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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 24th October 2014

No. 8322—IR(ID)-151/2005-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th September 2014 in Industrial Dispute Case No. 48/2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of M/s Maheswari Ispat Ltd., At Rampei, Dist. Cuttack and its workman Shri Pradeep Kumar Behera was filed by the workman for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 48 OF 2013 [U/s 2-A (2)]

Dated the 27th September 2014

Present :

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

Between :

The Management of
M/s Maheswari Ispat Ltd.,
At Rampei, P.O. Khuntuni,
Dist. Cuttack-754029.

. . First Party—Management

And

Its workman,
Shri Pradeep Kumar Behera,
S/o Goutam Behera,
At Brundanpur, P.O. Budhapank,
Dist. Angul.

. . Second Party—Workman

Appearances :

None	. .	For the First Party—Management
Shri P. K. Behera	. .	For the Second Party—Workman himself

AWARD

This case has been filed by the above named workman under under section 2-A(2) of the Industrial Disputes Act, 1947 (for short 'the Act') challenging his refusal of employment by the first party management with effect form the 1st October 2012 as illegal and unjustified and claiming for his reinstatement in service with back wages.

2. The claim of the workman as narrated in his statement of claim, in brief, is that pursuant to his selection in an interview on 10-3-2007 he was appointed under the first party management as a Fitter on a monthly wages of Rs. 8,000 which was revised from time to time and in the month of July 2012, it was Rs. 10,650 excluding P.F. contribution. It is alleged that although he was discharging his duties continuously but the management did not pay his wages for the month of August and September 2012 and when he demanded the same, the first party management did not allow him to perform his duty and ultimately refused him employment with effect from the 1st October 2012. According to him, such action of the first party management amounts to retrenchment and the same is illegal due to non-compliance of the statutory provisions of the Act. Further claim of the second party is that the first party is an 'industry' and he was a 'workman' under it within the meaning of the Act and the management having employed more than 100 workers in an average per working day during the preceding 12 months, is an industrial establishment and as such his retrenchment squarely comes within the purview of the provisions of Section 25-N of the Act. It is pleaded that the action of the management being in contravention of the provisions contained in Section 25-N and Section 25-G of the Act, he is entitled to the relief of reinstatement and on account of his remaining unemployed from the date of termination of his service he is also entitled to full back wages and so also his unpaid wages for the duty period, i.e for the months of August and September 2012.

It is stated in the claim statement that since no action was taken by the D.L.O., Cuttack on his complaint dated 24-4-2013, the second party has filed the present case before this Tribunal redressing his grievance.

3. Despite opportunity the first party management did not file its written statement. It even did not appear on the date of hearing for which it has been set *ex parte* vide Order No. 14, dated the 21st August 2014.

4. Basing on the claim of the second party the questions that arise for consideration are—

- (i) "Whether the the action of the management of M/s Maheswari IspatLtd., At Rampei, P.O. Khuntuni, Dist. Cuttack in terminating the services of the second party workman by way of refusal of employment with effect from the 1st October 2012 is legal and/ or justified ?

(ii) To what relief, if any, the second party workman is entitled ?

5. To substantiate his claim the second party workman has examined himself and filed documents which have been marked Exts.1 to 7.

6. The second party workman in his evidence on affidavit has corroborated the stand taken in the claim statement to the effect that he is a 'workman', the first party management is an 'industry' and that Chapter V-B of the Act is applicable to the establishment of the first party. There being no challenge to the aforesaid averments and the evidence of the second party, he is held to be a 'workman' under the first party 'industry' to which Chapter V-B of the Act is applicable.

7. The documentary evidence i.e. the Appointment Advice Ext.1, the copy of the EPF Slip, Ext.2, the copy of entry pass Ext.3, the copy of the Appointment Order dated the 17th January 2009, Ext.4 and the copy of the Leave Card, Ext.5 when considered together it emerges that the second party workman was employed under the first party management as a Fitter from March 2007. He has proved Ext.6, copy of his representation made to the management praying therein to allow him to resume his duty and to pay his arrear wages and further he has proved Ext.7, the copy of his complaint made to the D.L.O., Cuttack ventilating his grievance. Both Exts.6 and 7 indicated that he has ventilated his grievance before his Authority as well as before the D.L.O., Cuttack for his illegal termination of service by way of refusal of employment with effect from the 1st October 2012 and for payment of his wages for the months of August and September, 2012. The oral as well as the documentary evidence adduced on behalf of the second party workman having remained unchallenged due to non-participation of the first party management in the present proceeding. The irresistible conclusion is that the second party was in the employment of the first party continuously for more than 240 days and being refused to work he was deemed to be removed from his service without compliance of the provisions of Section 25-N of the Act.

8. In the result, the second party workman is held entitled to reinstatement in service forthwith. As to his claim for unpaid wages for the months of August and September 2012 and back wages, the management is directed to pay the unpaid wages of the workman within a period of one month of the date of publication of the Award in Official Gazette. He is, however, not entitled to any back wages on the principle of 'No Work No Pay'.

Dictated & corrected by me.

B. C. Rath
27-9-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

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27-9-2014
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Industrial Tribunal
Bhubaneswar

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