

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1957, CUTTACK, TUESDAY, OCTOBER 16, 2007/ ASWINA 24, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 19th September 2007

No.10794-1i/1-(BH)-14/1998(pt.)/L.E.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 25th June 2007 in I.D. Case No. 134/1998 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar/Angul Co-operative Agricultural and Rural Development Bank, Angul and its workman Shri Sricharan Biswal represented through All Orissa Co-operative Agricultural and Rural Development Bank Employees Union was referred for adjudication is hereby published as in the schedule below: —

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 134 of 1998

Dated the 25th June 2007

Present:

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

Between:

1. The Management of Orissa State
Co-operative Agricultural and Rural
Development Bank Ltd.,
Bhubaneswar.
2. Angul Co-operative Agricultural and
Rural Development Bank, Angul ... First-Party—Management
And
Their Workman
Shri Sricharan Biswal represented
through All Orissa Co-operative
Agricultural and Rural Development
Bank Employees Union. ... Second-Party—Workman

Appearances :

Shri H. K. Pradhan. ... For First-Party —Management No.1

Shri S. P. Jena For First-Party —Management No.2

Shri S. Biswal. ... For Second-Party —Workman himself.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar/ Angul Co-operative Agricultural and Rural Development Bank, Angul and their workman Shri Sricharan Biswal represented through All Orissa Co-operative Agricultural and Rural Development Bank Employees Union under Notification No. 5323/LE., dated the 18th May, 1998 vide Memo No. 11330(6)/LE., dated the 15th October, 1998 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“ Whether the reversion of Shri Sricharan Biswal from the post of Accountant to the post of Supervisor by the Management of Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar with effect from 8th July, 1997 is legal and/or justified ? If not what relief Shri Biswal is entitled to ?”

3. Shorn of all unnecessary details, the case of the workman in brief is as follows:

The workman namely Sricharan Biswal was initially appointed as Supervisor and joined in the said post on 10th January, 1973. After the workman had rendered 17 years of service, the administrator, Cadre Committee considered the workman for promotion to the post of Accountant and consequently in obedience to order No. 6499, dated the 16th November, 1994 the workman joined as Accountant under the Management on 22nd January, 1994 in the pay scale of Rs. 890 --1830/-. The promotion order had two riding clauses that the continuance of the workman in the post of Accountant was purely on temporary basis and that the performance of the workman in the post of Accountant would be reviewed after completion of one year and his further continuance in the post of Accountant would be considered basing on the performance report of the Management of CARD Bank, Angul. On 31st May, 1996 the Board of Directors of CARD Bank, Angul passed resolution to the effect that the performance of the workman in the post of Accountant was quite satisfactory and recommended his continuance in the said post to the Administrator, Cadre Committee. Notwithstanding such recommendation in favour of the workman, the authorities of the OSCARD Bank directed the CARD Bank, Angul to draw the salary of the workman in the rank of Supervisor stating that the posting of the workman in the post of Accountant was irregular. Consequent upon such direction of the higher authority i.e. authorities of the OSCARD Bank, the Management of the CARD Bank, Angul reverted the workman to the post of Supervisor with effect from November, 1994. The workman had not been given any opportunity before he was demoted to the post of Supervisor and thereby the Management

violated the principles of natural justice. Although a post of Accountant was available under the Management, the workman was reverted a lower post with malafide intention of the Management to accommodate some one else in the post of Accountant. Although only the Managing Director-*cum*-Administrator of the Cadre Committee, OSCARD Bank is the proper authority to change the service conditions or to revert a workman, the Manager, Personnel of the OSCARD Bank issued instruction to the CARD Bank, Angul for reversion of the workman to the post of Supervisor although the Manager, personnel did not have any such authority of his own. An employer can not change the service condition of a workman without giving 21 days notice in view of the provisions under section 9-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the I.D. Act). The Management in the instant case violated the provisions of the I.D. Act by refusing the wages of the workman without giving him any opportunity and due notice as per Section 9-A of the I.D. Act. On these averments the workman has challenged his reversion to the post of Supervisor from the post of Accountant.

