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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 22nd April 2016

No. 3111—IR (ID)-31/2016-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th March, 2016 in Industrial Dispute Case No. 52 of 2015 of the Presiding Officer, Labour Court, Bhubaneswar wherein the industrial dispute between the Managements of (1) M/s. Rail Road Logistics (I) Pvt. Ltd., C/o. Jena Godown Complex, Rudrapur, Plot No. 11, N.H.-5, P.O. Pahala, P.S. Baliana, Bhubaneswar, Dist. Khurda-10, (2) The M.D., M/s. Rail Road Logistics (I) Pvt. Ltd. Shivaji Nagar, Pune and their workman Shri P. Nilakantha Reddy was filed by the above workman under Section 2-A(2) of the I. D. Act, 1947 for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 52 OF 2015 U/S. 2-A(2)

Dated the 14th March 2016

Present :

Shri S. K. Sahoo, O.S.J.S., (Jr. Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

1. M/s. Rail Road Logistics (I) Pvt. Ltd.,
C/o. Jena Godown Complex, Rudrapur,
Plot No. 111, N.H.-5, P.O. Pahala,
P.S. Baliana, Bhubaneswar, Dist. Khurda-10. . . First Party—Managements
2. The Managing Director,
M/s. Rail Road Logistics (I) Pvt. Ltd.,
Flat No. 2, 2nd Floor, Vishwanjali,
Sagar Co-operative Society, Behind Vodafone
Store, Mumbai-Pune Road, Wakadewadi,
Shivaji Nagar, Pune-411 005.

And

Shri P. Nilakantha Reddy, . . . Second Party—Workman
 S/o. P. Narasingh Reddy,
 At Sikhar Chandi Nagar,
 P.S. Infosys, Bhubaneswar,
 Dist. Khurda.

Appearances :

Shri R. K. Pradhan, Auth. Representative . . . For the First Party—Managements

 Shri S. Behera, General Secretary of . . . For the Second Party—Workman
 Bhubaneswar Industrial Workers Union,
 Authorised Representative.

AWARD

The applicant, namely, Shri P. Nilakantha Reddy has filed the present application under Section 2-A (2) of the I. D. Act, 1947 challenging the refusal of his service from the 10th February 2014 by the first party managements.

2. The case of the second party workman is that he was engaged as a Heavy Vehicle Driver under the first party management from January 2005 and continued till 10th February 2014 without any break. The applicant along with 21 others were initially engaged under the first party managements and receiving salary of Rs.6,000/- each per month just before the illegal refusal of their employments. While a conciliation proceeding on Charter of Demand before the D.L.O.-cum-Conciliation Officer, Khurda at Bhubaneswar was pending, the applicant and his Co-workmen were refused their employment by the management. The managements have not paid the monthly wages for the month of December 2013, January and February 2014. On the request of the applicant for intervention of the Union, the Union of the workmen intervened into the matter and had approached the D.L.O. for conciliation. Due to non-cooperation of the first party managements, amicable settlement before D.L.O. failed. At the time of refusal of service of the applicant, the first party managements have not followed the provisions of sections 25-F and 25-H of the I. D. Act, 1947. Hence, the applicant has prayed for his reinstatement in service with full back wages.

3. On the other hand, the case of the first party managements is that the applicant was never employed as a Driver under the first party managements at any point of time. There is no employee and employer relationship in between them. The second party is not coming under the definition of 'Workman' as defined under section 2(s) of the I. D. Act, 1947. The Bhubaneswar Industrial Workers Union (CITU) is no way connected with the organisation of the first party nor the second party was a member of the said Union. Prior to the present proceeding, the second party had filed another proceeding bearing No. 01 of 2014, for which the present proceeding is not maintainable. The present application under Section 2-A (2) of the I. D. Act is also not maintainable. This Court has no jurisdiction to entertain the present application of the applicant under that Section. The nature of work of the first party management is only to transport/deliver the Mahindra Jeeps (new vehicles) by road from Mahindra Depot situated at Choudwar and Cuttack to different dealers of Mahindra Showrooms throughout Odisha as per the requirements of the dealers placed before the Mahindra Company. Whenever Mahindra Company placed their demand for delivery of new vehicles to the dealers, the organisation of the first party used to perform the said job of transportation by assigning the said work to the drivers who are generally available on payment of the money as

demanded by the drivers. The service of the driver is hired on per kilometre basis for a particular vehicle only. The work of the transportation of new vehicles by the first party management is not a regular work nor the drivers are engaged on monthly basis. The drivers were engaged by the first party management as and when required after receipt of the orders from Mahindra Company. Hence, the application filed by the applicant under Section 2-A (2) of the I. D. Act, 1947 is not maintainable which may be rejected.

