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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 10th February 2014

No. 1146—IR (ID)-33/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th December 2013 in Industrial Dispute Case No. 20 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Execjutive Officer, Kendrapara Municipality, Kendrapara and its Workman Premananda Pradhan, ex Daily Labourer was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 20 OF 2012
Dated the 28th December 2013

Present :

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

Between :

The Management of
The Execjutive Officer,
Kendrapara Municipality,
Kendrapara. . . First Party—Management

And

Their Workman
Shri Premananda Pradhan,
Ex-Daily Labourer,
Kendrapara Municipality,
At Poipat, P.O. Baro,
P.S. Pattamundai,
Dist. Kendrapara. . . Second Party—Workman

Appearances :

For the First Party—Management	. .	Shri A. K. Nayak, Associates, Advocate
For the Second Party—Workman	. .	Shri S. K. Dash, Advocate

AWARD

This case has been instituted under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) on a reference made by the Labour & ESI Department of the Governent of Odisha under Sction 12 (5) of the Act vide its Letter No. 3564—IR (ID)-33/2012-LESI, dated the 7th May 2012 with the following Schedule :—

> "Whether the termination of services of Shri Premananda Pradhan, ex daily labourer by way of verbal refusal of employment with effect from the 9th December 1998 by the management of Kendrapara Minicipality, Kendrapara is legal and/or justified ? If not, what relief Shri Pradhan entitled to ?"

2. This case of the second party workman is that he was engaged as a D.L.R. with effect from the 1st February 1992 under the first party management and was working under the control and supervision of the Licence Inspector of the first party continuously up to 9-12-1998. Initially he was getting wages @ Rs. 750 per month as per the minimum wages prescribed fom time to time. On 9-12-1998 the second party workman was verbally refused employment on the ground of surplus staff. Being aggrieved by such action the second party workman lodged a complaint before the Distict Labour Officer, Kendrapara in January, 1999 through the President, Kendrapara Municipality Workers' Union baing on which the District Labour Officer, Kendrapara issued notice to the first party management vide its letter dated the 16th February 1999 to attend a joint enquiry on 1-3-1999 but due to the adamant attitude of the first party management and callousness of the District Labour Officer, Kendrapara the grievance of the second party workman remained unattended. Subsequently on the petition of the second party workman, dated the 3rd February 2012, the District Labour Officer, Kendrapara intervended in the matter and ultimately this reference has been made by the State Govenment for adjudication.

3. The first party management in its written statement refuting the claim of the second party workman to have been engaged since 1992 till 2-2-1998 has stated that due to lapse of 13 years no document relating to his engagement is available in the office but simultaneously has stated that during the period 1998 the management was usually engaging daily labourers for a period of 2-3 months in a calendar year to assist the Licence Inspector and none of the workmen had worked for a complete period of one year. It has further stated that there is no sanctioned post to accommodate the second party workman. Therefore, he is not entitled to any benefit under Sections 25-F & 25-G of the Industrial Disputes Act, 1947 and Section 73(b) of the Orissa Municipal Act, 1982, hence urged for dismissal of the claim.

4. In the aforesaid premises, the issues framed are as follows :—

ISSUES

(i) "Whether there is employer workman relationship between the parties ?

(ii) Whether the second party has completed one year of continuous service preceding the date of the alleged termination of his services ?

(iii) Whether there is existence of an industrial dispute between the parties ?

(iv) Whether the termination of services of Shri Premananda Pradhan, ex daily labourer by way of verbal refusal of employment with effect from the 9th December 1998 by the management of Kendrapara Municipality, Kendrapara is legal and/or justified ?

(vi) If not, what relief Shri Pradhan is entitled to ?

5. In support of their respective case while the second party workman has examined himself as W.W. No.1 and filed documents marked Exts.1 to 11, the first party management has examined one witnness and filed documents marked Exts. A & B.

FINDINGS

6. *Issue Nos.(i) & (ii)*—The claim of the second party workman is that he had worked from 1992 to 1998 as a daily labourer under the first party management and was assisting the License Inspector. Though the first party management refuted the claim of the second party workman to have engaged as a D.L.R. under it, simultaneously it has stated in its written statement that he might have worked during the period from 1992 to 1998 when the first party management used to enngage daily labourers for a period of two to three months in a calendar year. But no such workman has been enaged for a complete period of one year. Besides the aforesaid statement on behalf of the second party workman, the copy of the experience certificate Ext.1, copy of the Identity Card Ext.2, copy of the attendance sheet Ext.8 and copy of the written statement filed in I.D. Case No.22 of 2008 by the first party management before the Labour Court, Bhubaneswar Ext.11 reveal that the second party workman was working as a D.L.R. under the first party management. Considering the nature of documents and its evidentiary value there is nothing to dispute that the second party workman was engagaed as a daily labourer under the first party management with effect from 1992 till 1997. Though the averment of the first party management in its written statement before this Tribunal as well as the parawise comment in I.D. Case No.22 of 2008 before the Labour Court, Bhubaneswar reflect that hardly he was engaged for few months i.e 30 to 50 days in a calendar year from 1992 to 1997-1998, no document has been produced in support of the same.

In the case of Director, Fisheries Terminal Division *Vrs.* Bhikubhai Meghajibhai Chavda, reported in AIR 2010 (SC) 1236, the Hon'ble Supreme Court has held as follows:—

> *"xx xx xx The appellants claim that the respondant did not work for 240 days. The respondent was a workman hired on a daily wage basis. So, it is obvious, as this court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. In connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. xx xx xx.*

The appellants have inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, in spite of the direction issued by the Labour Court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three-Judge Bench of this Court in the case of Municipal Corporation, Faridabad Vrs. Siri Niwas (2004) 8 SCC 195 : (2004 AIR SCW 5184), where it is observed.

"A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against this contentions. The matter, however, would be different where despite direction by a Court the evidence is withheld."

In the case in hand to substantiate the claim the second party workman had called for the muster roll to which the first party management expressed its inability to produce the same due to lapse of fifteen years. Therefore, in view of the aforesaid principle decided by the Hon'ble Supreme Court and the failure of the first party management to produce the relevantt records the presumption is to be drawn adversely against the first party management.

7. Issue Nos.(iii) & (iv)—In view of the finding on *issue Nos.(i) and (ii)* there is no controversy about the engagement of the second party workman as a D.L.R. continuously from 1992 to 1998. The stand of the first party management that there was no engagement of the second party workman itself amounts to refusal of employment and cause of action for this case. The case of the second party workman is that he was engaged as a D.L.R. This Tribunal on principles of law due to the failure of the first party management to produce the records has presumed that the second party workman has worked continuously for more than 240 days for the preceding calendar years. Section 25-F of the Industrial Disputes Act 1947 prescribes the stipulation for termination of such employees as follows :—

"25-F. Conditions precedent to retrenchment of workmen— No workman employed in any industdry 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 uch 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 [for such authority as may be specified by the appropriate Government by notification in the Official Gazette.]"

In the case in hand therebeing no sch compliance, the refusal/termination of employment to the second party is in contravention of the provisions of Section 25-F of the Industrial Disputes Act, thus is bad in law.

8. Issue Nos.(v)—The second party claims for his reinstatement with full back wages. His own stand being that he was refused employment being a surplus staff and that of the first party management is that there is no sanctioned post to accommodate him, reinstatement of the second party workman would an unnecessary financial burden on public fund. However, considering the illegal termination in violation of Section 25-F of the Industrial Disputes Act, the first party management is directed to pay a compensation of Rs. 25,000 (Rupees twenty-five thousand only) to the second party workman.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
28-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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28-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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

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