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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2006

No. 4322—li/1-39/1990(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th March 2006 in Industrial Disputes Case No. 70 of 1990 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the District Transport Manager (Admn.), Orissa State Road Transport Corporation, Baripada and its Workmen Shri Niranjana Sahu and 3 others represented through Rajya Paribahan Shramik Sangha was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 70 OF 1990

Dated the 29th March 2006

Present :

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

Between :

The District Transport Manager (Admn.) .. First Party—Management
Orissa State Road Transport Corporation
Baripada.

And

Their workmen Shri Niranjana Sahu .. Second Party—Workmen
and 3 others represented through Rajya
Paribahan Shramik Sangha.

Appearances :

For the First Party—Management .. Shri P. K. Behera
For the Second Party—Workmen .. Shri N. Sahoo

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. 10961(5)-L. E., dated the 3rd September 1990 for adjudication and Award.

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

“Whether the termination of services with effect from the 22nd February 1989 of (1) Shri Niranjan Sahu, (2) Shri Bani Bhusan Tripathy, (3) Shri Ratikanta Choudhury and (4) Shri Sukadeb Jena by the management of Orissa State Road Transport Corporation, Baripada is legal and/or justified ? If not, to what relief are they entitled ?”

3. By way of this reference workmen (1) Shri Niranjan Sahu, (2) Shri Bani Bhusan Tripathy, (3) Shri Ratikanta Choudhury and (4) Shri Sukadeb Jena have challenged the legality and justifiability of the action of Orissa State Road Transport Corporation, Baripada (in short the management) in terminating their services with effect from the 22nd February 1989.

The facts of the case in brief as narrated in the statement of claim tend to reveal that while in employment under the management as Conductors all the workmen were detected of carrying passengers without ticket in their respective vehicles of the management on different dates and on different routes. On the basis of the allegations the workmen were directed to submit their explanation. Having not satisfied with the explanation submitted by the workmen the management initiated separate domestic enquiries against all the workmen by appointing Enquiring Officers. During enquiry all the workmen were found guilty of the charges levelled against them. Accordingly after completion of the enquiry, reports were submitted to the management and they were asked to submit their explanation but the explanation submitted by them were found unsatisfactory. Accordingly they were terminated from service by the management with effect from the 22nd February 1989. According to the workmen they were not afforded reasonable and adequate opportunities to properly defend their case during enquiry. The principles of natural justice had also not been followed. On the whole, the domestic enquiry conducted by the management was not fair and proper and they were illegally terminated from their services with effect from the 22nd February 1989. After such termination they all approached the labour machinery but to no effect. 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, they have all claimed for their reinstatement in service with back wages along with other service benefits. Hence the reference.

4. The management, on the other hand, filed its written statement separately opposing the claim of the workmen *inter alia* contended that the workmen while in employment as Conductors were detected by the authorities of carrying passengers without ticket in different vehicles and routes on different dates. Accordingly they were asked by the management to submit their explanation but the explanation submitted by them were found unsatisfactory.

Having not satisfied with the explanations submitted by the workmen, the management decided to initiate domestic enquiry separately against the workmen and in fact appointed Enquiring Officers to conduct the enquiry into the allegations levelled against them. During the domestic enquiry the charges were proved and the workmen were found guilty of the charges levelled against them. After completion of the enquiry, enquiry reports were submitted to the management by the Enquiring Officers and the workmen were asked to submit their explanations. Accordingly the workmen submitted their explanations but the explanations submitted by them were found not satisfactory. After observing all formalities and after careful consideration of the enquiry report and the relevant connected documents the management terminated the services of the workmen with effect from the 22nd February 1989. According to the management the enquiries were conducted fairly and properly and reasonable and adequate opportunities were afforded to the workmen to properly defend their case during enquiry. The principles of natural justice were also followed by the management during enquiry. Therefore the action of the management in terminating their services with effect from the 22nd February 1989 was legal and justified and the workmen are not entitled for any relief. On the above backgrounds, the rejection of the claim of the workmen 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 a fair and proper domestic enquiry was conducted to terminate the services of the workmen ?
- (ii)* Is such termination of services of the workmen with effect from the 22nd February 1989 legal and/or justified ?
- (iii)* To what relief ?

6. Despite opportunities the workmen have not adduced any evidence in support of their case. The management on the other hand, has examined one Shri Hrusikesh Das as M. W. 1 and has relied upon the series of documents (xerox copies) marked as Exts-1 to 10/n respectively.

