

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 250-A CUTTACK, SATURDAY, MARCH 4, 2006 / FALGUNA 13, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2006

No. 1769-li/1(BH)-48/1997 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th December 2005 in Industrial Dispute Case No. 111 of 1997 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the President, Ispat Alloys Limited, At Balgopalpur, P.O. Rasalpur Via Remuna, Dist. Balasore and its workman Shri Man Mohan Mahapatra, At/P.O. Somanathpur Via Remuna, Dist. Balasore was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 111 OF 1997

Dated the 30th December 2005

Present :

Shri P. K. Sahoo, o.s.j.s. (Jr. Branch)
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The President, .. First Party—Management
Ispat Alloys Limited
At Balgopalpur, P.O. Rasalpur
Via Remuna, Dist. Balasore.

And

Shri Man Mohan Mahapatra .. Second Party—Workman
At/P.O. Somanathpur Via Remuna
Dist. Balasore, Orissa.

Appearances :

For the First Party–Management . . . Shri P. K. Das

For the Second Party–Workman himself . . . Shri M. M. Mahapatra

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. 13766(5)-L.E., dated the 27th October 1997 for adjudication and Award.

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

“Whether the termination of service of Shri Man Mohan Mahapatra with effect from the 15th July 1996 by the management of Ispat Alloys Limited is legal and/or justified ? If not, to what relief Shri Mahapatra is entitled ?”

3. By way of this reference the workman Shri Man Mohan Mahapatra has challenged the legality and justifiability of the action of the management of Ispat Alloys Limited, (hereinafter referred to as the management) in terminating his service with effect from the 15th July 1996.

The brief facts giving rise to the present reference are that the workman joined in the establishment of the management as trainee with effect from the 1st February 1994. Subsequently he was given appointment in the post of Junior Officer in the Quality Control Department on the 1st February 1995. He continued to work as such in the establishment of the management till the date of his termination on the 15th July 1996. According to the workman although he had rendered continuous uninterrupted service for the above said period with much sincerity, devotion and to the utmost satisfaction, but the management without any rhyme or reason terminated him from service with effect from the 15th July 1996 without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act). It is further alleged in the statement of claim that the management had neither issued any charge-sheet nor conducted any enquiry against his for any misconduct before terminating his service with effect from the said date. After such termination he raised a dispute before the Conciliation Officer-*cum*-Assistant Labour Officer, Balasore but the conciliation proceeding ended in failure and 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. Hence the reference.

4. The management, on the other hand, filed its written statement opposing the claim of the workman *inter alia* contended that the workman was appointed as Junior Officer in the Quality Control Department drawing salary of Rs. 3,112 per month and was discharging the functions of a supervisor and therefore, he is not a workman within the meaning of Section 2(s) of the Act. Since the workman is not termed as a workman, the dispute raised by him is not tenable in the eye of law. It is further averred in the written statement that on the 29th August 1995 the services of the workman were confirmed and he was posted in the Quality Control Department and the job assigned to him was purely supervisory in nature. There were assistance and Junior Technicians working under him who used to report him regarding

collection of sample from different heaps grinding of metals and cleaning of laboratory waste. It is specifically averred in the written statement that the workman had committed gross misconduct by physically molesting a female contract worker namely Smt. Basanti Singh on the 15th July 1996 in the Quality Control Department situated inside the administrative building of the factory. The matter was reported to the management by the victim lady. Subsequently the above incident was also reported at local Police Station and basing on her report Remuna Police Station Case No. 93 of 1996 was registered and investigation was accordingly commenced. During investigation the workman admitted his guilt and on the demand of the Union his services were terminated with effect from the 15th July 1996 after complying with the mandatory provisions of the Act by paying him one month's salary. According to the management, the action taken in this respect in terminating the services of the workman with effect from the 15th July 1996 was legal and justified and therefore, he is not entitled to any relief as claimed. 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 termination of services of Shri Man Mohan Mohapatra with effect from the 15th July 1996 by the management of Ispat Alloys Limited, is legal and/or justified ?
- (ii) If not, to what relief Shri Mohapatra is entitled ?
- (iii) Is the reference maintainable ?
- (iv) Is the workman coming within the purview of workman as defined in the Act ?

