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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 13th December 2019

No. 7692–IR-ID-34/2017-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd December, 2019 in I.D Case No. 29/2017 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Shakti Pack Pvt. Ltd., Plot No. 30, VIP Area, Nayapalli, Bhubaneswar and its Workman Shri Gobinda Moharana was referred to for adjudication is hereby published:

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO.29 OF 2017

Dated the 3rd December 2019

Present :

Shri Manas Ranjan Barik, M.A.LL.B.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

The Management of
M/s. Shakti Pack Pvt.Ltd.,
Plot No. 30, VIP Area,
Nayapalli, Bhubaneswar. . . First Party—Management

And

Shri Gobinda Moharana,
S/o Ganesh Moharana,
At Babaja,
P.O. Utaran,
Dist. Cuttack. . . Second Party—Workman

Appearances :

Shri Satyendu Mohanty, Manager	. .	For the First Party—Management
Shri Gobinda Moharana	. .	Second Party—Workman himself

AWARD

The Labour and E.S.I. Department of the Government of Odisha have referred the following dispute for adjudication by this Tribunal vide its Order No. IR(ID)-34/2017/8713-LESI. dated the 13th November 2017:—

"Whether the termination of service of Shri Gobinda Moharana, Carpenter -*cum*-Pattern Maker with effect from the 12th August 2016 by the Management of M/s Shakti Pack Pvt.Ltd., Plot No. 30, VIP Area, Nayapalli, Bhubaneswar is legal and /or justified ? If not, what relief Shri Gobinda Moharana is entitled to ?"

2. The case of the second party, in short, is that since the year 1998 he had been working under the first party as a Carpenter-*cum*-Pattern Maker and was covered under the EPF/ESI Scheme. He alleges that while working as such he was not being paid overtime wages regularly although he was working 12 hours a day instead of 8 hours. Besides, the first party was also not paying him bonus, E.L. wages etc. According to him, on the 11th August 2016 due to his illness he could not work overtime and on the next day that is on the 12th August 2016 while he was on duty the Supervisor of the Establishment refused him employment without assigning any rhyme or reason for such refusal. Thereafter he ventilated his grievance before the Managing Director of the first party and requested for his reinstatement but he paid a deaf ear to such request for which he redressed his grievance before the Labour machinery. It is specifically asserted by the second party that he having rendered continuous employment of more than 18 years under the first party his refusal of employment amounts to termination of service and the same is illegal owing to non-compliance of the mandatory provisions of the Act. Further assertion of the second party is that during his tenure of employment under the first party he was never asked to show cause for any dereliction in duty nor any enquiry was ever conducted in that regard. In the background as narrated above, the second party has prayed for awarding a lump sum compensation in his favour owing to the fact that from the date of his illegal termination he has not been gainfully employed elsewhere.

3. The first party entered contest in the case and filed its written statement. At the threshold the first party challenged the maintainability of the reference on the ground that it is not an 'Industrial Dispute' within the meaning of Section 2(k) of the Act. While admitting about the engagement of the second party under it as a worker with effect from the 1st December 1998, it is stated by the first party that after working for ten months only he had left the job on the 31st October 1999 and again in the year 2001 on his approach the first party re-engaged him in the job with effect from the 1st April 2001 with a monthly wage of Rs.2000 which was enhanced from time to time basing on the prescribed minimum wages. It is the categorical stand of the first party that the second party used to take advance frequently from the first party and ultimately when the Account Department wanted to deduct such huge advance amounting to Rs.50,000 from the salary of the second party, he requested not to deduct the same as he was under financial crisis. It is stated that with such background the second party on the 12th August 2016 again requested the first party to pay him an advance of Rs.10,000 and when his such request was not heeded to, he left the factory saying that

he will not come to work any further. According to the first party, the engagement of the second party under it was never for a continuous period of more than 240 days. Besides, he was never refused employment by it, rather he has voluntarily abandoned his job. There having no termination of service of the second party, the first party has prayed to answer the reference in the negative as against the second party.

4. In view of the question posed by the appropriate Government vide the instant reference as well as the rival pleadings, the issues emerge for determination are as follows :

ISSUES

(i) If the termination of service of Shri Gobinda Moharana, Carpenter-*cum*-Pattern Maker with effect from the 12th August 2016 by the Management of M/s Shakti Pack Pvt.Ltd., Plot No.30, VIP Area, Nayapalli, Bhubaneswar is legal and /or justified ?

