The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 1106 CUTTACK, MONDAY, AUGUST 7, 2006 / SRAVANA 16, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st July 2006

No. 6600–Ii/1(BH)-34/1993 (Pt.)-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2006 in Industrial Dispute Case No. 104 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the Managing Partner, M/s Srikrushna Cinema, At/P.O. Karanjia, Dist. Mayurbhanj and its workman Shri Shyam Sundar Parija, At/P.O. Karanjia, Dist. Mayurbhanj was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE NO. 104 OF 1995
Dated the 30th June 2006

Present :

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

Between :

The Managing Partner . . First Party—Management
M/s Srikrushna Cinema
At/P.O. Karanjia, Dist. Mayurbhanj.

And

Shri Shyam Sundar Parija . . Second Party—Workman
At/P.O. Karanjia, Dist. Mayurbhanj.

Appearances :

For the First Party–Management . . Shri B. C. Bastia, Advocate

For the Second Party–Workman . . Shri P. P. Pattnaik, Advocate

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. 6140(5)-L.E., dated the 24th May 1995 for adjudication and Award.

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

> "Whether the termination of the services of Shri Shyam Sundar Parija, Manager with effect from the 20th August 1992 by the management of M/s Srikrushna Cinema, Karanjia is legal and/or justified ? If not, to what relief Shri Parija is entitled ?"

3. By way of this reference the workman Shri Shyam Sundar Parija has challenged the legality and justifiability of the action of the management of M/s Srikrushna Cinema, Karanjia (in short the management) in terminating his services with effect from the 20th August 1992.

Matrix of the necessary facts as bear on the controversy involved in the present reference is that the workman concerned was initially appointed as Manager under the management with effect from the 1st July 1977 on a monthly pay of Rs. 600. He continued to work as such with much sincerity, devotion and to the best satisfaction of the management till the 20th August 1992 when his services were terminated. During such employment his remuneration was also enhanced to Rs. 1,500 per month. According to the workman, he had rendered continuous uninterrupted service since the date of his joining till the date of termination but the management without any rhyme or reason illegally terminated his services with effect from the 20th August 1992 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). He approached the labour machinery after such termination but to no effect. The matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. While seeking industrial adjudication the workman has claimed for his reinstatement in service with 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. It is categorically averred in the written statement that the workman concerned was appointed as Manager of M/s Srikrushna Cinema and was exclusively discharging his functions as managerial capacity and therefore, he is not a workman within the meaning of Section 2(s) of the Act. Since the workman concerned is not termed as a workman the dispute raised by him is not tenable in the eye of law. During the tenure of his service as Manager, the workman concerned remained absent unauthorisedly for a pretty long period and he was asked to submit his explanation for such unauthorised absence. Accordingly, the workman concerned submitted his explanation which was found unsatisfactory. Being not satisfied with the explanation submitted by the workman and having lost faith on him, the management decided to terminate the services of the workman and accordingly termination order was issued to him terminating his services with effect from the 20th August 1992. Since the workman does not come under the purview of Section 2(s) of the Act, he is not entitled for any relief. On the above backgrounds, the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

(*i*) Whether the termination of the services of Shri Shyam Sundar Parija, Manager with effect from the 20th August 1992 by the management of M/s Srikrushna Cinema, Karanjia is legal and/or justified ?

(*ii*) If not, to what relief Shri Parija is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the documents such as, appointment letter, letter dated the 2nd October 1991 relating to the enhancement of pay, show cause notice on the 4th August 1992, explanation on the 10th August 1992 and termination letter on the 20th August 1992 marked as Exts. 1 to 5, respectively.On the other hand, the management has examined one of the Partners of the management, namely Shri Patel Kumar Sahoo and has relied upon the xerox copies of the order on the 2nd February 2000 of Controlling Authority under payment of Gratuity Act, Balasore in P. G. Case No. 2/1993 and the receipt of payment of gratuity amount to the concerned workman marked as Exts. A 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 since the above issues are inter-linked with each other.