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

ISSUES

1. Whether the second party was a workman under the first party management ?
2. Whether there was refusal of service of the second party workman by the first party management, i.e. M/s. Rail Road Logistics (I) Pvt. Ltd. on 10.02.2014 ?
3. Whether the 2nd party workman is entitled for any other relief or reliefs ?

5. The second party workman is examined as W.W. 1 and Exts. 1 and 2 are marked on his behalf. Ext. 1 is the photo copy of the reply, dated the 26th September, 2013 of the first party managements submitted to the D.L.O., Khurda and Ext. 2 is the photo copy of From-D issued by the Conciliation Officer, Bhubaneswar.

On the other hand, the Branch-in-Charge of the first party managements is examined as M.W.1.

FINDINGS

ISSUE Nos.1 and 2.

6. For the sake of convenience and to avoid repetition, both the issues are taken up together for discussion. According to the Statement of Claim, the case of the second party workman is that he was engaged by the managements of first party organisation in the month of January, 2005 (paragraph-2). The second party while examined as W.W. 1 in his affidavit evidence at paragraph-2 also deposed that he was engaged under the first party management from January, 2005. During his cross-examination at paragraph-16, W.W. 1 admitted that in the month of August, 2005, he had joined under the first party managements. It is admitted by W.W. 1 that no notice or advertisement was given by the first party managements for appointment of drivers. It is also his evidence that no interview was conducted nor appointment letter was issued to him by the managements, but he was engaged by the Authorised Representative of the first party managements Mr. Rajib Kumar Pradhan since January, 2003. He fairly admitted that no engagement letter was issued to him by Mr. Pradhan. The evidence of the second party regarding the month of his engagement under the first party managements is prevaricating and not reliable. At paragraph-17 of his evidence during cross-examination, he also admitted that he cannot produce any document that he was working under the first party managements for 240 days in a year. So it is clear from the evidence of W.W. 1 that he failed to prove that he was a workman under the first party managements and the managements refused his service on 10th February 2014. (Range Forest Officer *Vrs.* S.T. Hadimani, [2002] 3 SCC 25, Rajasthan State Ganga Nagar S.Mills Ltd. *Vrs.* State of Rajasthan and Another, [2004] 8 SCC 161, Municipal Corporation, Faridabad *Vrs.* Siriniwas, [2004] 8 SCC 195, M.P Electricity Board *Vrs.* Hariram, [2004] 8 SCC 246 and AIR 2015 S.C. 609 Bhabanagar Municipal Corporation, etc. *Vrs.* Jadeja Govubha Chhanubha and Another).

On the other hand, the Manager of the first party management No. 1, who is the first party management No. 2 has been examined as M.W. 1. In his affidavit evidence, he has stated that the second party was never engaged by the first party managements for transportation of vehicles. He has also deposed that whenever an order is placed to the first party managements by the Mahindra Company, the managements used to engage drivers available for transportation of the vehicles from the Depots to the show rooms as and when required. None appeared for cross-examination of M.W. 1. The evidence of MW. 1 is on oath and goes unchallenged. The onus is on the second party to prove that he served under the first party managements continuously for a period of 240 days as per the definition of 'continuous service' provided under Section 25-B (2) of the I. D. Act, 1947 (2015 LLR 591 M/s. Haryana Breweries Ltd. *Vrs.* Presiding Officer, Labour Court and Another). In the case in hand, the second party failed to prove that he served under the first party managements continuously for a period of 240 days within 12 months prior to his termination. He also failed to prove that the employees junior to him are continuing under the first party managements although he was refused service by the first party managements. The evidence of W.W. 1 is contradictory and prevaricating in nature. The uncorroborated evidence of W.W. 1 is also not reliable and trustworthy. The second party workman failed to prove that he was a workman under the first party managements and he was refused service by the first party managements on 10th February 2014.

These issues are answered against the second party.

ISSUE No. 3

7. In view of my findings under issues No. 1 and 2, the second party is not entitled to any relief.

The application is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO
14-03-2016
Presiding Officer
Labour Court, Bhubaneswar

S. K. SAHOO
14-03-2016
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
M. NAYAK
Under-Secretary to Government