

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1973 CUTTACK, THURSDAY, NOVEMBER 27, 2014/MARGASIRA 6, 1936

LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 11th November 2014

No. 8999—IR -(ID)-175/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th September 2014 in Industrial Dispute Case No. 25/2013 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Managing Director, Odisha State Co-operative Marketing Federation Ltd., Bhubaneswar and its workman Shri Biswanath Pradhan was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 25 OF 2013

Dated the 17th September 2014

Present :

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

Between :

The Managing Director, . . . First Party—Management
M/s Odisha State-Co-operative Marketing
Federation Ltd.,
Station Road,
Bhubaneswar.

And

Its Workman, . . . Second Party—Workman
Shri Biswanath Pradhan,
S/o Shri Kapila Charan Pradhan,
At Trahi Achyut Nagar,
Trahi Achyut Ashram,
P.O. Jhintيسان,
P.S. Balakati, Dist. Khurda.

Appearances :

Shri Bishweshwar Panda, . . . For the First Party—Management
 Authorised Representative

Shri Biswanath Pradhan . . . For the Second Party—Workman himself

AWARD

The Government of Odisha in Labour & Employment Department in exercise of powers conferred upon it by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, the Act), have referred the following dispute for adjudication by this Court vide their Letter No.4575—IR-(ID)-175/2012-L.E., dated the 9th May 2013.

"Whether the action of the management of O.S.C.M.F. Ltd., Bhubaneswar in terminating the services of Shri Biswanath Pradhan, Sales Assistant (N.M.R.) by striking off his name from 20-10-2003 vide Order No. 5789, dated the 14th January 2004 is legal and/or justified ? If not, what relief Shri Pradhan is entitled to ?"

2. The case of the second party workman is that he was appointed as Godown Keeper of Pallahara Depot of the first party organisation with a consolidated pay of Rs. 500 per month. He has also completed Co-operative Training Course in the Co-operative Training College in two spells comprising of one month each and deposited security and submitted solvency certificate to the first party as required. The second party had been consistently represented before the first party for regularisation of his service, as the juniors to him were regularised. On 17-7-1993 an office order was passed to hand over the charge to Shri Dipak Kumar Swain and accordingly the second party handed over the charge of Pallahara Depot and awaited at Pallahara for his transfer order. As no transfer order was received by him, on 15-1-1996 he submitted a representation before the Chairman in his camp at Angul which was allowed and he was posted as Depot in-charge of Digapahandi on transfer. While working at Digapahandi he was seriously ill and remained bed ridden for a long period. So he had sent one telegraph message followed by an application for leave on 1-9-2003 to the Area Manager, Jagannathpur for sanction of 15 days leave i.e. from 1-9-2003. As he was bed ridden beyond 15-9-2003 due to his illness he could not resume to his duty. Unfortunately he received Order No. 5789-Estt.EA-848-99-00, Dt. 14-1-2004 and came to know that his name has been struck off from the rolls of the Federation with effect from 20-10-2003 on the ground of his absence from duty for more than 14 consecutive days continuously without permission and his post has been abolished. The first party management has not given any opportunity for hearing, filing of show-cause, notice, notice pay or retrenchment compensation. So, the second party had approached the learned Registrar, Odisha Co-operative Society, Bhubaneswar, vide Dispute Case No. 138 of 2006, which has been withdrawn by him by order Dt. 3-5-2008. Thereafter he preferred appeal before the Managing Committee on 29-5-2008 against his illegal retrenchment. The Appellate Authority without entering into the merit of the case rejected the appeal on 29-7-2008 solely on the ground of limitation/dely. On 27-8-2008 the second party had appealed the first party through Regd. Post with A.D. against his illegal retrenchment. The A.L.O., Bhubaneswar called both parties for conciliation but, it was deferred on the request of the management.

On 7-7-2010 D.L.O., Khurda transferred the complaint to D.L.O., Berhampur and the A.L.C., Berhampur asked both the parties to appear before him on 12-8-2001 at 3.00 P.M. At last the Conciliation Officer, referred the matter to Government and the present reference is the outcome of the same. The delay in filing the appeal was *bona fide* one and the second party was neither negligent nor it was a deliberate action. The workman served the first party for about 18 years continuously without regularisation of his service. The action taken by the first party management is violative of Article 14 of the Constitution of India and contrary to principle of natural justice. The first party management be directed to reinstate of the second party in service with full back wages alongwith consequential service benefits.

