

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1821 CUTTACK, WEDNESDAY, DECEMBER 22, 2004 / PAUSA 1, 1926

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th December 2004

No. 11343—li/1(B)-81/1996-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th September 2004 in Industrial Dispute Case No. 151 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Orissa Rajya Talaguda Samabaya Sangha Limited, Bhubaneswar and its Workman Shri Krushna Chandra Patra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 151 OF 1996

Dated the 29th September 2004

Present :

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

Between :

The Management of .. First Party—Management
Orissa Rajya Talaguda Samabaya
Sangha Limited, Bhubaneswar.

And

Their Workman .. Second Party—Workman
Shri Krushna Chandra Patra.

Appearances :

For the First Party—Management .. Sk. A. Mohamed

For the Second Party—Workman himself .. Shri K. C. Patra

AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12, read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 13236(5)-L.E., dated the 14th October 1996 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :

“Whether the action of the management of M/s. Orissa Rajya Talaguda Samabaya Sangha Limited, Bhubaneswar in terminating the services of Shri K. C. Patra, Driver with effect from the 13th November 1987 is legal and/or justified ? If not, to what relief Shri Patra is entitled ?”

3. Briefly stated the case of the workman Shri Krushna Chandra Patra is that he was working as a Driver under the management of M/s. Orissa Rajya Talaguda Samabaya Sangha Limited, Bhubaneswar (in short the management) since 1965 and continued as such till the date of his termination on the 13th November 1987. During his tenure for the above period he had discharged his duties with much sincerity, devotion and to the utmost satisfaction of the management. According to the workman, while he was on official duty at Bahugram, he sustained fracture on his spinal cord due to fall on the 13th November 1987 and was admitted to the S. C. B. Medical College Hospital, Cuttack. He had informed the management about the accident and prayed to bear the medical expenses. But surprisingly enough, the management without any rhyme or reason had illegally terminated him from service with effect from the 13th November 1987 without giving any prior notice or notice pay and retrenchment compensation. While challenging the legality and justifiability of the action of the management in terminating him from service with effect from the 13th November 1987, he has also prayed for his reinstatement in service with full back wages along with other service benefits. hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. The management while admitting the engagement of the workman *inter alia* stated that the workman met with an accident on the 13th November 1987 while he was performing his personal work and was admitted to S. C. B. Medical College Hospital, Cuttack. Due to such accident he sustained severe injuries on his person while he was on official duty. Since the workman was physically incapable of performing his normal duties and despite the letters issued to him when he had not turned up for joining his duties, the management was constrained to terminate his services with effect from the 13th November 1987. It is further averred in the written statement that after lapse of 8 years he made a representation to the management for his reinstatement. According to the management, since the workman has not explained the delay in raising the present dispute after lapse of 8 years, the claim already made with regards to his reinstatement in service with back wages is not tenable in the eye of law. It is further averred in the written statement that the date of birth of the workman was 1932 and as such, he was to retire on attaining the age of superannuation at the age of 58 years in the year 1990. Therefore the claim already made relating to his reinstatement in service beyond the age of superannuation is also not sustainable. On the above backgrounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed :-

ISSUES

- (i) Whether the action of the management of M/s. Orissa Rajya Talaguda Samabaya Sangha Limited, Bhubaneswar in terminating the services of Shri K. C. Patra, Driver with effect from the 13th November 1987 is legal and/or justified ?
- (ii) If not, to what relief Shri Patra is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copies of the documents such as, discharge certificate, dated the 26th November 1987, application, dated the 28th April 1988, letter of the management, dated the 6th July 1988 and the application, dated the 13th August 1988 marked as Exts. 1 to 4 respectively. On the other hand, the management has examined one Shri Harish Chandra Behera as M. W. 1 and also relied upon the xerox copy of the letter of the management, dated the 29th August 1996 marked as Ext. A in support of its case.

FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under the present reference, both the above issues are taken up together.

The perusal of the evidence of the workman clearly reveals that he was working as Driver under the management since 1965 and continued to work as such till November 1987. He was sent to the Training Institution at Bahugram to deliver some official letters. In the Training Institution he suddenly fell down and sustained injury on the spinal cord. He was admitted to the S. C. B. Medical College Hospital, Cuttack and after he was fully cured, he wanted to resume his duty but the management had illegally terminated his service with effect from the 13th November 1987 without any prior notice or notice pay and retrenchment compensation. Although he had intimated the fact of accident as well as the treatment at S. C. B. Medical College Hospital, Cuttack but the management without any rhyme or reason had illegally terminated him from service for which he has now prayed for his reinstatement till his usual superannuation with full back wages and other service benefits. During evidence the xerox copies of the documents such as, discharge certificate, letter, dated the 28th April 1988, another letter of the management and letter, dated the 13th August 1988 have been duly proved by him marked as Exts. 1 to 4 respectively. It has been suggested to him during cross-examination that after removal of plaster he did not join his duty despite repeated letters of the management to which he has given negative reply. The evidence given by the workman relating to the injury caused by fall and his absence from duty gets support from the evidence of M. W. 1. According to M. W. 1 despite the letters issued to the workman he had not turned up for joining the duties resulting such termination with effect from the 13th November 1987. Although he was informed to receive his dues to the tune of Rs. 14,876 but he did not turn up. M. W. 1 in his evidence has duly proved the letter, dated the 29th August 1996 vide Ext. A issued to the workman regarding his dues on superannuation, but the workman did not turn up to receive his dues. He has categorically stated that the date of birth recorded in the Service Register, the workman was to retire on the 31st January 1990 whereas he was asked to retire on the 6th July 1988. It has been suggested to him that on receipt of the letter, dated the 29th August 1996 the workman approached the management for payment of his dues but the management did not make any payment to which he has categorically denied.

