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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd August 2006

No. 7140–Ii/1(S)-79/1996 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th May 2006 in Industrial Dispute Case No. 17/1997 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the management of Orissa State Co-operative Marketing Production Ltd., Sambalpur through the Area Manager, M/s Orissa State Co-operative Marketing Federation Ltd., Khetrajpur, Sambalpur and its workman Shri Lokanath Pradhan, At/P.O. Sarapal, Dist Deogarh 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. 17 OF 1997

Dated the 11th May 2006

Present :

Shri P. K. Mohapatra, LL. B.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of
Orissa State Co-operative Marketing
Federation Ltd., Sambalpur through the
Area Manager, M/s. Orissa State Co-op.
Marketing Federation Ltd., Khetrajpur,
Sambalpur. . . First Party—Management

And

Its workman . . Second Party—Workman
Shri Lokanath Pradhan
At/P. O. Sarapal, Via Reamal
Dist. Deogarh.

Appearances :

For the First Party—Management . . Shri Niranjan Kar, Advocate

For the Second Party—Workman . . Shri R.N. Debata, Advocate

AWARD

1. Consequent to the reference made by the Government of Orissa, Labour & Employment Department vide Memo. No. 8727, dated the 23rd July 1997 this Industrial Dispute Case is registered. In it, this court is asked to adjudicate "Whether the termination of service of Shri Lokanath Pradhan, workman by the management of Orissa State Co-op. Marketing Federation Ltd., Khetrajpur, Sambalpur with effect from the 1st February 1993 is legal and/or justified ? If not, to what relief the workman is entitled ?"

2. The facts leading on to the above situation may be mentioned in a short compass—

The workman named above was appointed as Sales Assistant (B.N.A.) vide order No. 756 (3), dated the 13th June 1988 and he joined in his duty on the 1st July 1988 at Sambalpur Area Office of the Management with a monthly salary of Rs. 450 and he continued as such at different places till the 30th January 1993. The management terminated his service vide order No. 1030 (5), dated the 15th March 1993 with effect from the 1st February 1993. It is the specific case of the workman that he had received the termination order on the 22nd March 1993. According to him, he was terminated from service without any enquiry, without any valid reason and without payment of the legitimate financial benefits. Thereafter, the workman approached the Labour Officer and his case was also taken up by the Assistant Labour Officer, Sambalpur. But during the conciliation proceeding there was no favourable response from the management, as a result, a failure report was presented and then the Government referred the dispute to this court. To sum up, the claim of the workman is that his termination is illegal and accordingly a direction may be issued to the management to reinstate him in service with full back wages.

3. The management side being represented by the Area Manager has contested the above claim by stating that the workman was engaged as a Casual Labourer with a fixed scale of pay for a fixed period and after the conclusion of that work, he was disengaged vide letter No. 991, dated the 31st January 1993. It is also the case of the management that the wages of the workman was paid from the subsidy given by the State Government to the management society and when the State Government took a policy decision to stop payment of the subsidy, the workman was disengaged and there is no illegality in such action. In this connection, the Area Manager has also taken an alternative plea that subsequently the State

Government again granted the subsidy and accordingly by office order No. 997, dated the 2nd February 1993 the workman was again engaged with certain conditions, but the workman failed to comply it, as a result he was intimated vide office order No. 1080, dated the 15th March 1993 regarding his disengagement. It is also the case of the management that the Managing Director of the Federation is not relied as a party, as a result, the case is bad for non-joinder of the necessary party. Further according to the management, the claim of the workman is barred by law of limitation and principles of *res judicate.* To sum up, it is the plea of the management that the workman was appointed as a Casual Worker for a fixed term in relation to the seasonal work since the 13th June 1988 and he was engaged as such whenever the work was available and after the closure of scheme, he was disengaged from service. The management side have prayed for dismissal of the claim advanced by the workman.

4. In relation to the written statement filed by the management, the workman has filed a rejoinder. In it, he has taken the plea that the Area Manager, Sambalpur is his Appointing Authority and he being his controlling Officer vide Ext. 9 had also terminated him from service and as he (Area Manager) is a party in this case, so there is no reason to conclude that the case is bad for non-joinder of the necessary party. The workman has also contended that the dispute is within the time limit and the allegation of misappropriation etc. are false and cooked up. Further according to him, it is hard to believe the stand of the management that there was dearth of work at Sapon station as because some of the employees junior to him were absorbed on permanent basis by the Area Manager and there is no reason to ignore him.

5. By taking note of the pleadings of the parties, the following issues are settled in this case:—

(1) '' Whether the termination of services of Shri Lokanath Pradhan, workman by the management of Orissa State Co-op. Marketing Federation Ltd., Khetrajpur, Sambalpur with effect from the 1st February 1993 is legal and/or justified ?

(2) If not, to what relief the workman is entitled ?''

6. In order to suffice his stand, the workman was examined as the only witness from his side. He has marked Exts. 1 to 15/a. The management side have examined the Area Manager as the only witness. They have also marked Exts. A to S/5. The documents relied on by the parties will be referred as and when necessary.