4. The Managing Director-*cum*-Administrator, Cadre Committee, OSCARD Bank Ltd., Bhubaneswar in his written statement has challenged the maintainability of the present reference on more counts than one. Firstly it is contended that since the workman has filed the complaint petition before the Labour authorities in the capacity of Joint Secretary, All Orissa Co-operative Agricultural and Rural Development Bank Employees Union (herein after referred to as the CARD Bank Employees Union), the reference is not maintainable in view of the provisions of Trade Union Act read with Section 136, of the Orissa State Co-operative Societies Act, it is elaborated that the employees of the Co-operative Societies are barred from forming Employees Union under the Trade Union Act read with Section 136 of the Orissa State Co-operative Societies Act and therefore, a Joint Secretary of the employees Union can not legally file a complaint before the Labour Authorities and therefore, any such reference emanating from such complaint in itself is illegal. Further objection raised by the Managing Director-*cum*-Administrator, OSCARD Bank is that on the same facts the workman had raised a dispute case No. 40/97 in the Court of the Registrar, Co-operative Societies, Bhubaneswar and therefore the present reference registered as I.D. Case No. 134/98 is barred by principles of rejudicate. It is further contended that the workman was lacking requisite calibre to hold the post of Cadre Accountant but the Managing Director, OSCARD Bank allowed him to remain in-charge of the post of Accountant only because on a representation made by the workman, the concerned Minister, Co-operation Department had noted that the workman could be promoted. It is further contended in the written statement that in the seniority list the serial of the workman was at 64 and therefore, he could not be allowed to supersede 63 numbers of Supervisors to hold the post of Accountant but he had been temporarily allowed to remain in-charge the post of Accountant till the date of posting of Cadre Accountant is duly filled up by way of promotion. The workman did not acquire any right by remaining in-charge of the post of Accountant and therefore, he can not claim the post of Account as a matter of right. On these averments the Managing Director-*cum*-Administrator, OSCARD Bank, Bhubaneswar has sought for refusal of any relief to the workman.

5. The Secretary, CARD Bank, Angul in his written statement has contended that the post of Supervisor is a post concerning the work of supervisory nature and therefore, the Supervisor namely Sricharan Biswal can not be treated as a workman within the meaning of Section 2(s) of the I.D. Act. It is further contended in the written statement that the post of Cadre Accountant of different CARD Banks are filled up by way of promotion by the Managing Director-*cum*-Administrator, OSCARD Bank basing on seniority and efficiency of Cadre Supervisors of the CARD Banks of the State. The workman of this case being a pretty junior and his serial number in the seniority list being only at 64. When the post of Accountant, CARD Bank, Angul fell vacant on 22nd August, 1994 the workman made a representation to the Managing Director-*cum*-Administrator, OSCARD Bank to consider his case for giving him promotion as Cadre Accountant. The Board of Management of Angul CARD Bank requested the Managing Director-*cum*-Administrator, OSCARD Bank to attach the workman in the post of Accountant till the post is duly filled up. Considering such request of the Management of Angul CARD Bank, the Additional Administrator, Cadre Committee, OSCARD Bank allowed the workman to function as Accountant but did not consider him (workman) for promotion. Under the circumstances the workman was only temporarily officiating in the post of Accountant and allowed to draw the salary of an Accountant. when a regular Cadre Accountant was appointed on the basis of promotion as Accountant of Angul CARD Bank, the workman thereafter continued to work in his regular post as Cadre Supervisor. On these averments the Secretary of the CARD Bank, Angul has sought for refusal of any relief to the workman.

6. On the aforesaid pleadings of the parties, the following issues have been framed.

ISSUES

- (i) Whether the reversion of Shri Sricharan Biswal from the post of Accountant to the post of Supervisor by the Management of Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar with effect from 8th July 1997 is legal and/or justified ?
- (ii) If not, what relief Shri Biswal is entitled to ?

