The oral evidence of the second party workman having remained unchallenged it is also difficult to discard the claim of the second party workman that he has rendered continuous service for more than 240 days under the first party management in each year during his employment from January, 2001 to June, 2013. Hence, the second party workman has every right to bring his grievance under the provisions of the Industrial Disputes Act in case of his service being terminated/retrenched or he is removed from service by way of refusal of employment. But it appears from the claim statement and oral testimony of the workman and the so called suspension order marked Ext. 2 that the workman has not been either removed from service or retrenched or his service has been terminated. On the other hand, if the unchallenged documentary evidence under Ext. 2 is taken into consideration, the irresistible conclusion is that the second party being an employee is under suspension and the order of such suspension was passed in connection with certain misconduct allegedly committed by the second party. The suspension was effected on the 21st June 2013. However the order of suspension, i. e. Ext. 2 is silent as to initiation of any proceeding or departmental enquiry against the second party workman. It also does not reveal if the second party workman was suspended pending drawal of any proceeding. Nothing is also mentioned in the order with regard to payment of suspension allowance to the second party workman. Though, no specific assertion or evidence has been advanced regarding initiation or pending of any departmental proceeding/enquiry or there is specific denial regarding pendency of such proceeding/enquiry, it is implied from the oral testimony of the second party workman that he was not allowed to resume his duty and paid allowance on account of such suspension.

7. In the aforesaid fact and circumstances the workman can not be allowed to suffer for an indefinite period by way of refusal of employment in the guise of suspension from service. Hence, the first party management is directed to reinstate the second party workman in service forthwith and to pay him a compensation of Rs. 5,000 (Rupees five thousand only) in lieu of back wages. The first party to implement the Award within a period of one month of the date of its publication in the Official Gazette.

The case is disposed of accordingly.

Dictated and corrected by me.

B. C. RATH
16-09-2014
Presiding Officer
Industrial Tribunal, Bhubaneswar

B. C. RATH
16-09-2014
Presiding Officer
Industrial Tribunal, Bhubaneswar

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