

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 77-A CUTTACK, SATURDAY, JANUARY 28, 2006/MAGHA 8, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st January 2006

No. 711-li/1(B)-71/1997-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. 15/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of M/s Kartik Enterprises (P) Ltd., Industrial Estate, Cuttack and its workman Shri Bhagabat Das was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 15 OF 1998

Dated the 30th December 2005

Present :

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

Between :

The employer of M/s Kartik Enterprises (P) Ltd., Industrial Estate, Cuttack. . . First Party—Management

And

Shri Bhagabat Das . . . Second Party—Workman

Appearances :

For the First Party—Management . . . Shri S.T. Ullaha, Advocate

For the Second Party—Workman . . . Shri D. K. Das, Advocate
Shri G. C. Moharana, 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. 4557(4)-L. E., dated the 27th April 1998 for adjudication and Award.

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

“Whether the termination of employment of Shri Bhagabat Das, Watchman by the employer of M/s Kartik Enterprises Pvt. Ltd., Cuttack with effect from the 12th September 1996 is legal and/or justified ? If not, to what relief Shri Das is entitled ?”

3. By way of this reference workman Bhagabat Das has challenged the legality and justifiability of the action of the management of M/s Kartik Enterprises Pvt. Ltd., Cuttack (herein after referred to as the management) in terminating his services with effect from the 12th September 1996.

Matrix of the necessary facts as bear on the controversy involved in the present case is that the workman was engaged as Watchman in the establishment of the management with effect from the 1st April 1983. He continued in his employment till the date of his termination on the 12th September 1996. It is alleged in the statement of claim that although he had rendered continuous uninterrupted service for the above said period, but the management without any rhyme or reason terminated him from service without following the mandate of Section 25-F of the Industrial Disputes Act, 1947 (herinafter referred to as the Act). After such termination the workman raised a dispute before the District Labour Officer, Cuttack but to not effect. The conciliation proceeding initiated by the Assistant Labour Officer, Cuttack 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 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 *inter alia* contended that the workman on the 10th September 1996 morning was found carrying scrap materials in a trolley rickshaw for sale which was witnessed by the local people. The matter was confronted and the workman was asked to give the details of the materials already sold by him clandestinely but the result was that the workman left the factory in the night of the 11th September 1996 without informing the management and did not turn up for joining his duties. According to the management, the workman voluntarily abandoned the job and he was not terminated from services. 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 employment of Shri Bhagabat Das, Watchman by the employer of M/s Kartik Enterprises Pvt. Ltd., Cuttack with effect from the 12th September 1996 is legal and/or justified ?
- (ii) If not, to what relief Shri Das is entitled ?

6. The workman in support of his case has examined himself as W. W. 1 and has relied upon the xerox copy of the experience certificate marked as Ext. 1. On the other hand, the management has examined two witnesses namely, Madhusudan Munjal and Pawan Kumar Payal as M.Ws. 1 and 2 respectively but has not relied upon any document 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 reveals that he joined in the establishment of the management with effect from the 1st April 1983 as Watchman and continued to work as such till the date of his termination on the 12th September 1996. It is stated by the workman that the management without any rhyme or reason illegally terminated him from service without giving any notice or notice pay and retrenchment compensation. The management had neither issued any charge sheet nor conducted any enquiry against him for any misconduct before such termination. During evidence he has proved one certificate issued by the management indicating his engagement in the establishment of the management with effect from the 1st April 1983 marked as Ext. 1. During cross-examination he has clearly stated that he cannot assign any reason as to why the management terminated his service. It has been suggested to him that he used to sell the scrap materials of the factory to the outsiders and that on the 10th September 1996 morning he was found transporting the scrap materials in a trolley rickshaw and that he voluntarily abandoned the job to which he has negatively replied. M.W. 1 in his evidence has stated that on the 10th September 1996 morning at about 5-30 A.M. to 6-00 A.M. the workman was found carrying scrap materials in a trolley rickshaw and the above incident was witnessed by the adjacent factory owner namely Pawan Kumar Payal already examined as M.W. 2 in the instant case. While confronting the above incident the workman admitted to have stolen the scrap materials from the factory premises and further told to give the details to whom he had delivered the scrap materials but on the 11th September 1996 he left the factory premises for all time to come without handing over the key of the shed to the management. M.W. 1 has categorically stated that the management has not terminated the services of the workman with effect from the 12th September 1996 rather he voluntarily abandoned the job and did not turn up for joining his duty. During cross-examination he clearly admits that the matter was not reported at local Police Station and the management had not conducted any enquiry relating to the above incident. M.W. 2 in his evidence has stated that on the 10th September 1996 at about 5-30 A.M. to 6-00 A.M. he found one trolley rickshaw loaded with scrap materials coming outside the factory premises. He intimated the above incident to the Proprietor of the said factory in the afternoon at about 2 P.M. During cross-examination he has denied his knowledge about the alleged theft that took place on the 10th September 1996 morning from the factory premises of the management. He has categorically stated that he cannot say if there was any theft in the factory of the management on the 10th

September 1996. He has also denied his knowledge about the details of the Watchman of the management.