It is in the evidence of the workman that he joined in the establishment of the management as a Manager with effect from the 1st July 1977 on a monthly salary of Rs. 600 which was subsequently enhanced to Rs. 1,500 per month with effect from the 2nd October 1991. It is categorically stated that during his employment a dispute arise between the Partners and one of the Partners filed a Civil Suit in the Court of Sub-Judge, Karnjia. The said Partner engaged him (workman) on as a lawyer and therefore, the Managing Partner issued show cause vide Ext. 3. Accordingly he submitted his explanation on the 10th August 1992 vide Ext. 4 but the management being not satisfied with the explanation, terminated his services with effect from the 20th August 1992 vide Ext. 5, without conducting any enquiry to that effect. It is also in his evidence that the management while terminating his services had not given any notice or notice pay and retrenchment compensation to him. He has clearly stated that he now does not insist for his reinstatement in service due to his old age but claims full back wages and compensation. During cross-examination he clearly admits that although he was working as Manager but he was doing all the clerical works. It has been suggested to him that he had filed an application before the Assistant Labour Commissioner bearing P.G. Case No. 2/1993 for gratuity and that he made a final settlement with the management and accordingly received a sum of Rs. 9,000 from the management to which he has replied in the negative. But during cross-examination he admits the order of the Controlling Authority under the Payment of Gratuity Act and his signature thereon marked as Exts. A and B, respectively. It has further been suggested to him that he is not entitled to the benefits as claimed by him to which he has categorically denied. During evidence he has also proved the appointment order and the enhancement of his pay marked as Exts. 1 and 2, respectively. On the other hand, the evidence led by the management through M. W. 1 goes to prove that the concerned workman while working as Manager was looking after all the affairs including the supervision of work of all the employees of M/s Srikushna Cinema. The employees working under the

management used to report the Manager for any kind of leave. The Manager also used to allot the duties in absence of any staff and also used to make payment to all the staffs. During the tenure of his service as Manager the workman remained absent unauthorisedly for a pretty long period as a result the management was constrained to issue show cause. Accordingly, the workman submitted his explanation but being not satisfied with the explanation, the management terminated the services of the workman with effect from the 20th August 1992. He has further stated that initially the management was paying Rs. 600 per month to the workman towards his salary which was subsequently increased to Rs. 1,500 per month. He had also filed a case against the management before the Gratuity Authority under the Payment of Gratuity Act, Balasore in P. G. Case No. 2/1993 for payment of gratuity amount and as per the order of the Gratuity Authority vide Ext. A, the management paid the gratuity amount vide Ext. B. He has categorically stated that no legal dues is outstanding to be paid to the workman. During cross-examination he has clearly admitted that the management has not filed any documents to show that the workman was looking after all the affairs of the management including the supervision work. He has stated further that the workman was also doing the clerical work along with the managerial work. He has denied his knowledge about the date and period of absence of the workman till the date of his termination. He has categorically stated that although the management issued show cause to the workman but he cannot say exactly the name of the Partner who issued the said show cause to him. He further admits that he had not verified the reply submitted by the workman to the said show cause. It is also in his evidence that no domestic enquiry was conducted against the workman and he has no knowledge if the management had given any notice or notice pay and retrenchment compensation to the workman while terminating his services. He has clearly stated that he had neither part in the conciliation proceeding nor enquired into the papers relating to the termination. He admits that he has not produced any document to show that he was one of the Partners during the year 1992. It has been suggested to him that the workman had not remained absent for a pretty long time and that he had performed his duties to the best satisfaction of the management and that the management illegally terminated his services with effect from the 20th August 1992 and that he is entitled to be reinstated in service with full back wages to which he has negatively replied.