8. Both the management and the workman have adduced the evidence in support of their respective cases. It is undisputed between the parties that the workman while on official duty met with an accident at Bahugram and remained absent from duty till the 6th July 1988. It is also undisputed between the parties that the fact of such accident as well as the treatment at S. C. B. Medical College Hospital, Cuttack had been reported to the management. The workman in his evidence has categorically stated that despite his information the management had illegally terminated him from service with effect from the 13th November 1987 without giving any prior notice or notice pay and retrenchment compensation. On the other hand, the management has taken a stand that despite repeated letters the workman concerned had not turned up for joining the duties resulting in terminating of the services with effect from the 13th November 1987. But in this context not a single letter has been produced and proved by the management in the present case so as to lead me to arrive at a conclusion that the workman had been duly informed and advised to join his duties. In absence of any document to that effect it is difficult on my part to place reliance on the testimony of M. W. 1. Therefore the assertion of the management to the effect that the workman concerned had been duly informed to join his duty and that despite intimation he had not turned up for joining the duties is not correct. Rather it has been clearly proved and established by the workman that while terminating his services, the management has not given any prior notice or notice pay and retrenchment compensation which, in my view, are in complete violation of the mandatory provisions of Section 25-F of the Act. The Hon'ble Apex Court in the case of Karnataka State Road Transport Corporation Vrs. M. Boraiah reported in AIR 1983 Supreme Court 1320, Samon India Limited Vrs. Niranjan Das reported in 1984 (48) FLR 310 (Supreme Court) and workman Vrs. Food Corporation of India reported in AIR 1985 Supreme Court 670 has consistently taken the view that the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. In view of the above legal position, the stand taken by the workman concerned is quite genuine and correct and therefore the workman concerned is entitled to reinstatement.

9. The further perusal of the evidence of the workman clearly emerges that he has prayed for his reinstatement till the date of his retirement on superannuation with full back wages and other service benefits. On the other hand, the evidence of M. W. 1 clearly goes to show that the workman concerned was duly informed vide letter No. 979, dated the 29th August 1996 under Ext. A to receive his dues to the tune of Rs. 14,876 but the workman did not turn up to receive his dues. But there is no cogent material on record to show that the workman concerned had in fact denied to receive the aforesaid dues reflected in Ext. A. Rather it has been clearly established by the workman that after receipt of the letter he had been to the management to receive his dues, but the management did not pay the dues. In such premises the plea taken by the management to the effect that the workman concerned did not turn up to receive the above dues is without substance. Besides, the further plea taken by the management is that the workman sustained injury on his person while performing his personal work at Bahugram. But such plea taken by the management has nowhere been substantiated in the evidence rather M. W. 1 in his evidence has categorically stated that on the 13th November 1987 the workman had been to Bahugram on official duty and there he met with an accident. It is therefore crystal clear that the workman while performing official duty met with an accident and sustained injury on his person and remained absent from duty due to his treatment at S. C. B. Medical College Hospital, Cuttack. In such premises the plea taken by the management is also without substance. Further the stand taken by the management to

the effect that due to such accident the workman was physically incapable of performing his normal duty but in absence of any positive and definite evidence to that effect, the stand already taken by the management, in my view, is without force and therefore not acceptable. The management has urged with regard to the delay in filing the present dispute but the above fact has also nowhere been substantiated by the management in the evidence. In this context, I also find no substance in the submission already led by the management. Apart from that the workman has claimed for his reinstatement in service till the date of his retirement on superannuation. The evidence of the workman in this respect also gets corroboration from the evidence of M. W. 1 who in his evidence has categorically stated that as per the statement given in the Service Register the workman was to retire on the 31st February 1990. Further M. W. 1 admits in his evidence that as per the entry the workman was to retire on the 31st January 1990 on superannuation whereas he was asked to retire with effect from the 6th July 1988. The above evidence given by M. W. 1 has nowhere been challenged by the workman rather he has claimed for his reinstatement till the date of retirement on superannuation. In such view of the matter the workman concerned is entitled to the relief of reinstatement till the date of his retirement on superannuation.

10. After carefully examining the evidence available on record already tendered by the parties being coupled with the proved documents and keeping in view the settled position of law, I am of the opinion that the action of the management in terminating the services of the workman with effect from the 13th November 1987 was illegal, unjustified and against the mandate of Section 25-F of the Act. In that view of the matter, the workman is entitled to the relief as prayed for. Both the above issues are answered accordingly.

11. Hence it is ordered :

That the action of the management of M/s. Orissa Rajya Talaguda Samabaya Sangha Limited, Bhubaneswar in terminating the services of Shri K. C. Patra, Driver with effect from the 13th November 1987 is neither legal nor justified. The workman Shri Patra is deemed to be in service till the date of his retirement. He is entitled to get all service and financial benefits including compensation towards back wages a lump sum amount of Rs. 4,000 (Rupees four thousand only) till the date of his retirement on superannuation.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
29-9-2004
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
29-9-2004
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
D. MISHRA
Under-Secretary to Government