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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 2nd January 2020

No. 22–IR-ID-90/2019-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th November, 2019 in I.D Case No. 43/2017 [u/s-2-A(2)] of the Presiding Officer, Labour Court, Bhubaneswar where in the industrial dispute between the management of Fransis Joseph, Owner, M/s. Clitech Enterprises, Kharabelanager, Labour Colony, Unit-3, Bhubaneswar and Deepak Kumar Hota, At Gopalpurpatna, P.O. Sakhigopal, P.S. Satyabadi, Dist Puri is hereby published.

SCHEDULE

IN THE LABOUR COURT : BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 43 OF 2017(U/s.2-A(2))
Dated the 19th November 2019

Present :

Smt. Madhumita Mohanty,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

Fransis Joseph, Owner,
M/s. Clitech Enterprises,
Plot No. 199, Kharabelanager,
Labour Colony, Unit-3,
Bhubaneswar,
Dist. Khordha, Odisha.

.. First Party—Management

And

Deepak Kumar Hota, aged about 36 yrs.,
S/o Late Bhagaban Hota,
At Gopalpurpatna,
P.O. Sakhigopal,
P.S. Satyabadi,
Dist. Puri, Odisha.

.. Second Party—Workman

Appearances :

Fransis Joseph	. . . The management himself.
Deepak Kumar Hota	. . . The workman himself.

AWARD

The second party workman has preferred the present application resorting to the provisions of Section 2-A(2) of the ID Act, 1947 (for short 'the Act') with a prayer for declaring the termination of his service by way of refusal of employment with effect from the 1st October 2017 as illegal and unjust and to direct the management to pay him Rs.10 lakh in lieu of his reinstatement and back wages.

2. The second party workman's case, in nutshell, is that he was engaged as AC Mechanic by the management for the period starting from the 1st August 2013 to 1st October 2017 continuously on a monthly wage of Rs. 12,000/- per month. While working as such he was refused employment by the management with effect from the 1st October 2017. Thus, the refusal of his employment is in gross violation of the mandatory provisions required under the Act. Thereafter, on the 31st October 2017 he filed a complaint petition before DLO, Khordha at Bhubaneswar stating his illegal refusal of employment by the first party management. But as the dispute could not be settled by the labour authority within the stipulated period, he filed the present application under Section 2.-A(2) for adjudication.

3. The first party management entered appearance and contested the case by filing his written statement challenging the maintainability of the present case on the account of the fact that neither the second party is a workman nor the first party is his employer as defined under the Act. In this connection, it is contended on behalf of the management that at no point of time the second party was working as a worker/employee under management, rather he is an independent AC Mechanic and has now started his own firm in the name and style of SRI SAI REFRIGERATION with his partner. So there is no employer-employee relationship between the parties. In the circumstances, the management has prayed for the dismissal of the case.

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

ISSUES

- (i) Whether the application filed by the second party workman under Section 2-A(2) of ID Act, 1947 is maintainable ?
- (ii) Whether the action of the first party management in terminating the services of the second party workman by way of refusal of employment with effect from the 1st October 2017 is legal and/or justified ?
- (iii) If not, what relief the second party workman is entitled to ?

5. In order to substantiate his plea, the workman rendered his evidence as W.W.1 besides the evidence of one Sri Ranjit Kumar Seth as W.W. No.2 and relied on documents marked Ext.1 to

Ext.4. On behalf of management, Shri Fransis Joseph rendered his evidence as M.W. No. 1 and proved documents marked as Ext.A to Ext.C.

FINDINGS

6. *Issue Nos. (i), (ii) and (iii)*—For the sake of convenience and to avoid repetition, all the issues are taken up together for discussion.

W.W.1 during his evidence categorically deposed that he was engaged as AC Mechanic by the first party management for the period from the 1st August 2013 to 1st October 2017. W.W. No. 1 further deposed that he has worked continuously for a period of 240 days prior to his refusal of employment which amounts termination, but the management did not comply the provisions contained under Section 25 of Industrial Disputes Act while terminating his service. As such the action of the management in terminating the service of the workman by way of refusal is neither legal nor justified. Consequent upon his termination, he filed a complaint petition with regard to his illegal termination by the management before the DLO, khurda at Bhubaneswar and basing upon his complaint petition, the ALO, Bhubaneswar issued notices to the parties to attend for enquiry. But as the dispute could not be resolved by the labour machinery within the stipulated period of forty five days, he filed the present application under Section 2-A(2) for adjudication. To fortify the above submissions, the second party has relied upon Exts.1 to 4. Ext.1 is the Xerox copy of complaint petition filed by the second party before DLO, Khurda at Bhubaneswar stating his illegal refusal of employment by the first party management and requested for his intervention. Ext.2 is notice on the 8th November 2017 issued by the Asst. Labour Officer, Bhubaneswar to the workman. Ext.3 is the bank statement of the second party which clearly denotes that the management has transferred his salary to the bank account of the second party. Ext.4 is the identity card issued by the management in favour of the second party. Thus, on an analysis of the evidence, as discussed above, it can be safely concluded that the second party was an employee of the management.

M.W. No. 1 on other hand, with reference to Ext.B and Ext.C categorically stated that the second party has received Rs. 50,000 from the management towards his full and final settlement and now he has no claim or demand against the management. Exts.B(settlement made between the parties) and Ext.C (the Xerox copy of money receipt) are marked as exhibits on behalf of the management without any objection from the side of the workman. On perusal of Ext.B, it transpires that the second party has settled his all disputes with the management on receipt of Rs. 50,000 from it. On perusal of Ext.C, it reveals that the applicant has received Rs. 50,000 from the management towards full and final settlement of all his agency dues as per Ext.B by putting his signature on Ext.C. On perusal of the case record, it is found that the cross-examination of M.W. No. 1 was declined as the second party refused to cross-examine him.

Keeping in view of the discussion made above and taking into consideration the materials available on the Case record this Court arrived at a conclusion that the second party has already settled all his claim the management by receiving Rs. 50,000 towards full and final settlement and he has no more claim against the management.

In view of the conclusion reached in the preceding paragraph, the second party workman is not entitled to any relief in the present proceeding as claimed by him.

The application is disposed of accordingly.
Dictated and Corrected by me.

SMT. MADHUMITA MOHANTY
19-11-2019
Presiding Officer
Labour Court, Bhubaneswar

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