8. The learned counsel appearing for the management has strenuously urged that the reference as laid is not maintainable inasmuch as the workman concerned is not a workman as defined under Section 2(s) of the Act. He was mainly employed in managerial capacity and was discharging managerial functions and carrying out the administrative duties assigned to him. Therefore, he is not a workman within the meaning of Section 2(s) of the Act. According to the learned counsel since the workman concerned is not termed as a workman as defined under Section 2(s) of the Act, the dispute already raised by him is not at all tenable in the eye of law. The further submission of the learned counsel is that during the tenure of his service as Manager the workman concerned remained absent unauthorisedly for a pretty long period and he was asked to submit his explanation for such unauthorised absence. But the explanation submitted by the workman was found unsatisfactory and the management having lost faith on him decided to terminate the services of the workman and in fact terminated his services with effect from the 20th August 1992 which was legal and justified. The learned counsel has further submitted that after such termination the workman concerned filed P. G. Case No. 2/1993 before Controlling Authority under the Payment of Gratuity Act, Balasore in order to get his gratuity and as per the order of the Gratuity Authority the management paid the

entire gratuity amount towards full and final settlement of his claim and the workman concerned also received a sum of Rs. 9,000 towards his gratuity amount from the management as full and final settlement of his claim. It is categorically urged by the learned counsel that since the workman has already received the gratuity amount towards full and final settlement of his claim, he is no more entitled to get any relief as prayed for. On the above submission, the learned counsel appearing for the management has fairly submitted that the present reference as laid is not maintainable and the workman concerned is not entitled for any relief. On the other hand, the learned counsel appearing for the workman has contended that although the concerned workman was employed in the managerial capacity but he was mainly performing the clerical work. He had never remained absent unauthorisedly rather the management without any rhyme or reason illegally terminated him from service without conducting any domestic enquiry to that effect. The learned counsel has further submitted that the management while terminating his services had not followed the mandate of Section 25-F of the Act.According to him, the workman concerned had rendered continuous uninterrupted service for years together but the management without complying with the mandatory provisions of the Act terminated him from service without any rhyme or reason and therefore, the workman concerned is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act have not been complied in the case of his termination. On the above submission the learned counsel appearing for the workman has submitted that the present reference as laid is maintainable and the workman concerned is entitled to the relief as prayed for.

9. The perusal of the schedule of reference clearly emerges that the termination of the services of the concerned workman has been effected from the 20th August 1992. The sole ground of termination as has been pleaded in the written statement as well as in the evidence was his unauthorised absence from duty for a pretty long period. In this connection the workman was asked to submit his explanation and the workman concerned accordingly submitted his explanation but the management being not satisfied with the explanation decided to terminate the services of the workman and in fact terminated the services of the workman with effect from the 20th August 1992. The evidence led by the management goes to prove the above fact. The categorical evidence led by the management through M. W. 1 clearly shows that during the tenure of service as Manager the workman remained absent unauthorisedly for a pretty long period and the management was constrained to issue show cause to the workman. The workman accordingly submitted his explanation but the same was found not satisfactory. Thereafter the management terminated the services of the concerned workman with effect from the 20th August 1992. In this respect the evidence given by M. W. 1 clearly shows that no domestic enquiry had been conducted against the workman for such unauthorised absence. M. W. 1 admits in his evidence that he had not verified the explanation submitted by the workman to the said show cause. The evidence already adduced by the management through M. W. 1 nowhere discloses the period of absence from duty by the workman. Admittedly no domestic enquiry has been conducted against the workman for such unauthorisedly absence. No material is also placed before this Court relating to the period of absence from duty. Therefore, in absence of any clear, cogent and convincing evidence, the mere oral statement given by M. W. 1 to the effect that the workman being in the capacity of a Manager during the tenure of his service remained absent unauthorisedly for a pretty long period cannot be regarded as sufficient evidence to come to an irresistible conclusion that the workman had in fact remained absent from duty unauthorisedly for a pretty long period. Apart from the above fact, no other document has been produced before this Court to prove that the workman concerned was issued with any show cause relating to his unauthorised absence from duty and that he submitted his explanation which was found unsatisfactory. In absence of any

