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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 10th February 2014

No. 1141—IR(ID)-1/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th December 2013 in Industrial Dispute Case No. 36 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of Managing Director, M/s ARSS Infrastructure Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar and its workman Shri Basant Kumar Jena was filed by the above named 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. 36 OF 2013 (2-A)

Dated the 20th December 2013

Present :

Shri P. K. Ray, O.S.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
The Managing Director,
M/s ARSS Infrastructure Private Ltd.,
Sector-A, Zone-D, Plot No.-38
Mancheswar Industrial Estate,
Bhubaneswar.

.. First Party—Management

And

Its Workman . . . Second Party—Workman
 Shri Basant Kumar Jena,
 At Nuapada, P.O. Kanas,
 Dist. Puri.

Appearances :

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

AWARD

This case under Section 2-A(2) of the Industrial Disputes Act, 1947 has been filed by the second party workman for payment of his unpaid wages and for his reinstatement with effect from the 16th November 2009.

2. The case of the second party workmen is that he was appointed as Site Accountant-*cum*-Supervisor at the construction site of the first party management at Visakhapatnam and Phulbani from the 23rd March 2008 till the 15th November 2009. At the time of his initial engagement though the management verbally assured him to pay Rs. 7,000 only towards salary, it has not paid the monthly salary, site allowance and other benefits from the 23rd March 2008 till the 15th November 2009 which comes to Rs. 1,40,000. Further it is stated that due to his illness the second party workman remained on medical leave from the 16th November 2009 to the 20th November 2009 with due permission of the first party management. On the 21st November 2009 when the second party workman submitted his joining report with Medical Certificate the first party management refused him to join which amounts to termination of his service. Being aggrieved by such action the second party workman filed a petition before the Labour Commissioner, Bhubaneswar on the 18th April 2012 who forwarded the same to the District Labour Officer, Bhubaneswar for an enquiry and settlement. Though the Labour Officer called upon both the parties for an amicable settlement due to non-co-operation of the first party management it failed. Hence, as per the advise of the District Labour Officer he has filed this case.

3. The first party management did not appear or file any written statement and hence it has been set *ex parte*.

4. The issues to be decided in this case are as follows :

ISSUES

- (i) "Whether the refusal of employment made to the second party workman with effect from the 21st November 2009 is legal and justified ?
- (ii) Whether the second party is entitled to his unpaid wages ?"

5. In support of his case the second party workman besides examining himself as W.W. No. 1 has filed documents marked Exts. 1 to 5.

FINDINGS

6. *Issue Nos. (i) and (ii)*—In this case in the absence of any cross-examination the evidence both oral and documentary filed on behalf of the second party workman remained unchallenged.

On scrutiny of the evidence it is found that the second party workman was engaged as a Site Supervisor under the first party with effect from the 22nd March 2008 on a monthly salary of Rs. 7,000 per month and he continued in service till dated the 15th November 2009 with change of his designation from Site Supervisor to Accountant-cum-Supervisor which shows that he has completed more than 240 days continuous service in the preceding calendar year. In the aforesaid circumstances, any disengagement requires compliance of the provisions of Section 25-F of the Industrial Disputes Act. In the absence of challenge there is nothing to disbelieve the evidence of the second party workman that he has been disengaged without compliance of the aforesaid provisions. Section 25-F of the Industrial Disputes Act, 1947 envisages as follows :

"25-F. Conditions precedent to retrenchment of workman—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette)".

In the case in hand as there is non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, the disengagement of the second party workman is bad in law. Hence, he is entitled to reinstatement in service forthwith besides the wages due to him. The first party management is directed to implement the Award within a period of two months from the date of its publication in the Official Gazette.

Dictated and corrected by me.

P. K. RAY
20-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
20-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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