

The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 810, CUTTACK, TUESDAY, MAY 17, 2005/ BAISAKHA 27, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th April 2005

No.4177-li/1(BH)-72/94-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th March 2005 in I.D. Case No. 62/1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Polar Latex Ltd., Somanathpur, Balasore and its workman Shri Sadananda Pati was referred for adjudication is hereby published as in the scheduled below :

SCHEDULE

IN THE LABOUR COURT , BHUBANESWAR

INDUSTRIALDISPUTE CASE NO. 62 OF 1995

Dated the 29th March 2005

Present:

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

Between:

The Management of
M/s. Polar Latex Ltd.,
Somanathpur, Balasore.

.. First-party—Management

AND

Its workman
Shri Sadananda Pati

.. Second-party—Workman

Apperances:

Shri P. K. Chand, Chairman

.. For first-party—management

Shri S. N. Pati

..For second-party—workman himself

2
AWARD

The State Government in exercise of powers conferred under 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. 2090(5)/L.E., dated 8-2-1995 for adjudication and Award.

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

“ Whether the action of the management of M/s. Polar Latex Ltd., in terminating the services of Shri Sadananda Pati, a trainee, workman with effect from 12-11-1993 is legal and/or justified ? If not, what relief he is entitled to ?”

3. The brief facts giving rise to the present reference are that workman Sadananda Pati was appointed as a trainee under the Management of M/s. Polar Latex Ltd. (in short the Management) with effect from 10-4-1991. He continued to work under the Management till 23-11-1991 when he was placed under suspension on the false and fabricated allegations. Subsequently he was charge-sheeted and a domestic enquiry was conducted by the Enquiry Officer appointed by the management. The Enquiry Officer after completion of his enquiry submitted his report to the Management and basing on the said enquiry report, the Management terminated him from the traineeship of the company with effect from 12-11-1993. Thereafter, he approached the Management for his reinstatement but to no effect. He also approached the labour machinery but the conciliation proceeding initiated by the Assistant Labour Officer, Balasore ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment for adjudication. The workman while challenging the action of the Management in terminating his traineeship with effect from 12-11-1993 has now prayed for his reinstatement in service with back wages. Hence, the reference.

4. The Management on the other hand, entered its appearance and filed written statement opposing the claim of the workman. While admitting the appointment of the workman as a trainee with effect from 10-04-1991, the Management has categorically averred in its written statement that the period of training was for one year and the conditions of appointment stipulated in the appointment order were offered in writing to the workman who accepted the same under his signature. According to the Management the appointment letter clearly stipulates that if the Management is not satisfied with the work or conduct of the trainee. It shall have the right to terminate the traineeship without any notice. It is further stated that on 20-11-1991 there was a strike in the industry of the Management and the active participation of the workman concerned in the said strike during training period led the Management to issue notice to him. He was also charge-sheeted on the ground of obstructing the willing workers from attending their duties, assaulting, intimidating and abusing the co-workers during the strike for which F.I.R. was lodged against him at the nearest Police-station. The Enquiry Officer was also appointed by the Management to conduct the enquiry into the charges leveled against the workman. The workman participated in the enquiry and the Enquiry Officer after completion of the enquiry submitted his report holding the workman guilty of the charges leveled against him. Considering the gravity of the misconduct, the management was constrained to terminate the traineeship with effect from 12-11-1993 which was according to the Management legal and justified. On the above background, 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 first-party management in terminating the services of the second-party workman with effect from 12-11-1993 is legal and/or justified ?
- (ii) To what relief, if not, the workman is entitled ?

6. The workman in support of his case has examined himself as M.W.1 and has relied upon the xerox copies of the documents such as, the appointment letter for the traineeship, suspension order, charge-sheet, explanation letter of the Management giving an opportunity for personal hearing, termination order, officer order of the Management dated 12-11-1993 and representation made to the Vice-President of the Management marked as Exts. 1 to 8 respectively. On the other hand, the Management has examined one

Surendra Swain, Ramesh Chandra Samal and Rai Mohan Patnaik as M.Ws.1, 2 and 3 and has relied upon the copies of the documents such as, office letter informing the workman with regard to the appointment of the Enquiry Officer, domestic enquiry and the enquiry report submitted by the Enquiry Officer marked as Exts. A, A/1 and B respectively in support of its case.

FINDINGS

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

The perusal of the evidence of the workman clearly emerges that he was working under the management as a trainee workman with effect from 10-4-1991 but the Management placed him under suspension with effect from 23-11-1991 till the date of the termination of the traineeship on 12-11-1993 as he was an active member of the union. Although he raised a dispute before the District Labour Officer, Balasore but the matter was ultimately referred to this Court for adjudication. During evidence he has proved certain documents such as the order for traineeship, suspension order, notice of the management dated 20-11-1991, explanation, charges in the domestic enquiry, termination order, office order dated 12-11-1993 and the appeal memo marked as Exts.1 to 8 respectively. During cross-examination he has clearly admitted that he had participated in the domestic enquiry and had received the final order of the domestic enquiry. He further admits that on 20-11-1991 and 21-11-1991 there was strike in the factory and he had joined in the said strike. During the suspension period he had also received the subsistence allowance. It has been suggested to him by the Management that his performance during the training period was unsatisfactory and that he was found guilty of the charges leveled against him and that he is not entitled to get any relief to which he has given negative replies.