relevant document to that effect it cannot be definitely said that the workman concerned was issued with any show cause and that he had submitted his explanation to that effect. M. W. 1 admits during evidence that no domestic enquiry has been conducted against the workman relating to his unauthorised absence from duty. In such premises the submission already led by the learned counsel appearing for the management appears not sound. Secondly, coming to the other aspect of the case as to whether the concerned workman is termed as workman within the meaning of Section 2(s) of the Act or not, the evidence already led by the management is not so convincing as to arrive at a conclusion that the concerned workman was not coming under the purview of Section 2(s) of the Act. M. W. 1 in his evidence clearly admits that the workman was discharging the clerical duties and was also looking after all the affairs of the management. The designation of an employee is not of much importance and what is importance is the nature of duty performed by him. In the present case M. W. 1 clearly states that the workman was maintaining the accounts register. He was also looking after the Sales Tax matter and payment of entertainment tax and other related works concerning the accounts. He was also discharging the clerical work along with the managerial work, in such circumstances therefore, he can certainly be covered under the sweep of the definition of workman. In that view of the matter, the reference in its present form is maintainable and the concerned workman is clearly covered under the definition of workman as defined in Section 2(s) of the Act. Therefore, the stand taken by the management before this Court to the effect that the workman concerned is not coming under the purview of Section 2(s) of the Act, in my considered view, is without substance. Besides, the management while terminating the services of the concerned workman had not given any 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 settled position of law is that Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. In the present case the termination having been made in violation of the mandatory provisions of Section 25-F of the Act, in my opinion, is void *ab initio*. It is also well settled that when an allegation of misconduct is made against a workman he should be given a charge-sheet and a domestic enquiry should be held against him giving him full opportunity of hearing. This is a basic principle of Industrial law but in the present case neither any charge-sheet was issued nor any enquiry was conducted aginst the workman for the alleged misconduct. The management had neither made any effort nor any endeavour to conduct the domestic enquiry against the workman into the allegation of misconduct for such unauthorised absence from duty. Therefore, the termination of services of the workman with effect from the 20th August 1992 having been made in violation of the mandatory provisions of the Act was illegal and unjustified. In that view of the matter, the workman is entitled to get the relief as prayed for.

10. The workman in his evidence has clearly and categorically stated that he now becomes old and does not insist for his reinstatement in service. On the other hand, he has claimed back wages and retrenchment compensation. The evidence given by M. W. 1 goes to prove that as per the order of the Controlling Authority under Payment of Gratuity Act, Balasore vide P. G. No. 2/1993 under Ext. A the management paid the gratuity amount to the workman to the tune of Rs. 9,000 towards his full and final settlement of his claim. The perusal of the said order of the Controlling Authority under Payment of Gratuity Act, Balasore-*cum*-Assistant Labour Commissioner, Balasore clearly reveals that the workman concerned had filed a claim petition under sub-rule (1) of Rule 10 of the Payment of Gratuity Rules on the 17th February 1993. In the said order it has been reflected that on the 20th January 2000 the gratuity amount to the tune of Rs. 9,000 was paid to the concerned workman. The claim under the Controlling

Authority under Payment of Gratuity Act, Balasore was only for payment of gratuity to the workman. As per the order of the Gratuity Authority the payment was also made to the workman but it does not mean that the back wages as well as the retrenchment compensation were paid to the concerned workman. The amount already received by the concerned workman was his gratuity amount only after termination of his services which he received towards full and final settlement of his claim. Since this Court, in foregoing paragraphs, has observed that the termination was illegal and unjustified. The workman is therefore, entitled to the relief as claimed by him in his statement of claim. The workman clearly admits that he becomes now old and does not insist for reinstatement but claims back wages and retrenchment compensation. Admittedly the management has not availed the services of the concerned workman with effect from the date of his termination. The workman has also nowhere asserted that he has not been gainfully employed elsewhere after such termination. No cogent material is also forthcoming to that effect. In that view of the matter, the concerned workman is not only entitled to get a lump sum amount of Rs. 10,000 in lieu of retrenchment compensation. Both the above issues are answered accordingly.

11. Hence, it is ordered :

ORDER

That the termination of services of Shri Shyam Sundar Parija, Manager with effect from the 20th August 1992 by the management of M/s Srikrushna Cinema, Karanjia is neither legal nor justified. The workman concerned is entitled to get a lump sum amount of Rs. 10,000 (Rupees ten thousand) only in lieu of retrenchment compensation.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
30-6-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
30-6-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government

Printed and published by the Director, Printing, Stationery and Publication, Orissa, Cuttack-10
Ex. Gaz.619—193+11