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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 24th January 2024

S.R.O. No. 60/2024—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award, dated the 29th December 2023 in the ID Case No. 16 of 2021 by the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Senior Scientist and Head, M/s Krishi Vigyan Kendra, At Nimakana, P.O. Manijanga, Via Titrol, Dist. Jagatsinghpur-754160 and Shri Adhikari Das, S/o Late Natabar Das, At Illaspur, P.O. Manijanga, P.S. Tirtol, Dist. Jagatsinghpur was referred to for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 16 of 2021

Dated the 29th December 2023

Present :

Smt. Aparna Mohapatra,
Presiding Officer, Labour Court,
Bhubaneswar. [JO CODE-OD-0408]

Between :

The Senior Scientist and Head, . . First Party—Management
M/s Krishi Vigyan Kendra, At Nimakana,
P.O. Manijanga, Via Titrol,
Dist. Jagatsinghpur-754160.

And

Shri Adhikari Das, S/o Late Natabar Das, . . Second Party—Workman
At Illaspur, P.O. Manijanga, P.S. Tirtol,
Dist. Jagatsinghpur.

Appearances :

Shri Rabindra Ku. Pradhan, . . For the 1st Party—Management
Farm Manager, Authorised Representative.

Shri Adhikari Das . . For the 2nd Party—Workman himself

AWARD

The Government of Odisha in the Labour & E.S.I. Department in exercise of the powers conferred upon it by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication by this Court vide their Memo No. 7469/LESI, dated the 7th September 2021.

“Whether the termination of Shri Adhikari Das, Ex-Casual Labour from service with effect from the 1st June 2020 by way of refusal of employment by the Management of M/s Krishi Vigyan Kendra, Jagatsinghpur an agriculture extension centre of Odisha University of Agriculture and Technology, Bhubaneswar is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second party as narrated in his claim statement in brief is that with effect from the 1st December 2015 he was engaged as a casual labourer under the management and continued as such continuously till the 31st May 2020 i.e. for a period of 4 years and 6 months. He alleges that all of a sudden on the 1st June 2020, he was terminated from service by the management in the guise of refusal of employment in gross violation of the provisions of the ID Act when he demanded for regularisation of his service, so also his unpaid VDA and wages (for 110 days). On this aspect, the specific assertion of the second party is that the work done by him was perennial in nature and he has rendered service more than 240 days in every year during his service period under the management, for which he had demanded for regularisation of his service. Similarly, he was also not paid his salary for the months of April and May, 2020 and 4 to 5 days in each month. Towards his good performance, on the 6th September 2017 and the 13th May 2015 he received two numbers of Experience Certificates being issued by the concerned authority of the management. According to the second party, as his service have been terminated in an arbitrary manner without following the provisions of the ID Act, he is entitled to be reinstated in his previous service with all back wages, unpaid wages and VDA. Not only that the second party has also prayed for his regularisation in service.

3. In pursuance to the notice of this Court the management entered its appearance and filed written statement thereby challenging the maintainability of the present case/dispute on the ground that the second party is neither a ‘workman’ nor the management is an ‘industry’ being not a commercial and profit making organisation, so also there exists no industrial dispute as defined under the ID Act. That apart, there is also having no relationship of employee-employer between the parties as the second party was a casual labourer, but not an employee under the management and the Sr. Scientist and Head of the management was not his appointment authority. On that count i.e. for non-joinder of necessary party, this case is also liable to be dismissed. Disputing the averments regarding the continuous period of engagement of the second party, so also his alleged termination by way of refusal of employment when he demanded for regularisation of his service without complying the provisions enumerated under Section 25-F of the ID Act and non-payment of wages for 4 to 5 days in each month as made in the statement of claim, the management pleaded that the second party was engaged as and when required basis, he was paid on daily basis and he has received all his payments. The certificate as mentioned in the statement of claim was never issued by any competent authority as proof of employment of the second party. No wage was paid to the second party for the months of April and May, 2020 as no work was assigned to him during those months. The second party was not retrenched, rather he remained absent from duty voluntarily. In the background, as above, the first party management has prayed for the dismissal of the case.

4. A rejoinder to the written statement is filed by the second party and contended that the statements submitted by the management are false.

5. In view of the pleadings of the parties the following issues are framed:—

ISSUES

- (i) Whether the termination of Shri Adhikari Das, Ex-Casual Labour from service with effect from the 1st June 2020 by way of refusal of employment by the management of M/s Krishi Vigyan Kendra, Jagatsinghpur, an agriculture extension centre of Odisha University of Agriculture and Technology, Bhubaneswar is legal and/or justified ?
- (ii) Whether the second party is coming under the definition of workman as defined in the ID Act ?
- (iii) Whether the first party is an industry under Section 2(j) of the ID Act ?
- (iv) If not, what relief the second party is entitled to ?”