8. Now coming to the evidence of M.W.1, Surendra Swain it is seen that on 20-11-1993 there was disturbance at the entrance of the factory gate and the workman concerned had created the said disturbance and obstructed the employee from entering into the factory premises. He has categorically stated that he was assaulted along with others by the workman and relating to the above such disturbance a domestic enquiry was conducted and his statement was recorded by the Enquiry Officer. During cross-examination he admits that the Management had not issued any notice to appear before the Enquiry Officer and to give evidence in the domestic enquiry. It has been suggested to him that he has deposed falsely being influenced by the Management to which he has given a negative reply. M.W.2, Ramesh Chandra Samal in his evidence had stated that on 10-4-1991 the workman joined as trainee under the Management and during the training period he was involved in illegal activities for which he was charge-sheeted. Relating to his misconduct, a domestic enquiry was conducted in which the workman participated and all opportunities during enquiry had been given to the workman to defend his case. M.W.3 Rai Mohan Patnaik was appointed as Enquiry Officer who conducted the enquiry on the charges levelled against the workman. During enquiry he had offered all possible reasonable opportunities to the workman. After completion of the enquiry he submitted his enquiry report to the management vide Ext. B. He has also proved the appointment order as Enquiry Officer marked as Exts. A and A/1. The evidence in cross-examination of M.W.3 clearly shows that the occurrence took place on 21-11-1991 outside the factory premises and the concerned workman had obstructed the willing workers to enter into the factory premises including the employee namely Surendra Swain (M.W.1) to whom he had examined during the enquiry. He admits during cross-examination that has not mentioned in his report regarding the personal enmity between the workman and the aforesaid Shri Swain. During enquiry he has also examined the security staff namely A. K. Bhujabal. He further admits in his cross-examination that during enquiry he had ascertained that one criminal case was pending against the workman in connection with the Remuna Police-station and the F.I.R. submitted by the aforesaid Shri Swain has been marked as Ext.4 during enquiry. It has been suggested to him that he has not enquired into the matter properly and that he had submitted a false report to the management and that the enquiry conducted by him was not fair and proper to which he has denied.

9. Both the Management and the workman have adduced evidence in support of their respective cases. The Management has taken a stand before this Court that the workman concerned was appointed as trainee with effect from 10-4-1991 and the period of training was for one year. The conditions of appointment were offered in writing to the workman who accepted the same and thereafter joined as a trainee workman after knowing fully well the conditions stipulated in the appointment letter. It has been clearly reflected in the appointment letter that if the Management is not satisfied with the work or conduct of the trainee, the Management shall have the right to terminate the traineeship without any notice. Further

the completion of the traineeship does not entitle the trainee for being considered for employment in the company but if the performance and conduct of the trainee is found to be satisfactory and if a suitable vacancy exists at the time of completion of the training period, the case of the trainee may be considered for absorption in the company. The further plea taken by the Management is that the involvement of the workman in the strike as well as his behaviour, attitude and performance in the work as a trainee led the Management to hold a domestic enquiry in which he was found guilty. Basing on the enquiry report the Management was constrained to terminate the services of the workman and the action taken by the Management in this respect was legal and justified. Therefore the workman is not entitled to any relief as prayed for. On the other hand, it is the positive and definite case of the workman that due to his involvement and the participation in the Union activities the Management placed him under suspension and thereafter terminated him from service. According to the workman, the action of the Management in terminating his services was illegal and unjustified for which he raised the present dispute claiming for his reinstatement in service. After carefully examining the evidence as well as the documents relied upon by the parties it is seen that the Management has successfully proved and established its own case to the effect that the performance of the workman as a trainee workman was not satisfactory. The order of employment vide Ext.1 clearly sets out the terms thereafter which makes it more clear that the facility of providing training to the workman could be put to an end to at any time without assigning any reason whatsoever and his services could be regularized only on satisfactory completion of his training subject to the availability of the suitable existing vacancy. Admittedly the workman was under probation during the relevant time and the evidence led by the Management being coupled with the documentary evidence clearly shows that his services were not satisfactory. Apart from that the workman had been appointed as a trainee for a period of one year and he had to undergo the training to the satisfaction of the Management during that period. But as it reveals from the evidence already led by the Management that the workman during his training period was indulged himself in such activities which were considered to be unsatisfactory conduct on the part of a trainee, who was not assured any service even after completion of the training period. In the domestic enquiry he was found guilty of the charges levelled against him which clearly leads me to arrive at a just conclusion that the workman concerned has violated the conditions stipulated in the appointment letter. In that view of the matter the stand taken by the management is absolutely correct. On the other hand, the workman has miserably failed to substantiate his case to the effect that he had completed the training period under the Management successfully and satisfactorily. Therefore the assertion of the workman to the effect that the action of the Management in terminating his services was illegal and unjustified is without substance. Rather from the above discussion, I am of the considered view that the action of the Management in terminating the services of the workman with effect from 12-11-1993 was legal and justified. In that view of the matter, the workman is not entitled to any relief as prayed for. Both the above issues are answered accordingly.

10. Hence it is ordered:

ORDER

That the action of the Management of M/s. Polar Latex Ltd., in terminating the services of Shri Sadananda Pati, a trainee, workman with effect from 12-11-1993 is legal and justified. The workman Shri Pati is not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. Sahoo
29-3-2005
Presiding Officer
Labour Court.
Bhubaneswar

P. K. Sahoo
29-3-2005
Presiding Officer
Labour Court.
Bhubaneswar

By order of the Governor

D. MISHRA
Under -Secretary to Government