7. This Court after taking note of the entire portion and after hearing the parties vide order, dated the 11th June 1999 passed an Award against the workman and being aggrieved by the said order, the workman preferred OJC No. 13461 of 1999. Our Hon'ble Court vide order dated the 22nd March 2004 was pleased to remand the Industrial Dispute Case to this court for rehearing with a direction to give opportunity to both the parties to adduce evidence in support of their respective claim and to dispose of the case as expeditiously as possible. In view of the above direction of the Hon'ble Court, both the parties were given further opportunity to adduce evidence and then the matter was heard at length from the learned counsel for the parties.

FINDINGS

8. *Issue No. 1*—It is the usual practies in all the adjudication proceedings of this type to follow the procedure meant for the Civil suit with the conclusion that the same is a civil suit pending before a civil Court. It is a wall cottled law in a Civil Trial that evidence adduced is not admissible regarding a fact which has not been pleaded. So the principles of the pleadings is that no evidence should be allowed contrary to it. The object being to enable the adversary to know what case he has to meet and thus to prevent a surprise at the trial, Our Hon'ble Court is a catena of decisions have held that the Court should not allow evidence to be led on matters which are beyond the pleadings of the parties and even if such evidence is placed on record, the Court is not entitled to look into it for any purpose whatsoever. Though pleadings before the Labour Court have not to be read strictly, it is usually true that pleadings must be such as to give sufficient notice to the other parties of the case it is called upon to meet. In the present Industrial Dispute Case, the management side have contested the claim of the workman with a narrow pleading. On perusal of the written statement it is forthcoming that they have challenged the non-inclusion of the Managing Director as a party in this case and have further pleaded that the case is barred by law of limitation and principles of *res judicate*. They have also taken the plea that the wokman is a Casual Labour who is appointed for a fixed period and in connection with a seasonal work and his removal from service is not to be viewed strictly. They have also taken the plea that vide order No. 997, dated the 2nd February 1993 he was asked to join again by fulfilling certain conditions, but he has not complied it, as a result, he is not entitled to get any relief claimed by him. In Para. 9 of the written statement the management side have taken the further plea that an amount of Rs. 9701.09 paise is due from the workman which was misappropriated by him while he was working at the Sale Centre and the Auditor after scrutiny has pointed out the above ommission in his report and in view of the above position, his disengagment from sevice is in accordance with law. If the above legal position is kept in view, then the submissions advanced by the learned counsel of the management regarding the other facts and circumstances can be set at rest with the simple conclusion that those are not to be looked into for any purpose whatsoever.

9. It is the specific case of the management that the workman was working as a Casual Worker with a fixed pay for a fixed period and his removal from service without giving service benefits cannot be held to be legal. It is a well settled law that a workman appointed for a specific period, the termination of his service at the end of that period will not a retrenchment under Section 2(oo) (bb) of the Industrial Disputes Act. Even it is held by some Hon'ble Court that if an employee is employed in relation to a project and his service was terminated at the end of that project it will not be a retrenchment, as it will be an automatic termination of service. Even termination of a workman due to non-renewal of contract will not amount to retrenchment because it is concluded from the length and breadth of the Industrial Dispute Act. in this case it is the specific plea of the management that the workman was engaged as a Casual Labourer in a fixed scale of pay for a fixed period and as his work was seasonal, his removal is not illegal. To arrive in a just decision in this regard, the appointment letters issued to the workman from time to time need to be perusal. It may be pertinent to mention here that the workman was appointed for a period of 89 days and then after a break of one day he was again

appointed for another 89 days, so at the time of issuing each appointment order there was break of one day. The workman has filed some appointment orders and on perusal of the same it is hard to believe that he was appointed in relation to a particular work and for a particular project. In the body of the appointment orders there is even no whisper of word that it relates to any seasonal work, then there is clear cut mention that he was appointed for 89 days with a consolidated pay of Rs. 450 per month. It is also averred in it that his service is purely temporary in nature. There is no mention that it relaes to a particular policy of the Government and his entire pay expenses are borne from the subsidy given by the State Government. So the claim of the management that it relates to a particular season and for a particular project cannot be accepted. The evidence of the management witness in this regard is bald in nature and cannot override the documentary evidence adduced by the workman. Even the Hon'ble Court while disposing the writ case have specifically given direction to this Court to give importance to the compatation of 240 days of service in one calendar year. So the stand of the management that the service of the workman relates to a particular project and it is a seasonal one cannot be easily swallowed.

