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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 30th June 2022

S.R.O. No. 458/2022—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the award dated 7th June, 2022 in the ID Case No. 09 of 2022 [U/s2-A(2)] of the Presiding officer, Industrial Tribunal, Bhubaneswar on the industrial dispute between the (1) Managing Director M/s Surya Yodog Limited, At/P.O.Paradeepgarh, P.S.Paradeep Lock, Dist. Jagatsinghpur-754141, (2)The Managing Director, M/s Rams Assorted D-Cold Storage Ltd., At/P.O.Paradeepgarh, P.S. Paradeep Lock, Dist. Jagatsinghpur-754141 and Shri Bibhuti Bhusan Mishra. S/o Dhruba Charan Mishra, At Chunabelary, P.O. Paradeepgarh, Dist. Jagatsinghpur-754141 is hereby published as in the schedule below:—

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSRIAL DISPUTE CASE No.09 of 2022 [U/s 2-A(2)]

Dated the 7th June 2022

Present :

Shri Goutam Sharma, M.A., LL.B.,
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

(1) The Managing Director, . . . First Party—Managements
M/s Surya Yodog Limited,
At/P.O. Paradeepgarh,
P.S. Paradeep Lock,
Dist. Jagatsinghpur-754141.
(2) The Managing Director, . . .
M/s Rams Assorted D-Cold Storage Ltd.,
At/P.O. Paradeepgarh,
P.S. Paradeep Lock,
Dist. Jagatsinghpur-754141.

And

Shri Bibhuti Bhusan Mishra,
S/o Dhruva Charan Mishra,
At Chunabelary, P. O. Paradeepgarh,
Dist. Jagatsinghpur-754141.

.. Second Party—Workman

Appearances :

None	.. For the 1st Party Nos. 1 & 2
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Shri B. B. Mishra	.. For the 2nd Party—himself

AWARD

This is an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (in short 'the Act') filed by one Shri Bibhuti Bhusan Mishra (hereinafter referred to as 'the second party') challenging termination of his service with effect from the 15th December 2020 by M/s Rams Assorted D-Cold Storage Ltd. (hereinafter referred to as 'the first party management No. 2) with a prayer for his reinstatement in service with full back wages along with all other service benefit.

2. The case of the second party in brief is that he initially joined under M/s Surya Yodog Ltd. (hereinafter referred to as 'the first party—management No.1) on 1st January 2002 as a skilled worker and continued to work under it till 23rd November 2017 when he was transferred to work under first party No. 2. It is stated that while working under the first party No. 2 all of a sudden on the 15th December 2020 the second party was not allowed to perform his duty and was told that his service has been terminated. Challenging the termination it is stated by the second party that he having rendered continuous service for more than 240 days under 'the first party No. 2, his termination from service amounts to 'retrenchment and for non-compliance of the mandatory provisions of the Act by the first party No. 2 the same is illegal as well as unjustified. Further alleged that the action of the first party No. 2 is not sustainable as juniors to him have been retained and new persons have been engaged after his retrenchment in violation of the provisions of Sec. 25-F, 25-G and 25-H of the Act. The second party in the circumstance prayed for his reinstatement in service with full back wages and other service benefits.

3. No written statement is filed by the first party managements, nor any step was taken on their behalf. The Registered notices sent to both the first party managements returned unserved with the postal remark "refused", hence both the first party managements are set *ex parte*.

4. Basing on the averments of the claim statement, the following issues have been settled :—

ISSUES

- “(i) If the case is maintainable ?
- “(ii) Whether the action of the Managing Director, M/s.Rams Assorted D-Cold Storage Ltd, in terminating the services of Shri Bibhuti Bhusan Mishra with effect from the 15th December 2020 is legal and/or justified ?
- “(iii) If not what relief the workman is entitled to ?”

5. To substantiate his stand, the second party examined himself as W.W. No.1, also examined another witness W.W. No. 2 on his behalf and relied on the xerox copy of the complaint the 18th March 2021 addressed to the District Labour Officer, Jagatsinghpur (Ext.1); xerox copy of statement of his S.B. Account (Ext. 2) and xerox copy of his EPF statement (Ext. 3).

FINDINGS

6. *Issue No. (i)*—The averments with regard to the engagement of the second party as a skilled workman under the management which runs a Cold Storage remained unchallenged, as both the first party managements abstained from the proceeding and did not turn-up despite registered notices. Hence, looking to the status of the second party he is held to be a ‘workman’ coming within the definition of Section 2(s) of the Act. The first party organisation, which runs a Cold Storage and carries on business in a systematic manner with the co-operation of the workers to satisfy human wants is also held to be an ‘industry’ within the meaning of Section 2(j) of the Act.

7. It reveals from Ext. 1, the copy of the complaint petition dated the 18th March 2021 of the second party and others addressed to the District Labour Officer, Jagatsinghpur that on their refusal of employment by the management they approached the labour machinery ventilating their grievances, but as the same could not resolved within the stipulated period, the second party filed the instant application under Section 2-A(2) of the Act on the 3rd January 2022, hence the case is held to be maintainable in this forum.

8. *Issue No. (ii)*—The refusal of employment of the second party with effect from the 15th December 2020 is challenged under this issue on the ground that the same amounts to retrenchment owing to non-compliance of the provisions of Section 25-F of the Act by the first party management.

