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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 10th February 2005

No. 1436-li/1(S)-10/2003(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th December 2004 in Industrial Disputes Case No. 64 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s. Baham Service Co-operative Society Ltd., Baham, Sambalpur and its Workman Shri Sashi Bhusan Panda was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 64 OF 2003

Dated the 28th December 2004

Present :

Shri G. N. Patra, LL. B.
Presiding Officer, Labour Court
Sambalpur.

Between :

The Management of .. First Party—Management
M/s. Baham Service Co-operative
Society Ltd., Baham, Dist. Sambalpur.

And

Its Workman .. Second Party—Workman
Shri Sashi Bhusan Panda
Ex-Asst. Secretary-cum-Salesman
Village/P. O. Baham, Via-Grudpali
Dist. Sambalpur.

Appearances :

For the First Party–Management	..	Self
<hr/>		
For the Second Party–Workman	..	Self

AWARD

This case arises out of the reference made by the Government of Orissa in Labour & Employment Department, under Sections 10 & 12 of the Industrial Disputes Act, 1947 vide Memo No. 10735 (5), dated the 10th November 2003 for adjudication of the dispute mentioned below :

“Whether the termination of services of Shri Sashi Bhusan Panda, ex-Asst. Secretary-cum-Salesman with effect from the 10th October 1991 by the Management of M/s. Baham Service Co-operative Society Ltd., Baham, Sambalpur is legal and/or justified ? If not, what relief is the workman entitled to ?”

2. The case of the second party workman may briefly be stated as follows :—

The second party workman was appointed temporarily as an Assistant Secretary-cum-Salesman vide Order No.7, dated the 7th October 1979 of the President, Baham Service Co-operative Society Limited (hereinafter called the first party management) on consolidated pay of Rs. 150 per month. He worked under the first party management satisfactorily till 1991. The first party management vide letter/notice No. 24, dated the 31st March 1991 intimated the workman that the Society was unable to pay him the revised scale of pay and as such he was asked to seek voluntary retirement, failing which his service would be terminated on completion of 30 days from the date of notice. Since the second party workman did not seek for voluntary retirement, his services were terminated with effect from the 11th May 1991, retrospectively, vide Order No. 7, dated the 10th October 1991 of the first party management. In the said termination order, it was mentioned that whenever financial status of the Society would increase in future and it would be felt necessary to recruit employees, second party workman’s case would be considered for re-employment on priority basis.

The further case of the second party workman is that the post of Assistant Secretary was lying vacant till 1993 after his retrenchment. Subsequently one Aswini Kumar Nayak was appointed without issuing any offer to him. Shri Nayak resigned and another fresh candidate namely Shri Sarat Kumar Nayak was appointed as Assistant Secretary during the year 1995, who also resigned in the year 1997 and then another fresh candidate Shri Sanatan Thella was appointed as Assistant Secretary. Shri Sanatan Thella has been continuing as such since 31st March 1997 in the retrenchment vacancy of the second party workman. During all the said appointments of Assistant Secretaries the first party management has never *adhered to* their promises made at the time of the retrenchment of the second party workman and no opportunity was given to him for his re-employment and thereby the management has violated the provision of Section 25-H of the Industrial Disputes Act, 1947. The second party

workman submitted a representation on the 15th September 1997 to the first party management for his re-employment, but to no effect. Having fail in his attempt to get justice from the first party management, the workman approached before the District Labour Officer, Sambalpur on the 1st October 2002 for redressal of his grievances. The District Labour Officer initiated conciliation proceeding, but it failed and therefore the present reference for adjudication of the dispute. The workman in the above circumstances prayed the court to declare the action of management violating Section 25-H of the Industrial Disputes Act, 1947 as illegal and direct for his employment with full back wages with effect from the date Shri Aswini Kumar Nayak was appointed during 1993.