10. According to the workman, he was in service from the 1st July 1988 and continued as such till the date of his relieve. To suffice it, the workman has filed some appointment orders and other letters of the management issued to him. As per law, the proof of 240 days of service of the workman is on the workman. In the present case, the workman has adduced oral and documentary evidence to butress his above claim. He has also filed a petition to call for certain documents from the management side. But the management took the plea that those documents are not available with them. So non-production of the documents from the side of the management is due to non-availability of the same with them. To adjudicate and find out whether the workman has completed 240 days of work in a calendar year this Court has to look into his service records. In the instant case, the workman has produced all the documents in his possession. It is the admitted case of the management that he was in service up till the date of his removal. Of course in this regard, the management has taken the plea that he was not in continuous service and after expiry of 89 days there is a break of one day. Even at the time of argument, the learned counsel appearing for the management has submitted that the appointment of 89 days is also not regular, but it is intermittent. But in this regard, the evidence adduced from the side of the management is weak and not cogent. Rather the workman has filed documents which are available with him. In view of the above background there is no good reason as to why the management side have withheld the production of documents which ought to be available with them. Their explanation that those are not available cannot be easily swallowed as subsequently the documents which are beneficial to them are produced. So non-production of the documents from the side of the management is to be adversely viewed and can be treated as non-compliance of Section 106 of Indian Evidence Act. Under the above provision of law, any fact which is especially within the knowledge of any person the burden of proof of that fact is upon him. As the same is not complied from the side of the management no adverse inference is to be drawn to the extent that they have withheld the evidence which was considered to be highly necessary to adjudicate the crux of the issue. So after scrutiny of the evidence on record and by taking the

note of the documents filed by the parties, I am of firm view that the workman has completed 240 days of service in a calendar year proceeding his termination. In view of my such conclusion non-compliance of the provisions of the Act is to be seriously viewed and it is to be held that the termination is not legal.

11. The matter does not end here. It is also the case of the workman that the management side have taken the plea that his termination also relates to the misappropriation pointed out by the Auditor. This being the position available in the plea of the management, it can be safely said that his removal from service is stigmatic. In such a position, there should be a departmental enquiry and opportunity of being heard should be given to him. In this connection the averment of the management in the body of the termination letter is relevant. There is no mention that his removal has direct link with the misappropriation. Even in the written statement, there is a mention that his removal relates to non-compliance of the order issued by the Area Manager. In Para. 10 of the written statement it is clearly averred by the Area Manager that his (workman) disengagement from service is not for misappropriation, but his failure to join in duty complying the order, dated the 2nd February 1993. So on both the counts there are legal restrictions for complience, but the management side have failed to comply it. So the workman is entitled to get relief claimed by him.

12. The evidence of the management witness with regard to the removal of the workman is also relevant to arrive into a conclusion. According to him, his removal relates to non-compliance of the stipulations available in office order No. 856, dated the 24th December 1992 and No. 997, dated the 2nd February 1993. If the pleading of the management in this regard is taken into account then the letter, dated the 2nd February 1993 relates to the further employment offered to him (workman). In this connection, reliance be attached to Para. 5 of the written statement. In a Civil Trial, the facts admitted need not be proved. So letter No. 997, dated the 2nd February 1993 relates to further engagement offered to the workman stipulating certain condition. The other letter is not produced from the side of the management. The allegations of misappropriation levelled by the management against the workman is to be proved by adducing cogent and reliable evidence. The report of the Auditor in this regard is a vital pisco of evidence. The same is not produced in the Court. The documents filed from the side of the management to suffice this aspect are not highly reliable. The evidence adduced by the Area Manager is also not trustwrothy to conclude that the workman has misapporiated the amount as alleged by the management. For the sake of argument if it is believed that the workman had misappropriated the amount as averred in the written statement, then there is no reason as to why a further appointment order was issued in his favour and he was asked to comply certain stipulations. To sum up, the management side have failed to suffice the allegations of misappropriation levelled against the workman and even the documents filed by the management are also not proved in accordance with law. Though emphasis is given from the side of management to Ext.H., but by taking the note of the facts that the same is xerox copy of a documents it cannot be judicially noted and the contents of it cannot be used against the workman.

13. It is available in the evidence of the management witness that there are more than 100 employees in the organisation of the management. Admittedly the permission of the Government is not taken while removing the present workman. The workman has filed Exts. 12 to 15 to suffice his claim. On perusal of the same it can be said that he was maintaining different papers of the management during his service tenure. As such there are materials to conclude that the termination of service of the workman by the management with effect from the 1st February 1993 is not legal and/or justified. So the first issue is answered in support of the workman.

14. *Issue No. 2 :*—According to the workman after his termination, he is managing with difficulty. But the management side have come up with the plea that he is maintaining a Tractor. To suffice it, no documentary evidence is adduced from the side of the management. So the fact that the workman was gainfully employed after his termination is not put forth from the side of the management in a satisfactory manner. In view of the above background there are good reasons to direct the management to reinstate the workman with full back wages. The mental agony of the workman and the continuous litigation he is facing after his termination are congenial circumstances to arrive in to such a conclusion. So the above issue is answered accordingly. Hence the Award.

AWARD

The reference is answered in support of the workman on contest. The management is directed to pay cost of Rs. 2,000 (Rupees two thousand) only to the workman within one month from the date of publication of the award by way of notification. The management is directed to reinstate the workman with full back wages.

Dictated and corrected by me.

P. K. MOHAPATRA
11-5-2006
Presiding Officer
Labour Court, Sambalpur

P. K. MOHAPATRA
11-5-2006
Presiding Officer
Labour Court, Sambalpur

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

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