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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 31st January 2014

No. 795—IR-(ID)-90/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th December 2013 in I. D. Case No. 1 of 2013 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Executive Engineer, (R. & B.) Division, Sambalpur and their Workman Shri Sadananda Bag, Ex Mulia was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 1 OF 2013

Dated the 10th December 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of .. First Party—Management
Executive Engineer,
(R. & B.) Division, Sambalpur.

And

Their workman .. Second Party—Workman
Shri Sadananda Bag,
Ex Semi-Skilled Mulia,
At Chandmunda, P.O. Maneswar,
Dist. Sambalpur.

Appearances :

Shri A. K. Mishra, .. For the First Party—Management
Auth. Representative.

Self .. For the Second Party—Workman

AWARD

This award arises out of a reference made by the Government of Odisha, Labour & E.S.I. Department, under the power conferred by 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) (for short the "Act") vide Order under Memo. No. 714 (5), dated the 28th January 2013. The dispute involved under the schedule of reference is as follows :—

“Whether the action of the Executive Engineer, (R. & B.) Division, Sambalpur in terminating the services of Shri Sadananda Bag, Semi-Skilled Mulia with effect from the 31st December 1995 by way of refusal of employment is legal and/or justified ? If not, what relief Shri Bag is entitled to ?”

2. The case of the second party workman as per his statement of claim is that on the basis of a notification and interview, he was selected to work as a Semi-Skilled Mulia and joined service under the first party management with effect from the 1st December 1986. He continued to work and received wages from the first party through Muster Roll and Hand Receipts till 31-12-1995. From 1-1-1996 the first party stopped payment of wages to him without any reason and it was told to him that there is no need for work and he would be called for work whenever necessity arises. Subsequently, the first party prepared a Gradation List of DLRs and NMRs but his name did not find mention and therefore, he approached the Deputy Labour Commissioner, Sambalpur. The complaint of the second party was enquired by the Conciliation Officer-*cum*-Assistant Labour Officer, Sambalpur who returned the complaint on the ground of limitation vide his letter No. 2270, Dt. 18-4-2007. The second party then filed a petition for review of the said decision and ultimately, the Conciliation Officer submitted a failure report to the Government.

3. The first party entered appearance and filed written statement wherein he submitted that the second party was engaged interruptedly for a total period of 99 days from 1-12-1986 to 9-5-1987. From 10-5-1987, he was not engaged in any capacity but the second party has made out a false story to get undue benefit from the first party. It is the further case of the management that the second party was not engaged for more than a year continuously so as to attract the provision of the Section 25 (F) of the I.D. Act. It is the specific case of the management that the second party was not retrenched on 31-12-1995 by way of refusal of employment as alleged by him, with such averments, the first party prayed for dismissal of the case with cost.

4. The second party took several adjournments to file a rejoinder which he never filed

5. On the basis of the pleadings of the parties, the following issues have been settled

ISSUES

- (i) “Whether the action of the Executive Engineer (R. & B.) Division, Sambalpur in terminating the services of Shri Sadananda Bag, Semi-Skilled Mulia with effect from the 31st December 1995 by way of refusal of employment is legal and/or justified ?
- (ii) If not, what relief Shri Bag is entitled to ?”

FINDINGS

6. *Issue No. (i)*—The second party did not adduce any oral evidence. He filed some documents in support of his statement of claim which though not marked was perused for consideration. The second party claims that he worked under the first party as a Semi-Skilled Mulia from 1-12-1986 to 31-12-1995. According to him, he was receiving wages from the first party for the said period through Muster Roll and Hand Receipts. On the contrary, it is the case of the management that the second party was engaged interruptedly only for 99 days during the period from 1-12-1986 to 9-5-1987. It is their specific case that from 10-5-1987 the second party was never engaged. The documents filed by the workman mostly refer to payment made to him for the work during the year 1987. It also reveals from the documents that for the month of January 1987, March 1987 and June 1987, he received some payments from the first party under Hand Receipts and Muster Roll. There is no documentary evidence to show that the second party was engaged by the first party after the end of June 1987. In such circumstances, his allegation that he was in continuous service under the first party till 31-12-1995 can not be believed. Since it is not proved that the second party worked under first party after the month of June 1987, it can not be said that he was terminated from service with effect from the 31st December 1995. Admittedly, the second party prepared a list of NMRs and DLRs., the copy of which has been filed by the second party. In this list, there are 28 numbers of unskilled DLRs whose date of engagement have been clearly noted. In this list, there are names of several Mulias who were engaged by the management prior to the year 1993. It appears that since the second party was not continuously rendering service, his name was not mentioned in the list.

7. The second party initially filed a complaint before the Deputy Labour Commissioner, Sambalpur and the Assistant Labour Officer intimated him that after verification of pay vouchers submitted by the Executive Engineer, (R. & B.) Division, Sambalpur, it is observed that he worked as Semi-Skilled Mulia under the first party during the year 1987 (January, March and May) but he filed the complaint petition for re-engagement in the same post after gap of 19 years. He could not justify the reason for such delay and therefore, his application was returned back. This fact reveals from the copy of the letter No. 2270, Dt. 18-4-2007 filed by the second party. It further reveals from the documents filed by the second party that he made another application to the Deputy Labour Commissioner, Sambalpur stating therein that delay in raising dispute is not a ground to deny the relief to a workman and he prayed for review of the earlier decision. The said application was filed on 25-3-2010 (copy of which is filed in Court). The Labour Authority accepted the second complaint but there was no reconciliation as the SDO, Bridges, Sambalpur, representing the management submitted that in view of the documents available, they are not in a position to consider re-employment to the workman. On the basis of the report of the Conciliation Officer, the present reference has been made but the workman failed to establish his claim by adducing evidence in support of his case.

8. After careful consideration of the materials on record and the discussions made above, I am inclined to hold that there is no *iota* of evidence to hold that the second party worked as Semi-Skilled Mulia just prior to 31-12-1995 under the first party. Therefore, it can not be said that he was

terminated from service with effect from the 31st December 1995 by way of refusal of employment. The issue No. (i) is accordingly answered in the negative.

9. *Issue No. (ii)*—Since it has been held that the second party was not refused employment or terminated from service with effect from the 31st December 1995 and the documents filed by the workman reveal that he worked only for a short period till the month of June 1987, he can not be reinstated in service nor he can be held entitled to any relief of back wages. It is accordingly held that the second party is not entitled to any relief.

10. In view of the determination of the issues in the manner aforesaid, the following award is passed :

AWARD

The reference is answered on contest without cost. It is held that Shri Sadananda Bag was not terminated from service by way of refusal of employment by the Executive Engineer, (R. & B.) Division, Sambalpur with effect from the 31st December 1995 and that he is not entitled to any relief.

Dictated and corrected by me.

SRIKANTA MISHRA
10-12-2013
Presiding Officer
Labour Court
Sambalpur.

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10-12-2013
Presiding Officer
Labour Court
Sambalpur.

By order of the Governor
N. BEHERA
Under-Secretary to Government