Section 25-F of the Act reads as under:-

25F. Conditions precedent to retrenchment of workmen. No workman employed in any industry 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 such 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 or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

A bare reading of the aforesaid provision reveals that in order to attract the provisions of Sec. 25-F of the Act, the claimant has to establish that he had rendered continuous service for not less than one year under his employer. ‘Continuous service’ is defined u/s 25-B of the Act, which reads as under :—

25B. Definition of continuous service :

For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

- (i) ninety-five days, in the case of a workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case.

It is well settled in a catena of decisions of the Hon'ble Supreme Court that to claim protection of the provisions of Section 25-F of the Act, the burden rests on the claimant to prove that he has rendered continuous service for more than 240 days under his employer. In this connection, it is profitable to refer to a decision of the Hon'ble Supreme Court in the case of *R. M. Yellatty Vrs. Assistant Executive Engineer*, reported in (2006) 1 SCC 106 wherein it has been observed as follows :—

“However, applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily waged earlier there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus, in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.”

9. The above being the position of law, now it is to be examined as to how far the second party is able to establish that he had worked for 240 days under his employer so as to claim the protection of Sec.25-F of the Act.

10. W.W. No.1, the second party in his examination-in-chief stated that initially he joined the first party management No.1 with effect from the 1st January 2002 and continued there till 23rd November 2017 and thereafter he was transferred to work under first party management No. 2 where he continued till 15th December 2020. He stated that on 15th December 2020 when he

went to perform his duty the first party management No.2 refused him employment and did not allow him to discharge his duty. Further stated that he was working continuously under both the managements for the period from the 1st January 2002 till 15th December 2020 but in spite of deductions of EPF and ESI contributions from his wages he was not covered under the ESI/EPF Scheme. In support of his continuous work under the first party No. 2 W.W. No.1 proved Ext. 2, the copy of his Savings Bank Account. W.W. No. 1 also stated that the first party while terminating his service allowed his juniors to continue and also engaged new persons in its establishment. He further deposed that termination of his service being in contravention of the provisions of the Act he is entitled to reinstatement in service with full back wages and other service benefits. The other witness W.W. No. 2 examined on behalf of the second party corroborating the evidence of W.W. 1 stated in his examination in chief that while he was employed as a Store Keeper under the first party, the second party was also working there continuously from the 1st January 2002 till 15th December 2020 and was being paid his wages sometime through his bank account, sometime through voucher and sometime through advance register. He further deposed that during his employment the second party was covered under the ESI and EPF Scheme but the deductions effected from the wages of the second party towards the ESI and EPF were not being deposited by the management with the concerned authorities.

11. The second party-workman in his claim statement so also in the examination-in-chief taken a clear stand that he was a skilled labourer and joined the establishment of the first party management No.1 on 1st January 2002 and continued till 23rd November 2017 and thereafter his service was placed under the first party management No.2 where he continued till the date of his retrenchment i.e. 15th December 2020. It is also his stand that he was getting regular salary from the first party management Nos. 1 and 2 and in spite of deductions of EPF and ESI contributions from his wages he was not covered under the ESI/EPF Scheme. But not a single scrap of document has been filed by the second party to show that contributions towards ESI and EPF were being deducted from his monthly wages. The second party workman filed his Bank Pass Book relating to the period from December 2012 to December 2018 (Ext. 2). On close scrutiny of the Bank Pass Book it shows that after dated the 23rd November 2017 certain amount was credited to the account of the second party during the year 2018 i.e. from April 2018 to November, 2018 except September 2018 on clearing from the account of the first party management No. 2. Except the above transactions there is no other transaction in any month right from November 2017 to December 2020 regarding credit of money in the account of the second party workman from the account of the first party management No. 1 or 2. Solely basing on such transactions which covers a period of seven months, i.e. less than 240 days in one calendar year it cannot be concluded that the second party workman had rendered continuous service of 240 days preceding the date of his termination of service as defined under Section 25-B of the Act. For the assigned reasons Ext. 2 is of no help to the second party. Moreover, The second party workman did not take any endeavour to file any other document except the Savings Bank Account Ext. 2 to prove that he was working under the first party management Nos. 1 and 2 from the year 2002 to 2020 and was getting his monthly wages from the said Managements. In absence of any documentary proof no reliance can be placed on the affidavits which are self-serving documents. In the result, the second party has miserably failed to establish that he worked continuously for a period of 240 days in one calendar year preceding the date of termination under the first party management No. 2, accordingly is not entitled to the protection of Section 25-F of the Act.

12. Another plea is also taken by the second party that while terminating his service the first party management No. 2 allowed his juniors to continue and also engaged new persons and thereby the management violated the provisions of Section 25-G and H of the Act. To prove such aspect the second party has failed to place on record the seniority list of workers and engagement order, if any, of new persons so as to scrutinize the same and arrive at a conclusion on the point.

13. In view of discussions held above, issue No. 2 is answered in the affirmative in favour of the first party management No.2.

14. *Issue No. (iii)* —In view of the finding arrived at on Issue No. 2, the second party workman is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

GOUTAM SHARMA
7-06-2022
Presiding Officer
Industrial Tribunal
Bhubaneswar

GOUTAM SHARMA
7-06-2022
Presiding Officer
Industrial Tribunal
Bhubaneswar

[No. 5229—LESI-IR-ID-0170/2022-LESI.]

By order of the Governor
NITIRANJAN SEN
Additional Secretary to Government