FINDINGS

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

The perusal of the evidence of M. W. 1 clearly emerges that on the 13th August 1986 during checking by the A. T. M. (B), O. S. R. T. C., Baripada workman Shri Niranjana Sahu was detected of carrying ten passengers without ticket in the vehicle bearing No. ORM 4752. Accordingly a charge sheet came to be issued and the departmental proceeding was initiated against him. The concerned workman was asked to submit his explanation and accordingly the workman submitted his explanation vide Ext. 4. The A. T. M. (A) was appointed as Enquiring

Officer vide order Ext. 5. Notice was issued to the workman vide Ext. 6. Accordingly the Enquiring Officer conducted the enquiry and during enquiry witnesses were examined and cross examined by the concerned workman. The workman also examined himself and another witness namely Shri Pradipta Kumar Sahoo in support of his case. All the statements during enquiry have been marked as Exts. 6/a to 6/d respectively. After completion of the enquiry, the Enquiring Officer submitted his report vide Ext. 5, holding the concerned workman guilty of all the charges levelled against him. After careful consideration of the enquiry report the disciplinary authority discharged the concerned workman from service with effect from the 22nd February 1989 vide Ext. 8. During evidence M. W. 1 has proved the checking report, detection report and copy of the proceeding including charge sheet marked as Exts. 1 to 3 respectively. The further perusal of the evidence of M. W. 1 clearly reveals that in the case of the workman Ratikanta Choudhury a charge sheet came to be issued against him for carrying eighteen passengers without ticket in the Bus bearing No. ORM 7488 on the 27th March 1987 in Baripada-Baleipal route. He was also asked to submit his explanation and accordingly the workman submitted his explanation. The domestic enquiry was conducted against him by the Enquiring Officer appointed by the management and the Enquiring Officer after completion of the enquiry submitted the report to the management. Again on the 8th July 1984 workman Shri Ratikanta Choudhury was also detected by the A. T. M. (B), O. S. R. T. C., Baripada of carrying ten passengers without ticket in Bus No. ORM 3103. In the return trip on the 9th July 1984 again he was detected of carrying 8½ passengers without ticket in the same vehicle. Accordingly a charge sheet came to be issued against him and departmental proceeding was initiated. The Enquiring Officer appointed by the management after completion of the enquiry submitted his report holding the concerned workman guilty of all the charges levelled against him. During evidence he has also proved the detection report, proceeding, explanation, appointment of Enquiring Officer, statement of witnesses, enquiry report, another detection report in the return trip, proceeding, explanation, appointment of Enquiring Officer statement of witnesses, enquiry report, discharge order and its publication marked as Exts. 9 to 10/n respectively. M. W. 1 has been cross examined by the workmen at length. But nothing material and substantial has been elicited by the workmen during cross examination so as to discard his evidence. On careful scrutiny of the cross examination of M. W. 1 it is seen that the evidence in cross examination is not scattered by the workmen in any manner and I also find no cogent reason to disbelieve his evidence.

8. Despite opportunities all the workmen have failed to adduce evidence in support of their case. On the other hand the management has only examined one witness in support of its case who has only implicated workmen Shri Niranjan Sahu and Shri Ratikanta Choudhury and has given evidence to that effect. M. W. 1 has also not breathed a single word against the other two workmen namely Shri Bani Bhusan Tripathy and Shri Sukadeb Jena. The act of misconduct has also not been proved and established during evidence. The above named workmen during cross examination have also not elicited anything material in support of their case. The management has also led no evidence against the above named workmen. After carefully examining the evidence of M. W. 1 it is clearly evident that workmen Shri Niranjan Sahu and Shri Ratikanta Choudhury were detected by the authorities of the management on different dates of carrying passengers without ticket in the respective vehicles in different route.

Accordingly they were asked to submit their explanation which were found unsatisfactory. Having not satisfied with the explanation, the management conducted enquiry against both the above named workmen. The Enquiring Officer appointed by the management after completion of the enquiry submitted his report to the management holding both the workmen guilty of the charges levelled against them. The evidence of M. W. 1 clearly shows that both the workmen had fully participated in the enquiry. It is therefore, crystal clear that the domestic enquiry was fairly and properly conducted by the management and the principles of natural justice had been followed at the time of enquiry. In my considered opinion, the domestic enquiry conducted by the management was fair and proper and the final order of termination of the workmen Shri Niranjana Sahu and Shri Ratikanta Choudhury was based on legal evidence. In that view of the matter, I am led to hold that the domestic enquiry conducted by the management was fair and proper and therefore, I have got no other alternative than to hold that the action of the management in terminating the services of Shri Niranjana Sahu and Shri Ratikanta Choudhury with effect from the 22nd February 1989 was legal and justified. In such circumstances both the above named workmen are not entitled for any relief.

The case in respect of workmen Shri Bani Bhusan Tripathy and Shri Sukadeb Jena could not be adjudicated due to their non-participation in the present proceeding at the time of hearing.

9. Hence it is ordered

ORDER

That the termination of services with effect from the 22nd February 1989 of workmen Shri Niranjana Sahu and Shri Ratikanta Choudhury is legal and justified. Both the workmen concerned are not entitled for any relief. In respect of workmen Shri Bani Bhusan Tripathy and Shri Sukadeb Jena the reference could not be adjudicated and therefore, no Award is possible against them.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
29-3-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
29-3-2006
Presiding Officer
Labour Court, Bhubaneswar

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