3. In pursuance of the notice issued by this Court the first party entered its appearance and filed written statement. The case of the first party is that the second party was engaged by the first party on the recommendation of the Deputy Registrar of Co-operative Society, Dhenkanal Division, as Godown Keeper at Pallahara, temporarily on *ad hoc* basis on a consolidated pay of Rs. 500 per month with effect from 1-6-1985. The engagement of the second party workman was by the Area Manager, Angul. He had enhanced the wage of the workman to Rs. 1000 per month with effect from the 1st November 1989. During his period of engagement at Pallahara from 1-6-1985 to 17-7-1993 there were a lot of allegations of misappropriations of stock and cash against him which was also noticed by the first party. For the said reason the second party was withdrawn from Pallahara and one Shri Dipak Kumar Swain was posted in his place vide Order No.153, Dt. 17-7-1993. In the said order the workman was directed to hand over the full charge of stocks and record immediately to Shri Swain. He was not posted elsewhere for compliance of the audit of the Godown at Pallahara. By order Dt. 11-11-1993 he was posted to area office Angul, but he refused to join and remain absent from his duty. After audit it was found that the second party had misappropriated an amount of Rs. 62,438.31 paisa. After lapse of 2 and $\frac{1}{2}$ years the second party had submitted a representation to the Chairman during his visit to Angul, on 15-1-1996 which was accepted by the Chairman of the society and accordingly he was engaged as Office Assistant of the Area Office with effect from the 16th January 1996. While working as such at Jagannathpur a disciplinary proceeding was drawn against him vide Memo. No. 3418, Dt 3-8-1999 and the second party was asked to file show -cause. After show cause was filed a departmental enquiry was conducted as per the Service Rules of the Federation and the second party was found guilty by the E.O., vide his report Dt. 30-6-2003. The Disciplinary Authority after following the procedure passed an order to strike off the name of second party from the roll of the Federation vide Office Order No. 5789, Dt. 14-1-2004. In view of such order the second party is not in service under the Federation since 20-10-2003. The efforts by the second party against the order passed by the first party were turned down by different authorities such as Co-operative Tribunal, R.C.S., (O). The Conciliation Officer, Berhampur has opined that there is no Industrial Dispute at all in between the parties and the second party is not entitled for any relief. During his service at Jagannathpur in a Disciplinary Proceeding recovery notice was issued to the second party for Rs. 57,566.77 paisa but the second party avoided to receive letter No. 3185, Dt. 29-9-2003 and left the Headquarters with a plea of his illness. That letter was returned unserved with postal remarks "addressee left without information hence returned to the sender". The second party remained absent from his duty since 20-10-2003 without any leave application. On receipt of the notice from the Area Manager on 29-11-2003 the second party submitted his representation for voluntary retirement with a request to settle his dues. The relief claimed by the second party is not at all acceptable and the case be dismissed with cost.

4. In view of the pleadings of the parties the following issues are settled

ISSUES

- (i) Whether the action of the management of O.S.C.M.F. Ltd., Bhubaneswar in terminating the services of Shri Biswanath Pradhan, Sales Assistant (NMR) by striking off his name from 20-10-2003 vide Order No. 5789, Dt. 14-1-2004 is legal/or justified ?
- (ii) If not, what relief Shri Pradhan is entitled to ?