(ii) If not, what relief Shri Gobinda Moharana is entitled to ?

5. To substantiate his stand the second party examined himself as W.W.1 and placed reliance on copies of documents such as - complaint petition, dated the 9th September 2016 addressed to the DLO, Bhubaneswar (Ext.1); EPF slip for the year 2013-14 (Ext.2); ESI Card (Ext.3); Experience Certificate, dated the 7th March 2009 granted by the management in favour of the second party (Ext.4) and statement showing deposite particulars of EPF of the second party (Ext.5) and out of the same Ext.1 has been marked with objection. Similarly, the first party in its turn has examined two witnesses namely, Shri Ajay Kumar Pradhan as M.W.1 and Shri Satyendu Mohanty as M.W.2 and placed reliance on documents such as Original Register of Wages for the period from the 1st March 2002 to 30th June 2004 (Ext.A); Original Register of Wages for the period from the 1st December 2015 to 30th September 2016 (Ext.B); Original Voucher, dated the 20th May 2016 (Ext.C) and Original Voucher, dated the 22nd July 2016 (Ext.D) which have been marked with objection.

FINDINGS

6. *Issue No. (i)* – This issue being the pivotal one, is taken-up at first for consideration for the sake of convenience, brevity and just decision. Neither any dispute has been raised from any quarters regarding the status of the second party to be a 'workman', nor the first party to be an 'industry' as defined under the Act.

7. In the case at hand , it is the positive case of the second party that his services have been terminated illegally in total non-compliance of Sec.25-F of the Act with effect from the 12th August 2016. In this regard W.W.1 while corroborating the facts stated in the claim statement has adduced evidence to the effect that on the 12th August 2016 while he was performing his work, the Supervisor of the Company told him that as in the previous day he had not done his overtime duty and left the office after 5 P.M., his services were no more required further. On the next day at 10 A.M. though he met the Director of the Company, but he did not allow him to continue his job on the ground of refusal of overtime duty. During cross examination of W.W.1 nothing convincingly has been elicited from his mouth to disbelieve his such evidence. Rather, he has clarified at that time that on the 12th August 2016 the Supervisor of the Company namely, Rout Babu refrained him from performing his duty.

8. On the contrary, it is the positive assertion of the first party that it is not a case of termination of services of the second party, rather the second party has voluntarily abandoned his service with

effect from the 13th August 2016. In this regard, both the witnesses examined on behalf of the first party have categorically adduced evidence to the effect that the second party had availed advance loan of an amount of Rs.50,000 in total in two instalments. On 12th August 2016 when he again requested the first party to pay a further advance amount of Rs.10,000 the first party refused to pay and asked the second party to pay back the previous advances. At that time the second party became violent and refused to continue in job and thereafter the second party has not turned up to work. But during cross-examination of M.W.1 it has successfully been elicited from his mouth that the second party had not filed any application seeking the said advance by him. It has further been elicited from the mouth of M.W.2 that though on the 2nd November 2016 he had attended the conciliation proceeding before the Conciliation Officer, but he had not raised the plea regarding the payment of any advance amout to the second party. Whereas, it is the consistent case of the second party that the management has neither recalled him to resume his duty nor initiated any disciplinary proceeding nor sought for any explanation from him. Further, during cross-examination of M.W.1 he has admitted that no notice has been served on the second party from the side of the management prior to presuming him to have abandoned his services. At this juncture, a genuine doubt creeps into the mind of this Tribunal as to how the first party remained silent when one of its workmen did not turn up to his duties after taking a huge advance amount of Rs.50,000 instead of issuing any notice to him to refund the same or to resume his duty. Further, it is the positive evidence of W.W.1 that he had served under the management continuously and uninterruptedly from 1998 to 2016. Whereas, it is the case of the first party that the second party had served under it from the year 2001 till 2016. It cannot be believed for a moment that after serving under the management for more than 15 years, a workman would leave his services wilfully basing on a trivial issue.