6. The second party in order to substantiate his stand besides adducing his evidence as WW No.1, has also examined one witness as WW No.2 and relied on certain documents which are marked as Exts.1 to 11.

On behalf of the first party management, the Firm Manager, namely Rabindra Kumar Pradhan has been examined as MW No.1, but no document is exhibited on its behalf.

FINDINGS

7. *Issue No. (ii)*—In the WS, it has been stated with vehemence by the management that the second party is not a ‘workman’ as defined under the Act. But, to that effect, the management neither filed a single scrap of paper to convince the Court nor put a single question to the second party during his cross-examination. However, it is the common case of both the parties that the second party was engaged as a Casual/Daily Labourer under the management. The second party as WW No.1 while corroborating the averment made in the claim statement has deposed at Para. 4 to the effect that he was engaged to work in the Cow Unit, Rabbit Unit, Poultry Unit, Pig Units, so also in the production of seeds and plantation, whereas during his cross-examination nothing has been elicited from his mouth to discard such evidence. Similarly, the MW No.1, who is none other than the Farm Manager of the management, during his cross-examination clearly testified that as per the instruction of the Sr. Scientist as Head of the Institution, he used to supervise the work of daily wage labourers and in his evidence also asserted that the second party is an unskilled worker. At this stage, it is felt appropriate to mention here that there is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman. Further, in the decision reported in 2011 AIR (SCW) 3455 = AIR 2011 SC 2532, in the case of *Devinder Singh Vrs. Municipal Council, Sanuar*, the Hon’ble Apex Court have been pleased to observe that the definition of workman also does not make any distinction between full time and part-time employee or a person appointed on contract basis.

So, in view of the discussions made above and in absence of any evidence that the second party being a Casual/Daily Labourer was doing managerial and administrative nature of duties, it is held that second party is a ‘workman’. Accordingly, this issue is answered against the management.

8. *Issue No. (iii)*—From this issue, it emerges that the first party is not an industry as per Section 2(j) of the ID Act as alleged by the management. In the written statement though much emphasis is given on the point of maintainability on the account that the establishment of the management is not an industry, yet the same having not been challenged/substantiated during hearing of this case, so also through adequate evidence, this Court has no other option than to hold that the first party management is an industry as defined under the ID Act.

Accordingly, this issue is answered against the management.

9. *Issue No. (i)*—Needless to say here that the fate of the instant dispute very much rests on the decision of the present issue. In this regard, the second party has claimed to have worked as a Casual Labour under the management continuously for the period from the 1st December 2015 till the 31st May 2020 when his service was abruptly/arbitrarily terminated by the management in the guise of refusal of employment without compliance of the statutory requirements of the Act. On the contrary, it is specifically pleaded by the management that the second party being a Casual Labourer, he is at liberty to work as per his sweet will and accordingly, he has left his service under the management on his own volition, so question of refusal of employment which amounts to termination, as alleged by the second party, does not arise.

On the face of above, it is pertinent to mention here that as per the settled position of law, the burden is on the claimant to prove that he was not only employed under the management, but also had rendered continuous service under it for a period of at least 240 days, so as to seek protection of the provisions of Section 25-F of the ID Act. This view finds support from a decision of the Hon'ble Apex Court in the case of *R. M. Yellatti Vrs. The Assistant Executive Engineer* [2006 (1) SCC 106]. So, as per the above settled position of law, if the second party succeeds in establishing the fact of his continuous service under the management as provided in Section 25-B of the Act, then only the provisions stipulated in Section 25-F of the Act would be attracted. Hence, it is to be examined as to how far the workman has established that he rendered continuous service of 240 days under the management in view of the proposition of law as propounded above by the Hon'ble Apex Court so also in a *plethora* of decisions.

At the cost of repetition, it reiterates that the second party was engaged as a Casual Labourer under the management and his service was supervised by the Farm Manager of the management, for which definitely there exists employee-employer relationship between the parties. In the case in hand, it is the plea of the management that the Sr. Scientist and Head of the management is not the appointing authority of the second party. Undisputedly, the second party was engaged under the management, but nowhere, the management has disclosed that who had engaged the second party under it. However, the MW No.1 during his cross-examination admitted that the Sr. Scientist is the Head of the institution where the second party was working.