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, appointment letter, letter of termination, order sheet in G. R. Case No. 953 of 1996, order sheet in 1 C.C. 342/1991 and 250/1997, petition for compromise in G. R. Case No. 953/1996, formal F.I.R. and the F.I.R. submitted by victim lady Basanti Singh at Remuna Police-Station marked as Exts. 1 to 8 respectively. On the other hand, the management has examined four witnesses namely, Basanti Singh, Shri Bhuban Mohan Das, Shri Saroj Ranjan Rath and Shri Narahari Mahallik as M. Ws. 1 to 4 and has relied upon the xerox copies of the documents such as, complaint dated the 15th July 1996 report of the contractor, F.I.R., petition for compromise, appointment letter, circulars, payment advice, preparation of chemical reports, organisation chart, order of the S.D.J.M., dated the 18th September 1998 and letter of the management, dated the 7/8th August 1996 marked as Exts. A to N respectively in support of its case.

FINDINGS

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

Before going into the facts of the case, it is necessary to have a look at the law on point. Section 2(s) of the Act reads as follows :

“ ‘Workman’ means any person (including apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express, impelled and for the purpose of any proceeding under this Act in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment had led to that dispute, but does not include any such person.

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the Police Service or as officer of other employee of a prison; or
- (iii) who is employed mainly in a Managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mosen or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

8. The Hon’ble Apex Court in the case of *Ved Prakash Gupta Vrs. M/s. Delton Cable India (Private) Limited* reported in 1984 (48) FLR 417 (Supreme Court) has interpreted Section 2(s) of the Act :

“ What has to be seen in this case is, whether the petitioner is a workman under the above said definition and what is the substantial duty which he was performing and whether such work was managerial or supervisory in nature, in the sense in which those terms are understand in the industrial law”.

Again the Hon’ble Apex Court in *Arkal Govinda Raj Rao Vrs. Ciba Goigy of India Co. Limited, Bombay* reported in 1986(52) F.L.R. 19 (Supreme Court) has held as under :

“ Where an employee has multifarious duties and a question is raised whether he is a workman or someone other than a workman the Court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties these additional duties can not change the character and status of the person concerned. In other words, the dominant purpose of employment must be first taken into consideration and the class of some additional duties must be rejected while determining the status and character of a person. The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties would hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not detract from the truth”.

9. From the language employed in Section 2(s) of the Act a person who is employed to do manual work, unskilled work, skilled work, technical work, operational work, clerical work and supervisory work is a workman. The specification of the aforesaid seven types work obviously was intended to lay down that an employee is to become a ‘workman’ only if he is

employed to do work of one of these types while there may be employees who in doing any such work would not be out of the scope of the work without any resort to exceptions. The designation of an employee is not of much importance and what is important is the nature of duties being performed by him. The dominant purpose of employment must be first taken into consideration and the class of some additional duties must be rejected while determining the status and character of a person. It is not casual or occasional work which a particular employee does which is decisive of what is the nature of his employment nor decisive of the question whether he is employee at all falling within the definition. A distinction therefore, has necessarily to be made between the principal work of an employee and the ancillary duties involved in doing the principal work. The question in each case will have to be decided with reference to the special facts and circumstances thereof. The question whether the employee is a workman or not, is not a pure question of fact. It is a mixed question of fact and law. In this background it is most pertinent to analyse the evidence already adduced on behalf of the management. In the present case the management in total has examined four witnesses in support of its case. Out of the four witnesses except M.W. 3 Shri Saroj Ranjan Rath no other witness has whispered a single word regarding the nature of the duties and functions performed by the workman. They (M. Ws. 1, 2 and 4) have nowhere stated that the workman was discharging managerial functions and carrying out any administrative duties. Nothing has been elicited from their evidence to show that the work which the workman was performing was supervisory in nature. M. Ws. 3 in his evidence has simply stated that the workman was a Chemist and he used to prepare chemical reports. His performance was supervisory in nature. He has further stated that the workman was receiving his salary a sum of Rs. 1,250 as basic pay and gross salary was Rs. 2,500 per month. The workman was coming under Grade IV as stipulated in the appointment order vide Ext. B. There are three grades in the Company such as, workman, officers and managerial category. The Grade IV is coming under the supervisory category and the workman was coming under the said grade as per his appointment order. Since the performance of the workman was supervisory in nature, he is not coming under the definition of 'workman' as per the Act. During cross-examination M. W. 3 has categorically stated that the workman was working as a chemist and the work performed by him was purely of the technical nature. Except the above evidence the management has not placed any clear, cogent and reliable evidence to prove and establish that the workman is not coming under the definition of 'workman' within the meaning of Section 2(s) of the Act. Rather, in my considered opinion when the person is found to be discharging technical work he can certainly be covered under the sweep of the definition of the workman. On the other hand, the perusal of the evidence of the workman clearly emerges that his work was to test and to make analysis of the products and raw materials. He was making chemical analysis of the products and the technicians were receiving instructions from him to prepare the samples. After carefully examining the evidence led by the management and considering the nature of duties and functions performed by the workman I am of the view that he can not be said to be working in the supervisory capacity. In my considered view the management has failed to produce any evidence to show that the workman was employed in the supervisory capacity and that he was discharging the works of supervision over all its subordinates. Admittedly there is no cogent material on record to establish that the workman was discharging managerial functions or carrying out any administrative duties. Rather it has been fully established that the workman was working as a Chemist, and therefore, even if, some incidental supervisory work was done by him, he could not have been put in the