9. Needless to reiterate here the settled proposition of law that “Abandonment”, it is trite, presages, as its *sine qua non*, the animus to abandon. Sans animus, there can be no abandonment. Willingness to work and voluntary abandonment are strange bedfellows, which cannot cohabit together. Abandonment is a positive act, deliberately and mindfully done, in the awareness and acceptance of the consequences that ensue. Being a positive act, law always casts the onus, to prove the factum of abandonment by the employee, on the person asserting the fact. Abandonment, ordinarily, cannot be “deemed”. In the case at hand, nothing substantial has been put forth by the first party to hold that the second party has wilfully abandoned his services. There is no quarrel over the fact that in a case under the Act the party is to prove its case by preponderance of probability and not beyond all reasonable doubt as in a criminal case. From the discussions made in the aforementioned paragraphs, it clearly emerges that the second party has successfully proved beyond preponderance of probability its case to the effect that his services have been terminated by the first party with effect from the 12th August 2016.

10. Now, it is to be seen as to whether the second party had rendered continuous service under the first party in view of Section 25B of the Act. In this regard, W.W.1 in corroboration of the averments of the claim statement has adduced evidence to the effect that he was an EPF/ESI Scheme holder for 18 years and rendered his services as a Carpenter-*cum*-Pattern Maker under the magagement for the period from the 1998 to 11th August 2016. He has completed more than 240 days continuous employment in 12 calendar months prior to the date of his termination of service. Though the first party has consistently disputed the said fact, but during cross-examination of W.W.1 nothing has been elicited from his mouth to disregard his such evidence. In the case at hand, the original Registers of Wages for the period from the 1st March 2002 to 30th June 2004 and

1st December 2015 to 30th September 2016 have been produced from the side of the management under Exts.A and B. On perusal of Ext.B it emerges that the second party had worked for 24 days; 24 days; 24 days; 24 days; 24 days; 25 days; 24 days and 12 days from the December 2015 to August 2016, respectively. In the case at hand no Wage Register showing the engagement of the second party preceding the 12 calendar months of the date of his termination has been filed by the management. Be that as it may, the second party to establish his continuous engagement under the first party for a period of more than 240 days in a calender year has relied on Exts.2 to 5. It is pertinent to mention here that during the admission of the said documents into evidence the first party has not raised objection in any manner. Ext.5 goes to show that amounts of Rs.511; Rs.528; Rs.534; and Rs.453 had been contributed by the second party towards his P.F. subscription for the months of November 2015, October 2015, September 2015 and August 2015, respectively. Ext.5 further reveals that amounts of Rs.528; Rs.557; Rs.557; Rs.596; Rs.557; Rs.600; Rs.557 and Rs.279 have been contributed by the second party towards the said subscription for the months of December 2015 to August 2016. On a comparative analysis of the P.F. statement (Ext.5) along with the Wage Register (Ext.B), it can easily be construed that the second party must have worked at least for more than 60 days for the period from September 2015 to November 2015. From the above analysis it emerges that the second party has worked for a period of one year prior to the date of his termination in view of Section 25-B of the Act. In the case at hand , admittedly, the provisions of Section 25-F have not been complied with prior to termination of services of the second party. In the above backdrop of facts, I do not have any semblance of doubt in my mind that the termination of services of the second party with effect from the 12th August 2016 by the first party is neither legal nor justified.

11. It is felt pertinent to mention here that during the course of argument both the sides have advanced their respective submissions regarding the maintainablity of the instant reference. The first party has challenged the maintainablity of the instant reference by submitting that the second party has never made any demand for his reinstatement or otherwise after his alleged illegal termination of service and as such, there existed no industrial dispute between the parties as defined under Section 2(k) of the Act. It has further been submitted that the appropriate Government without application of mind has made the instant reference. On the contrary, the second party has vociferously argued that there is sufficient material on record to the effect that after his termination of service the second party has approached to appropriate Authority of the first party management and when the grievance raised by him was not heeded to finding no other way out he approached the Labour Authorities taking recourse to the Act. Accordingly, he has submitted to reject such argument of the first party regarding the maintainablity of the instant dispute. In view of such rival submissions, it becomes imperative on the part of this Tribunal to examine the materials available on record on this score prior to determining the issue on the question of relief the second party is entitled to.