8. Both the workman and the management have adduced evidence in support of their respective cases. On a careful scrutiny and analysis of the evidence on record it is clearly evident that the workman was working in the establishment of the management as watchman since the 1st April 1983 and continued in his employment till the date of his termination on the 12th September 1996. According to the workman although he had rendered continuous service for the above period but the management without any rhyme or reason terminated his service without giving any notice or notice pay and retrenchment compensation. It is categorically stated by the workman that the management had neither issued any charge sheet nor conducted any enquiry against him for any misconduct before such termination. According to the workman he is entitled to be reinstated in service with back wages since the provisions of Section 25-F of the Act were not complied with in the case of his termination. The fact with regard to the continuous service of the workman having been rendered by him in the establishment of the management has not been disputed by the management. The stand taken by the management before this Court is that the management had not terminated the services of the workman with effect from the 12th September 1996 rather he voluntarily abandoned the job. According to the management on the 10th September 1996 morning the workman was found carrying scrap materials in a trolley rickshaw from the factory premises to the outside and when the above incident was confronted before him, he left the job voluntarily. It is categorically stated by the M.W. 1 that the above incident was witnessed by M.W. 2. But on perusal of the evidence of M.W. 2 it is seen that M.W. 2 has not breathed a single word against the workman implicating him in the alleged theft. M.W. 2 in his evidence has totally denied the involvement of the workman in the alleged theft. Therefore, the evidence led by the management with regard to the involvement of the workman in the alleged theft appears not to be trustworthy. The evidence given by M.W. 1 on the above aspect also gets no corroboration from the evidence of M.W. 2 relating to the alleged theft. Apart from the above fact, it is clearly admitted by M.W. 1 that the management had neither issued any charge sheet nor conducted any enquiry against the workman for any misconduct. The management had also not lodged any report at the local Police Station relating to the alleged theft. On the whole, the misconduct as alleged by the management has not at all been proved and established in the instant case by the management. In absence of any enquiry it can not be definitely said that the workman was involved in committing the alleged theft. Rather it is clearly evident from the evidence of the workman that the management without any rhyme or reason terminated him from service with effect from the 12th September 1996 and while terminating his services had not issued any notice or notice pay and retrenchment compensation to him. The above such fact has also nowhere been challenged and disputed by the management. In such premises, absolutely I find no cogent reason to disbelieve the evidence of the workman. Rather I am of the view that the management without any rhyme or reason terminated the services of the workman with effect from the 12th September 1996 and while terminating his services had not complied with the mandatory provisions of Section 25-F of the Act. The settled position of law is that Section 25-F of the Act being a beneficial legislation it has to be strictly complied with and is

a mandatory precondition. The compliance of Section 25-F of the Act is must, otherwise, the order of termination becomes null and void. There is also no dispute that under Section 25-F of the Act, a workman is entitled to one month's notice before retrenchment or one month's pay in lieu thereof. Such notice or payment in lieu thereof is a condition precedent for effecting retrenchment. The Hon'ble Apex Court in several decisions has consistently taken the view that the provisions of Section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. The further settled position of law is that even if the case set up by the management is taken to be true and correct that the workman has abandoned, then also his services cannot be terminated in the manner as it has been done without complying with the provisions of Section 25-F of the Act. In the case at hand, the condition precedent has not at all been followed by the management while terminating the services of the workman. In view of the above legal position the termination having been made in violation of the mandatory provisions of Section 25-F of the Act, in my view, is void *ab initio*. I am, therefore, of the opinion that the action of the management in terminating the services of the workman with effect from the 12th September 1996 was illegal, unjustified and against the mandate of Section 25-F of the Act. In such view of the matter, the workman is entitled to the relief of reinstatement.

9. The schedule of reference reveals that the termination of the workman has been effected from the 12th September 1996. Admittedly the management has not availed the services of the workman with effect from the date of his termination. In such premises, the workman is entitled to be reinstated in service, but on the facts and circumstances of this case, as the workman had not worked with effect from the date of termination, he is not entitled to any back wages. Both the above issues are answered accordingly.

10. Hence it is ordered.

ORDER

That the termination of employment of Shri Bhagabat Das, Watchman by the employer of M/s Kartik Enterprises Pvt. Ltd., Cuttack with effect from the 12th September 1996 is neither legal nor justified. The workman Shri Das is entitled to be reinstated in service 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
D. MISHRA
Under-Secretary to Government