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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 9th April 2014

No. 3260—IR-(ID)-14/2014-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th March 2014 in I. D. Case No. 50 of 2012 of the Presiding Officer, Industrial Tribunal, Bhubaneswar where in the industrial dispute between the Management of Odisha Engineering College, Saheed Nagar, Bhubaneswar and their workman Shri Bibhuti Bhusan Parida 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. 50 OF 2012

Dated the 15th March 2014

Present :

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

Between :

The Management of
Odisha Engineering College,
Plot No. 36-A, Saheed Nagar,
Bhubaneswar-751 007.

.. First Party—Management

And

Their workman,
Shri Bibhuti Bhusan Parida,
S/o Shri Sarbeswar Parida,
At Balarampur, Paikanasahi,
P.S. Balanga, Dist. Puri.

.. Second Party—Workman

Appearances :

Shri S. K. Das, Advocate	.. For the First Party—Management
Shri Susanta Dash, Advocate	.. For the Second Party—Workman

AWARD

This application under Section 2-A(2) of the Industrial Disputes Act has been filed for reinstatement with all back wages and consequential service benefits.

2. The case of the second party workman is that he was engaged as an Attendant on DLR basis by the first party management since June, 2001. Being satisfied with his performance the first party management absorbed him on regular basis with effect from 23-7-2007 and he has rendered service continuously for a period of more than 240 days in the preceding calendar years under the meaning of Section 25-B of the Industrial Disputes Act, 1947. Few days after his marriage under forced circumstances he had been to his sister-in-law's house from 11-4-2011 to 17-4-2011 and remained absent without permission on 15-4-2011 and 16-4-2011. On 18-4-2011 at the time of reporting in spite of his begging apology he was not allowed to resume duties and was charge sheeted by the first party management. Though he submitted in writing begging apology for his fault the first party management with an ulterior motive appointed one Enquiry Officer for conducting a domestic enquiry against him and ultimately on the basis of the report submitted by the Enquiry Officer the first party management violating the principles of natural justice terminated his service. Being aggrieved by such action he lodged a complaint before the labour machinery. As the authority failed to take proper action within the stipulated period he has filed this case.

3. The first party management in its written statement admitting the appointment of the second party workman initially on DLR basis and subsequently as a regular employee of its establishment has stated that after such regularisation he developed the habit of anti-management activities and disobeyed the authorities. During his continuance in service he was allowed 18 days E.L. with effect from 8-3-2011 to 25-3-2011 for his marriage but he did not turn up thereafter and remained unauthorisedly absent from duty and even did not submit his explanation to the show cause after expire of the stipulated period. Though the second party workman in his written statement in the enquiry admitted the guilt of his unauthorised absence from duty the first party management offered reasonable opportunity and appointed one Enquiry Officer where the second party workman also played hide and seek. However, on the basis of the report submitted by the Enquiry Officer the first party management after giving him opportunity to explain terminated his service. Hence, he is not entitled to any relief claimed for.

4. The second party workman in his rejoinder reiterating the stand taken in the claim statement has prayed for his reinstatement in service with back wages.

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

ISSUES

- (i) "Whether the domestic enquiry conducted against the workman is fair and proper ?
- (ii) Whether the action of the management in terminating the services of the workman with effect from the 4th July 2012 is legal and/or justified ?
- (iii) To what relief the workman is entitled ?"

6. In view of the principle decided in *M/s Cooper Engineering Ltd. Vrs. P. P. Mundhe*, reported in AIR 1975 (SC) 1900, the issue relating to the fairness and propriety of the domestic enquiry was taken up in the preliminary hearing and the same has been answered against the first party management.

7. In order to substantiate their respective case on other issues while the first party management examined three witnesses and filed only one document marked Ext. P, the second party workman relied upon his evidence adduced by him in the preliminary hearing.

FINDINGS

8. *Issue No. (ii)*—The first party management has terminated the service of the second party workman on the ground that he remained unauthorisedly absent from duty after expiry of his Earned Leave taken for the period from 8-3-2011 to 25-3-2011 for the purpose of his marriage as stated in Para. 6 of its written statement. But at the same time in Para. 11 of its written statement it has pleaded that the second party workman in his written statement of defence on 11-6-2011 admitted the fault of his unauthorised absence. The admission of the second party workman is that he remained absent from 11-4-2011 to 17-4-2011 out of which only 15-4-2011 and 16-4-2011 were only working days. Therefore, the aforesaid contradictory statement of the first party management shows that it has not come to this forum with a clean hand. Except the absence for the period 15-4-2011 and 16-4-2011 the first party management has not produced any document to substantiate the unauthorised absence of the second party workman for the rest of the period. Rather the statement of M.W. No. 1 in his cross examination reveals that the second party workman was present in the office on 18-4-2011 when he was served with the notice to show cause. The aforesaid statement of M.W. No. 1 supports the case of the second party workman that on 18-4-2011 he attended the office but he was not allowed to discharge his duty. Therefore, the stand of the first party management that the second party workman did not resume his duty after expiry of his leave on 25-3-2011 is not correct.

Admittedly, the second party workman was unauthorisedly absent from duty for two days but in view of his begging apology the same could have been adjusted towards his leave or salary. Since without considering the aforesaid aspect the first party management has terminated his service the same is contrary to the provisions of law and is illegal.

9. *Issue No. (iii)*—In view of the aforesaid finding to the effect that the termination of service of the second party workman is illegal, he is entitled to reinstatement in his previous post but in the circumstance of the case he is not entitled to any back wages on the principles of 'no work no pay'. Accordingly the first party management is directed to reinstate the second party workman in service within a period of two months of the date of publication of the Award in the Official Gazette.

The case is disposed of accordingly.

Dictated and corrected by me.

P. K. RAY
15-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
15-3-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

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