12. While adducing evidence before this Tribunal, W.W.1 in corroboration to the averments made in the claim statement has stated to the effect that when he was refused employment on the 12th August 2016, on the next day at 10 A.M. he had met with the Director and at that time the Director did not allow him to continue in his job. He has further stated that he had made several requests through his Supervisor for his restoration of employment, but all are in vein. During cross-examination of W.W.1 nothing has been elicited from his mouth to discard his such evidence, rather during his cross-examination he has categorically explained that on the 12th August 2016 when the Supervisor Rout Babu refrained him from performing his duty, on the next day he met the Director and at that time the Director also told him not to come to the factory henceforth. In the

instant case the second party has relied on the complaint lodged by him before the Conciliation Officer under Ext.1. It is felt apt to reiterate here that the said document has been marked as an exhibit with objection. But during cross-examination of W.W.1 not a single question nor suggestion has been put to him circumscribing the genuineness of the said document . Further, none of the witnesses examined from the side of the first party has whispered a single word disputing the genuineness of the same. From the above discussions, I am of the view that the objection of the first party with respect to Ext.1 is without any basis. On perusal of Ext.1 it emerges that the second party has taken the self-same plea of his meeting with the Directore of the first party management on the 13th August 2016. In the backdrop of facts, as discussed hereinabove, I do not have any semblance of doubt in my mind that after his termination of service on the 12th August 2016 the second party had met with the Director of the first party management and ventilated his grievance. Hence, prior to approaching the Labour Authorities the second party has raised the demand before the Authority of the first party. From the discussions made hereinabove it cannot be said that there was no existence of industrial dispute between the parties. At this juncture, it is felt apposite to place reliance on a decision of the Hon'ble Apex Court in Shambhu Nath Goyal *vrs.* Bank of Baroda [AIR 1978(2)SCC 353], wherein it has been held that "when parties are at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of labour, there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section."

That apart, in Ramakrishna Mills Ltd. *vrs.* The Government of Tamilnadu and others [1984-II LLJ 259], it has been held that "how the demand should be raised, should not and could not be a legal notion of fixity and rigidity; the grievance of the workmen, and the demand for its redressal must be communicated to the management; the means and mechanism of communication adopted are not matters of much significance so long as the demand is that of the workman and it reaches the management; a written demand on the Management is not in all cases a *sine qua non* and there must arise a dispute or difference within the meaning of S.2(k) or S.2(a) of the Industrial Disputes Act and the demand as such need not in all cases be directly made by a representation to the management and the demand could be made through other sources also".

Further, the instant reference has been made by the appropriate Government by exercising its jurisdiction under the Act. It is no more *res integra* that the Tribunal being creation of the Statute and getting jurisdiction on the basis of reference cannot question the validity of the reference. In the above backdrop of facts, I do not find any merit in the argument advanced by the first party regarding the maintainablity of the instant dispute.

13. *Issue Nos.(ii)*- From the materials available on record and in view of Exts.A and B there is no iota of doubt in the mind of this tribunal that the second party was not a regular employee under the management. In corroboration of the facts stated in the claim statement W.W.1 has adduced evidence to the effect that after his termination of services he has not been gainfully employed till date. Such evidence of W.W.1 has not been tarnished during his cross-examination. Moreover, nothing substantial has been put forth from the side of the first party that after his termination of

service the second party has been gainfully employed elsewhere. Be that as it may, in the case at hand the second party has sought the relief for compensation on the ground that he does not have any faith in the management, which has terminated him illegally and arbitrarily after utilising his service under it for a period of more than 18 years.

14. In view of the facts and circumstances of the case coupled with the relief claimed by the second party, it is felt appropriate to award a compensation amount of Rs.1,50,000(Rupees one lakh fifty thousand only) in favour of the second party. The first party is directed to pay the aforesaid compensation amount to the second party within a period of two months of the date of publicationof the Award in the Official Gazette.

Dictated and corrected by me.

MANAS RANJAN BARIK
3-12-2019
Presiding Officer
Industrial Tribunal, Bhubaneswar

MANAS RANJAN BARIK
3-12-2019
Presiding Officer
Industrial Tribunal, Bhubaneswar

By order of the Governor
SANTOSH KUMAR MOHANTY
Under-Secretary to Government

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