3. The first party management contested the reference by filing a written statement in which the management admitted the fact of appointment and retrenchment of the second party workman with its reason. It is the case of the first party management that the workman Shri Sashi Bhusan Panda was virtually working as Salesman to sell sugar, Wheat and Rice, etc. in the Public Distribution System Scheme of the Government and after withdrawal of the Public Distribution System from the Service Co-operative Society, the services of the second party workman was no longer required. In the meantime the Government of Orissa in their Resolution No. 11164, dated the 5th September 1991 in the Labour & Employment Department and the Registrar of Co-operative Society, Orissa in his letter No. 27971 (13), dated the 6th December 1990 directed to lesson the management's cost by reducing the number of employees from the Co-operative Society. Since the first party management was running in loss, the second party workman was retrenched, being the last entrant, after complying with the provisions of law. Prior to retrenchment, the second party workman was served with one month notice vide letter No. 24, dated the 31st March 1991 which he received on the 18th April 1991. Simultaneously within the period from the 18th April 1991 to the 10th May 1991, the Secretary of the first party management asked the workman to receive his retrenchment compensation of Rs. 4, 165. But the second party flatly refused to receive the same and after a lapse of 9 years, the second party workman voluntarily received the said retrenchment compensation on the 20th April 2000. The further case of the management is that after death of Rabi Chandra Nayak, the then Assistant Secretary of the first party management, the second party was asked to join in the post of Assistant Secretary to which he refused. The Annual General Body Meeting of the Society was held on the 21st February 1994. The second party workman was called to the General Body Meeting and was asked to join in the service in place of the deceased Assistant Secretary, Rabi Chandra Nayak, but he refused to join. Thereafter the General Body unanimously resolved to appoint Shri Aswini Kumar Nayak, the son of said deceased Rabi Chandra Nayak, Assistant Secretary, on compassionate ground and there is therefore, no violation of provisions of 25-H of the Industrial Disputes Act. Since the second party workman did not join in the Society, he forfeited his claim of re-entry to job and as such his representation for re-employment, dated the 15th September 1997 did not merit any consideration. Further the management took plea that the case of the second party workman is *prima facie* barred by time. Consequently the first party management prays to dismiss the prayer of the second party workman being devoid of merit.

4. On the basis of the above pleadings of both the parties, the following issues have been framed for adjudication.

ISSUES

- (i) “Whether the termination of services of Shri Sashi Bhusan Panda, Ex-Assistant Secretary-*cum*-Salesman with effect from the 10th October 1991 by the Management of M/s. Baham Service Co-operative Society Ltd., Baham, Sambalpur is legal and/or justified ?
- (ii) To what relief, the workman is entitled ?”

FINDINGS

5. *Issue No. i*—It is not disputed that the second party workman was appointed as an Assistant Secretary-*cum*-Salesman by the first party management with effect from the 7th October 1979 vide Ext. A and that after working continuously for more than 11 years, his services were terminated retrospectively with effect from the 11th May 1991 vide Order No. 7, dated the 10th October 1991 of the first party management marked Ext. C, due to loss and inability of the first party management to pay the enhanced salary to him. In the circumstances, therefore, the termination of the second party workman amounts to retrenchment within the meaning of the expression as defined in Section 2 (oo) of the Industrial Disputes Act, 1947. It is the settled principle of law that for a valid retrenchment, the mandatory preconditions prescribed under Section 25-F of the Industrial Disputes Act, 1947 must have been fulfilled at the time of retrenchment of the workman. Section 25-F of the Industrial Disputes Act, 1947 provides as follows :—

That 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 :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

(b) the workman has been paid at the time of retrenchment, compensation which shall be equivalent of 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).

6. In the present case, the second party workman was noticed in writing on the 31st March 1991 vide Ext. B for termination of his service and in accordance with that his services were terminated with effect from the 11th May 1991 retrospectively vide Ext. C, (Order No. 7, dated the 10th October 1991 of the first party management) and thus Section 25-F (a) of the Industrial Disputes Act, 1947, can be said to have been complied by the first party management. But so far as compliance of Section 25-F (b) of the Industrial Disputes Act is concerned, the first party management produced the acquittance roll marked Ext. 2 on admission. It appears from Ext. 2 at page 34 that the first party management prepared the bill for compensation amounting to Rs. 4,162.50 paise on the 21st March 1992 i. e., long after

the retrenchment of the workman and the same was paid to him on the 20th April 2000. Thus, from the above, it is crystal clear that the second party workman was not paid retrenchment compensation as envisaged under Section 25-F (b) of the Industrial Disputes Act, 1947, on the date of retrenchment making the retrenchment ineffective and invalid in the eye of law. It is submitted by the management that after preparation of compensation bill the workman was called upon to receive the same, but he refused and only on the 20th April 2000 he voluntarily received the same. As per Section 25-F (b) of the Industrial Disputes Act, 1947, the workman is to be paid the retrenchment compensation at the time of retrenchment and admittedly the management has neither prepared the bill nor paid the retrenchment compensation at the time of retrenchment as is evidence from Ext. 2 (the Acquittance Roll). Preparation of compensation of bill subsequently and its payment to workman later on after retrenchment cannot cure the defect. Thus, there is a clear violation of Provision of Section 25-F (b) of the Industrial Disputes Act, in the present case, making the termination of the second party workman illegal and inoperative in the eye of law. Accordingly, issue No. i is answered in favour of the workman.