It is a fact that in the instant case no documentary evidence is adduced on behalf of the second party showing his exact period of engagement. However, while cross-examining MW No.1, the second party has succeeded to elicit that he (the second party) had worked for 275 days from April, 2017 to March, 2018, for 285 days from April, 2018 to March, 2019 and for 285 days from April, 2019 to March, 2020 under the management and that the second party has worked for more than 240 days in each calendar year. So, from the above evidence of the MW No.1, it is clear that the second party had worked for a period of 240 days in each calendar year under the management.

Next it is to see if at all the first party management ever refused employment to the second party by way of terminating him from service. Needless to say that when the second party emphasises that his service has been terminated by way of refusal of employment, the contention

is advanced on behalf of the management to that effect that the second party being a casual labourer has voluntarily abandoned his service under it. But, it is the settled position of law that “to constitute voluntarily abandonment of service, there must be total or complete giving up of duties and/or expression of the intention not to serve any further”. On perusal of Ext. 1, the xerox copy of the complaint petition of the second party reveals that he had submitted a complaint petition (arising out of the present case) before the concerned DLO against the illegal termination of his service by the management thereby claiming for his reinstatement in service. Had there been any intention of the second party not to serve the management any more, he would not have persuaded his claim before the labour machinery. Further, no evidence either oral or documentary is available on the record to show that the second party was recalled by the management to join in his duty when it is alleged that the second party remained absent voluntarily. In the statement of claim, the second party alleged that as he was not paid enhanced VDA with his wages, so also his unpaid wages, he demanded for the same, but the management instead of paying the same, rather terminated his service by way of refusal of employment. It also transpires from Ext.1 that the second party also put forth such grievance before the concerned DLO. It appears from the order sheets that despite direction of this Court on the petition of the second party, the management was directed to produce the attendance register for the period from January 2020 to May, 2020 as the management strongly objected his engagement under it after March, 2020. But, the management neither complied with such order nor filed any document in view of such order when the management itself in its WS admitted to have maintained records regarding payment made to the casual labourers. So, an inference can be drawn against the management owing to non-filing of any document as per the order of this Court. Further, on a careful scrutiny of the views of the management to Ext.1 attached to the Failure Report, it is found that the same is totally silent about the voluntary abandonment of service by the second party under it. Furthermore, the documents attached with the Failure Report also denotes that after filing of Ext. 1, the second party was paid his VDA for the period from 2018-19 to 2019-20 which definitely support the allegations of the second party. So, there is every reason to presume that when the second party has claimed for his wages with hike VDA, he was refused employment.

So, taking all these factors into consideration, it can therefore be held that the second party at no point of time had abandoned his service and accordingly, the argument advanced on this score on behalf of the management *sans* merit. So, it is a clear case of termination by way of refusal of employment.

Now coming to the question of legality and justifiability of the termination of service of the second party, it is found that this Court has already come to a conclusion that the second party, having rendered service for a period of 240 days in each calendar year during his engagement period under the first party management, was entitled to the protection of Section 25-F of the Act. Admittedly, the management has not complied with the provisions of Section 25-F of the Act at the time of refusal of employment to the second party which amounts to termination. The non-compliance of the mandatory provisions of Section 25-F of the Act by the management at the time of termination of the second party is undoubtedly an illegal and unjustified action of the management.

10. *Issue No. (iv)*—In view of the findings on issue No. (i), the next question that falls for determination is as to what relief the second party is entitled to ? It has been fairly admitted by the second party that he was working under the management as a casual labourer and his employment was for a short period. So, it is felt apt to refer a decision of the Hon’ble Apex Court in the case of Assistant Engineer, Rajasthan Development Corporation and another *Vrs.* Gitam Singh [(2013)

5 SCC 136], wherein their Lordships by referring a *catena* of decisions have held that in case of daily wagers, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice. In the light of the legal positions and having regard to the facts of the present case including the status & nature of employment of the second party and his length of employment under the management, this Court while declining to grant the relief of reinstatement and back wages in favour of the second party, feels it appropriate to award some monetary compensation which would meet the ends of justice. Accordingly, the second party is held entitled to receive a monetary compensation of Rs. 60,000 (Rupees sixty thousand) only from the management for the wrongful termination of his service. The payment of the compensation be made to the second party within two months from the date of publication of the Award in the Official Gazette, failing which the same will carry interest @ 6% per annum till its realisation.

The issue is answered accordingly and consequently the reference is disposed of.

Dictated and corrected by me.

APARNA MOHAPATRA
29-12-2023
Presiding Officer
Labour Court, Bhubaneswar

APARNA MOHAPATRA
29-12-2023
Presiding Officer
Labour Court, Bhubaneswar

[No. 610—LESI-IR-ID-0003/2024-LESI.]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government