5. The second party workman Shri Biswanath Pradhan is examined as W.W.1 and Ext.1 & 2 series are marked on his behalf. Ext.1 series are the prescriptions and investigation reports during the period of alleged illness of the workman whereas Ext.2 is the office order of the Area Manager, Area Office Angul, communicated to the second party through Memo. No. 290, Dt. 1-6-1985. On the other hand one Bisweswar Panda is examined M.W.1 and Exts.A to K. are marked. Ext. A is the report Dt. 26-11-1998 by Madhab Chandra Nayak, Ext.B is the Office Order of the Area Manager Angul, communicated to the second party through Memo. No. 303 (2) Dt. 18-11-1993. Ext.C is the representation of the second party Dt. 15-1-1996. Ext.D is the office copy of the charge Dt. 3-8-1999, framed against the second party. Ext.E is the reply of the second party to the charge Dt. 18-8-1999. Ext.F is the letter Dt. 17-8-1999 of the second party, Ext.G is the photo copy of the receipt Dt. 7-8-1999. Ext.H is the office copy of letter Dt. 29-9-1993 issued to the second party by the Secretary and Ext.H/1 is the postal cover, Ext. J is the office copy of letter Dt. 30-6-2003 issued by the Accounts Officer to the Managing Director, of the first party. Ext.J/1 is the enquiry report submitted alongwith the letter. Ext. K is the letter No. 5065, Dt. 29-9-2012 issued by the Conciliation Officer-cum-A.L.O., Berhampur to the managing Director, of the first party. Ext.K/1 is the copy of the Factual REport of the Conciliation Proceeding submitted alongwith the letter.

6. *Issues No. (i) & (ii)*—For the sake of convenience and to avoid repetition both the issues are taken up together for discussion. It is the case of the second party workman that he has been illegally terminated from his service from 20-10-2003 vide Order No. 5789, Dt. 14-12-2014. On the other hand it is the case of the first party management that the first party being the Disciplinary Authority, after following due procedure had passed order to recover the defalcated amount of Rs. 57,566.77 paise alongwith interest from the second party by initiating a Dispute Case and struck off his his name from the roll of the Federation as per Rule 46 of the Staff Service Rules, 1990 of the Federation for which the second party is not entitled for any relief. From the evidence of W.W. 1 and Ext.2, the office order of the Area Manager it is clear hat the second party workman was appointed temporarily on *ad hoc* basis as Godown Keeper on a consolidated pay of Rs. 500 per month from 1-6-1985 and posted at Pallahara Godown until further order. From the evidence of W.W.1 and his pleading it is also clear that by office order Dt. 17-7-1993 he had handed over the charge to Shri D.K. Swain. It is also clear from his evidence and pleading that he was transferred to Jagannathpur Depot, Digapahadi on his representation to the Chairman Dt. 15-1-1996. This evidence of W.W.1 is also admitted by the first party management. On the other hand from the evidence of M.W.1 and Ext.B it is clear that order was passed and communicated to the second party vide memo. No. 303, Dt. 18-11-1993 directing him to hand over the full charge of his office at Pallahara to Shri D.K. Swain and join at Area Office, Angul by 30-11-1993. It is also deposed by