7. *Issue No. ii*—The services of the second party workman were terminated with effect from the 11th May 1991, retrospectively, as per Order No. 7, dated the 10th October 1991 of the first party management vide Ext. C. In the Ext. C it has been clearly mentioned that the management has terminated the services of the second party workman due to its financial crisis and inability to pay enhanced salary as per the Ordinance of the State Government and also in the said order, it has been clearly mentioned that in the event of financial improvement of the Society and necessity for employment of more employees, the re-employment of the second party workman shall be given preference. The second party alleges that after his termination from service, the first party management subsequently after 1993 appointed one Shri Aswini Kumar Nayak as Assistant Secretary and after his resignation appointed one Shri Sarat Kumar Nayak as Assistant Secretary during 1995 in his vacant post who resigned in the year 1997. Thereafter, the first party management appointed a fresh candidate namely Sanatan Thella as Assistant Secretary and he has been continuing as such in the retrenchment vacancy of the second party workman in violation of Section 25-H of the Industrial Disputes Act, 1947. So far as no opportunity has been given to him, to offer himself for re-employment as promised by the first party management in his termination notice and order vide Exts. B and C. The first party management on the otherhand has taken the plea that after death of the then Assistant Secretary Shri Rabi Chandra Nayak, the second party workman was called to the Annual General Body Meeting of the Management Society on the 21st February 1994 and asked to join in the Society in place of Shri Rabi Chandra Nayak ; but the second party workman refused to join. Thereafter, the General Body of the first party Society unanimously resolved to appoint Shri Aswini Kumar Nayak, the son of late Rabi Chandra Nayak on compassionate ground. Therefore, in the circumstances, the second party workman forfeited his claim of re-entry in to job under Section 25-H of the Industrial Disputes Act, 1947 and he cannot claim it subsequently. In its attempt to prove it, the first party management merely filed certain documents, but miserably failed to lead any evidence to prove the same and remained silent in the matter. In his cross-examination, the second party workman (W. W. 1) flatly denied to the suggestion of the first party management that after the death of said

Rabi Chandra Nayak, notice was issued to him to join in the service or he was called to the Annual General Body Meeting on the 21st February 1994 and that he attended the said Annual General Body Meeting and refused to join in the service. In the circumstances, there is no other alternative except to hold that the first party management has violated the provision of Section 25-H of the Industrial Disputes Act, 1947 by not offering the job of Assistant Secretary to the second party workman at the time of subsequent appointments in the post of Assistant Secretary, after retrenchment of second party workman.

9. Now the question is to what relief the second party workman is entitled to. Admittedly the second party workman slept over the matter for long and he only raised the matter before the District Labour Officer, Sambalpur on the 1st October 2002 i. e., after more than a decade. Therefore, in the circumstances, it would be fair and in the interest of justice if the workman will be ordered for his re-employment in service, in the post of Assistant Secretary with a consolidated back wages of Rs. 15,000 (Rupees fifteen thousand) only within a period of two months from the date of publication of award in the Official Gazette. Hence the following Award.

AWARD

The reference is disposed of on contest. The termination of services of Shri Sashi Bhusan Panda, Ex-Assistant Secretary-*cum*-Salesman with effect from the 10th October 1991 by the Management of M/s. Baham Service Co-operative Society Ltd., Baham, Sambalpur is held to be illegal. Shri Panda is entitled for his re-employment in the post of Assistant Secretary with a consolidated back wages of Rs. 15,000 (Rupees fifteen thousand) only, within a period of two months from the date of publication of the Award in the Official Gazette. Parties are to bear their own cost.

Dictated and corrected by me.

G. N. PATRA
(28-12-2004)
Presiding Officer
Labour Court, Sambalpur

G. N. PATRA
(28-12-2004)
Presiding Officer
Labour Court, Sambalpur

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