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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 9th April 2014

No. 3255—IR-(ID)-15/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th March 2014 in Industrial Dispute Case No. 40 of 2013 of the Presiding Officer, Industrial Tribunal, Bhubaneswar wherein the industrial dispute between the Management of M/s Utkal Galvanisers Ltd., At Kapursingh, Dist. Cuttack and its Workman Shri Bijay Ketan Swain 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. 40 OF 2013

Dated the 14th March 2014

Present :

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

Between :

The Management of
M/s Utkal Galvanisers Ltd.,
At Kapursingh,
P.O. Oranda,
Dist. Cuttack.

.. First Party—Management

And

Its Workman Shri Bijay Ketan Swain
S/o Late Sugribar Swain,
Village Indranipatna,
P.O. Chasapada, P.S. Choudwar,
Dist. Cuttack.

.. Second Party—Workman

Appearances :

Shri P.K. Jena, Manager (Personnel)	. . For the First Party—Management
Shri T. Lenka, Auth. Rept.	. . For the Second Party—Workman

AWARD

1. This application under Section 2-A(2) of the Industrial Disputes Act, 1947 has been filed for reinstatement of the second party workman with full back wages, continuity of service and other consequential service benefits.

2. The case of the second party workman is that he initially joined on 1-1-1986 as a Helper under the first party management. Due to his satisfactory performance the first party management promoted him to the post of Assistant Operator where he continued till 21-9-2011. Since the second party workman on principle is to be covered under the E.S.I. and E.P.F. Scheme, due to his illness while on leave with effect from the 22nd September 2011 he went to E.S.I. Hospital for treatment, he was not extend the said benefit as the E.S.I. contribution was not deposited by the first party management for a number of years though it was deducting contribution towards E.S.I. from the second party workman every month. Subsequently, he went to Arogya Sadan, Choudwar where the doctor intimated him to have been affected with Jaundice. As per the advice of the doctor the second party workman remained on leave up to 12-1-2012. After recovery on 13-1-2012 when the second party went to join his duty along with a medical certificate the first party management did not allow him to enter into the factory premises for which he approached the A.L.O., Choudwar who told him to tender resignation to the management with an assurance that he would get all his legal dues from the first party management. But as the A.L.O., Choudwar did not take proper steps, the second party workman withdrew his resignation vide letter dated 28-7-2012. It is stated that even if the second party has worked continuously under the first party management for a period of one year prior to his refusal of employment the first party management in contravention of the provisions of Section 25-F of the Industrial Disputes Act, 1947 has terminated his service. On his raising dispute before the first party management with copy to the D.L.O., Cuttack since no action was taken within a period of forty -five days, he approached this forum for redressal of his grievance.

3. The first party management in its written statement refuting the allegation of the second party workman about his termination from service has stated that the second party workman resigned from service which was given effect to with effect from the 2nd April 2012 and therefore, he has got *no locus standi* to file this case and accordingly the case of the second party workman is liable to be dismissed.

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

ISSUES

- (i) “Whether the termination of services by way of refusal of employment of Shri Bijay Ketan Swain, Assistant Operator with effect from the 13th January 2012 by the Managing Director, M/s Utkal Galvanisers Ltd., is legal and/or justified ?
- (ii) If not, what relief Shri Swain is entitled to ?”

4. In support of his case the second party workman has examined himself as W.W. No.1 and filed documents which have been marked Exts.1 to 8. The first party management did not adduce any evidence in the case.

FINDINGS

5. *Issue Nos. (i) & (ii)*—In this case the own case of the second party workman is that he has resigned though it was at the instance of the A.L.O., Choudwar. Again though the second party workman claims that before acceptance of such resignation he had withdrawn the same, the first party management in its written statement has stated that the same was accepted and given effect to from 2-4-2012. In the aforesaid circumstances, the onus lies upon the second party workman to prove that before acceptance of his resignation he had withdrawn the same but no evidence has been produced in support of his claim that before acceptance of the resignation he had withdrawn the same. In the aforesaid background the second party workman does not have any claim for reinstatement against the first party management. However, it is up to the first party management to consider the grievance of the second party workman for fresh appointment, if he is otherwise found suitable.

The case is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
14-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
14-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
R. K. NANDA
Under-Secretary to Government