category as contained in clause 4 of Section 2(s) of the Act. In that view of the matter, the workman was clearly covered under the definition of the workman irrespective of the amount of salary drawn by him. The Hon'ble Apex Court and different Hon'ble High Courts in the Country have time and again said that one is not to be guided by the factum of salary drawn by a particular person but the main criteria to determine whether that person is a workman, is to take into consideration the nature of work rendered by him in the industry. Status of a Chemist in a manufacturing industrial concern is aptly described in a judgement of the Hon'ble Apex Court which is rendered in the case of *Burma Shell Oil Storage and Distributing Company of India Limited, Vrs. Management Staff Association* reported in 1971 (22) F.L.R. 11 (Supreme Court). The Hon'ble Apex Court in that judgement has held that "the Chemist may be assisted by the assistants and he may be required to do some supervision to ensure that the workman assisting him do their work properly but that small amount of supervision is only incidental to his own technical work. In the circumstances, even if, the petitioner is required to supervise the work of his assistants or subordinates, it is only incidental to the main functions which he is required to discharge in the starch department. In the case at hand, the workman was found to be discharging technical work. He was neither discharging managerial functions nor was he carrying out any administrative duties and 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. Both the above issues are answered accordingly.

10. *Issue Nos. (i) and (ii)*—For better adjudication of the above issues it is also quite necessary to make an analysis of the evidence led by the parties in support of their respective cases. The evidence of the workman reveals that on the 1st February 1994 he joined in the establishment of the management as Trainee and subsequently he was given appointment in the post of Junior Officer in the Quality Control Department of the management vide Ext. 1 with effect from the 1st February 1995. He continued in his employment as such in the establishment of the management till the date of his termination on the 15th July 1996. He has categorically stated that the management while terminating his services had neither issued any charge-sheet nor conducted any enquiry for any misconduct. The management had also not given any notice or notice pay and retrenchment compensation while terminating his services. According to him, the action of the management in terminating his services vide termination order Ext. 2 without conducting any inquiry was quite illegal and unjustified and therefore, he has now claimed for his reinstatement in service with back wages. On the other hand, the management has placed evidence through M. Ws. 1 to 4 with regard to the serious acts of misconduct of molesting one contract lady worker committed by the workman on the 15th July 1996 at about 10-30 A.M. It would therefore, necessary to have a glance to the evidence already adduced on behalf of the management. M. W. 1, Basanti Singh, the victim lady in her evidence has stated that while she was working in the factory premises the workman outraged her modesty by pressing her breast. The above incident was immediately informed to the contractor. Shri Bhuban Mohan Das (M. W. 2) under whom she was working and thereafter she lodged written complaint before the Deputy General Manager (Development) vide Ext. A. The matter was also reported to the Vice-President of the management vide Ext. B. Subsequently she presented a report at the local Police-Station vide Ext. C. It further reveals from her evidence that on her approach the Workers Union demanded immediate removal of the workman. At the later stage the matter was amicably settled as per the settlement vide