M.W.1 that the said order was offered to the second party who refused to receive the same and join in his new post at Angul. Ext. A is the report submitted by Madhab Chandra Nayak, Dt. 26-11-1993, from which it is clear that the second party did not receive letter No. 303 (2) Dt. 18-11-1993. On perusal of Ext.B it is clear that in the said order the second party was directed to join in his new assignment at Area Office Angul, after handing over full charge of Pallahara Depot to Shri D.K. Swain. From the evidence of W.W.1 and his pleading it is clear that only on 15-1-1996 he has submitted a representation to the Chairman at his camp office at Angul, which was accepted and as per that order he joined at Jagannathpur of Digapahandi. It is also admitted by the second party that on 16-1-1996 he joined at Jagannathpur. It also transpires from the evidence of M.W.1 and Ext.D, E, H that a departmental disciplinary proceeding bearing No. 3418, Dt. 3-8-1999 was initiated against the second party for his act of omission and commission for the period 1993-1994-1995-1996 while he was in charge of Pallahara Depot. Admittedly Ext.D is the charge sheet which has been communicated to the second party vide Memo. No. 3419 (3), Dt. 3-8-1999, and Ext.E is the reply Dt. 18-8-1999 to the charge by the second party. Ext.F is letter Dt. 17-8-1999 and Ext.G is the copy of the money receipt Dt. 7-8-1999 submitted by the second party to the Special Officer, Audit, MARKFED, Odisha, Bhubaneswar. On perusal of Ext.F and G it is clear that the second party had deposited a sum of Rs.639 towards audit recovery for the year 1997, 1998 which has been deposited at Jagannathpur. Ext.H is the letter No.3185, Dt. 29-9-2003 which has been issued to the second party recovery of Rs. 57,566.77 after due enquiry. From the evidence of M.W.1 and Ext.H/1 the postal cover it is also clear that the said letter was returned to the sender with an endorsement by the Postal Authority. "Left without any instruction returned to the sender". The letter was addressed to the second party in his Digapahandi address. So, from the evidence of M.W.1 and Exts.H and H/1 it is clear that the second party had left the Headquarters without any intimation to his authority. Ext.J/1 is the enquiry report which shows that the second party had committed financial irregularities from 1985-86 to 1993-94 and also committed financial improprieties even beyond 1997-1998 for which he has deposited a sum of Rs. 639 vide M.R. No. 23703, Dt. 7-8-1999 which has been pointed out in the audit for the year 1997-1998. It is also clear from J/1 that the second party has committed misappropriation of cash and stock, manipulated the accounts negligent in his duty and also dishonest. It was also opined by the Enquiring Officer that the second party was a habitual financial offender. Admittedly the said amount misappropriated by the second party has not been paid to the first party by the second party. In his evidence W.W.1 deposed that while he was in charge of Digapahandi Depot he was bed ridden for a long period and applied for leave from 1-9-2003 to 15-9-2003 through telegraph message followed by an application. He failed to prove submission of leave application to the Area Manager, Jagannathpur for leave from 1-9-2003. It is also clear from the materials on record that since 1-9-2003 the second party workman has not performed his duty. Accordingly to the second party due to his illness he was bed ridden for which he could not attend his duty. He proved Ext.1 series. On perusal of those documents it is clear that the doctors have prescribed some medicine and some investigations were made. Ext.1 series shows that the second party was under treatment of doctor in the year 2003 and 2004, but it does not disclose that the second party was not in a condition to perform his duty or advised by the doctor not to attend the duty. It also does not show that the second party was bed ridden during that period. On the other hand it is clear from the evidence of M.W.1 and the documents proved by him that the second party avoided to receive notices from the Competent

Authority and remained absent from his duty since 1-9-2003 without any reason. It is also clear from the evidence on record that he has misappropriated the money of his employer. It is further clear from the evidence of M.W.1 that as the second party remained absent from his duty unauthorisedly for a period of more than 14 days consecutively and continuously his name has been struck off from the roll of the Federation as per Rule 46 of the Staff Service Rules, 1990 of the Federation.

7. From the pleading and evidence of W.W.1 it appears that in Disputes Case No. 138 of 2006 he had challenged the termination of his service by the first party, but subsequently on his approach it was withdrawn vide order Dt. 3-5-2008 of learned Registrar of Co-operative Societies, Odisha, Bhubaneswar. It also clear from his evidence, that the appeal preferred by him before the Managing Committee on 29-5-2008 was also rejected by order Dt. 29-7-2008. Ext.K is the letter No. 5065, Dt. 29-9-2012 of the Conciliation Officer-*cum*-A.L.O Berhampur addressed to the Managing Director of the first party and Ext.K/1 is the Factual Report submitted by him. On perusal of Ext.K/1 it is clear that the Conciliation Officer has opined that the striking off the name of the second party from the roll of the Federation on 14-1-2004 on the ground of abandonment of service does not amount to retrenchment as per Section 2(OO) of the Industrial Disputes Act, 1947 and the dispute raised by the second party is barred by law of limitation and that there is no existence of any industrial dispute and that the second party is not entitled for any relief claimed by him. After going through the ocular testimony of the witnesses of both the parties and documents proved by them, it is clear that the second party has abandoned his service and he was not terminated by the first party management. The deletion of the name from the roll of the Federation under Rule 46 of staff Service Rules 1990 does not amount to termination. It is a case of abandonment of service by the second party from from the first party organisation. The striking off the name of the second party by the first party vide Order No. 5789, Dt. 14-1-2004 is legal and justified. As the action of the first party management is legal and justified the second party is not entitled for any relief.

The reference is disposed of accordingly.

Dictated and corrected by me.

S. K. SAHOO
17-9-2014
Presiding Officer
Labour Court
Bhubaneswar

S. K. SAHOO
17-9-2014
Presiding Officer
Labour Court
Bhubaneswar

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