Ext. D. During cross-examination she has categorically stated that nobody has witnessed the occurrence at the relevant time. She was working alone and nobody was there at the spot. As per her version the contractor (M. W. 2) wrote the F. I. R., M. W. 2 in his evidence has stated that he heard the occurrence from the victim lady (M. W. 1) and reported the above fact to the Assistant Manager. He also made a written complaint to him and to the Vice-President of the management. It further reveals from his evidence that on the same day the Union demanded the immediate removal of the workman and infact the Union paralised the production of the factory. The local Police on receipt of the F. I. R. arrived at the spot and brought the workman to Police-Station and thereafter cool atmosphere prevailed in the factory area. M. W. 3 came to know about the occurrence on receipt of the complaint from M. W. 2. He wanted to pacify the matter, but the Union demanded immediate removal of the workman. As the situation was then wrost the management was constrained to terminate the services of the workman with effect from the 15th July 1996. He (M.W. 3) admits in his cross-examination that the alleged occurrence took place at about 1-30 P.M. and the above incident was reported to him at about 1-45 P.M. He has clearly stated that neither any charge-sheet was issued nor any departmental enquiry was conducted against the workman for the alleged incident. He further admits that he had not personally made any enquiry relating to the incident. It is also in his evidence that the management without conducting any domestic enquiry terminated the services of the workman with effect from the 15th July 1996 and while terminating his services had not given any retrenchment compensation to him. M. W. 4 being the Assistant General Secretary of the Union, after the alleged incident demanded before the mangement for removal of the workman from service. He has further stated that on receipt of the F.I.R. the local Police resumed the workman from the premises of the management and brought him to the Police-Station.

11. From the above discussion of the evidence of the witnesses it is clearly evident that the management had neither issued any charge-sheet nor conducted any enquiry against the workman for the alleged misconduct even no priliminary enquiry was also conducted by the management. The stand taken by the management before this Court that as per the demand of the Union, the management was constrained to terminate the services of the workman with effect from the 15th July 1996 but such stand taken by the management is without substance. In my considered view the action taken by the management in terminating the services of the workman without conducting any enquiry was illegal and unjustified. The reason of termination has also not been reflected in the letter of termination vide Ext. 2. The perusal of the letter of termination vide Ext. 2 emerges that the management decided to terminate the services of the workman as his services were no longer required in the interest of company and infact terminated his services with effect from the 15th July 1996. The above said document also no where indicates the reason of termination. It is admitted by M. W. 3 that neither any charge-sheet was issued nor any enquiry was conducted against the workman for the alleged misconduct. But without conducting enquiry the management terminated the services of the workman with effect from the 15th July 1996 without giving any 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 bearing. This is a basic principle of industrial law. But in the

present case neither any charge-sheet was issued nor any enquiry was conducted against the workman for the alleged misconduct. There is also no cogent material on record to establish that the serious violence prevailed in the factory premises which compelled the management to dispense with the enquiry in the larger interest of the company. Rather it has been elicited that after the workman was rescued by the Police the atmosphere was cool and everything was normal and subsequently the alleged incident was amicably settled but it is not understood as to what prevented the management to conduct a domestic enquiry into the allegation of misconduct made against the workman. Under the industrial law charge-sheet should be issued when an allegation of misconduct is made and a domestic enquiry should be held giving the workman full opportunity of hearing. But in the instant case the management had neither made any effort nor any endeavour to conduct the domestic enquiry against the workman into the allegation of misconduct. Therefore the termination of service of the workman with effect from the 15th July 1996 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 the relief of reinstatement.

12. The perusal of the schedule of reference clearly reveals that the workman has been terminated from service with effect from the 15th July 1996. Nothing has been brought to my notice that the workman has been gainfully employed elsewhere with effect from the date of termination. On the other hand, the management has also not availed the services of the workman with effect from the date of termination. In such circumstances, the workman is entitled to be reinstated in service but on the facts and circumstances of this case without any back wages. Both the above issues are answered accordingly.

13. Hence, it is ordered.

ORDER

That the termination of service of Shri Man Mohan Mohapatra with effect from the 15th July 1996 by the management of Ispat Alloys Limited is neither legal nor justified. The workman is entitled for reinstatement but without any back wages.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
30-12-2005
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
30-12-2005
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
K. C. MISHRA
Deputy Secretary to Government