7. Before embarking on discussion of evidence in the instant case it is to be noted that for the purpose of avoiding confusion and in the interest of better clarity both the Managing Director, OSCARD Bank, Bhubaneswar and the Secretary CARD Bank, Angul are hereinafter referred to as the Management because both of them are different functionaries of the Management in the instant case and both of them have virtually rather similar pleadings.

8. Before answering the issue No.(i) proper, it is important to first decide as to whether Sricharan Biswal, Supervisor of the Management is a workman within the meaning of Section 2(S) of the I.D. Act. This is so because the Management has taken a stand that Sricharan Biswal being a Supervisor having been appointed in the post of Supervisor is not a workman. In this context M.W.1 has stated that the nature of the work of Sricharan Biswal was supervisory in nature. Save and except this bald statement of the M.W.1 there is nothing

in the record to show that nature of work of Shri Srichan Biswal was really supervisory in nature. Shri Biswal started his work as Supervisor on a initial pay of Rs. 890/- per month. There is nothing in the record to show that Shri Biswal was supervising the works of other staffs or really doing any work of supervisory nature. Only the nature of work actually done by an employee and power vested in him as controlling authority to supervise the work of other sub-ordinates really determine as to whether an employee is a workman or an employee is in the capacity of managerial or administrative capacity. More over there is no evidence on record to show that Shri Biswal was drawing wages exceeding Rs. 1,600/- per month salary though by itself it can not be a criteria to determine as to whether the employee is a workman or not. Only the nature of work and necessary controlling power vested on the employee can determine as to whether the employee is in a managerial or administrative post having real controlling powers to enforce supervisory capacity on others. In this contest the decision of the Hon'ble Apex Court in the case of S.K. Verma Vs. Mahesh Chandra reported in 1983(47) FLR 313 can be relied on. Thus merely because the designation of the employee concerned is Supervisor, the employee can not said to be working as a Manager or Administrative Officer in supervisory capacity. Thus there can be no doubt in the facts and circumstances of this case, the employee namely Shri Sricharan Biswal is a workman within the meaning of Section 2(S) of the I.D. Act.

9. In the instant case the grievance of the workman is that he was working as an Accountant and without giving any notice to him, the Management reverted him back to the post of Supervisor in violation of Section 9-A of the I.D. Act. It is to be seen from the evidence on record as to how far the contention raised by the workman is tenable. The workman has examined himself as W.W.1. In his evidence W.W.1 has stated that the Management vide Memo No. 5500, dated the 16th November 1994 allowed him to function as an Accountant vide Ext.1. Ext.1 simply states that the workman had been allowed to function as Accountant in the existing vacancy but he was really not promoted to the post of Accountant under Ext.1. Ext.3 makes the position very clear. Under Ext.3 the workman was allowed to draw the salary of an Accountant on a conditional basis. In Ext.3 it has been clearly mentioned that the continuance of the workman as Accountant was purely on temporary basis and that his performance would be reviewed after completion of one year and his further continuance will be considered on the basis of his performance as per the report of the Management, the workman had been allowed to draw the salary of an Accountant purely on *ad hoc* basis. Under Ext.4 the Management vide its letter dated the 8th July, 1997 has made it very clear that granting of scale of pay of Accountant to the workman a Cadre Supervisor was irregular and that his services could not be regularised as Accountant. The Management has examined two witnesses. M.W.1 in his evidence has stated that the workman was pretty junior and his serial number in the seniority list of Cadre Supervisors was 64. M.W.2 in his evidence has stated that the post of Accountant is a cadre post and the Accountants are posted by the OSCARD Bank, Bhubaneswar and they are posted to the different District CARD Banks. In his evidence M.W.2 has categorically stated that the workman had never

been posted as an Accountant but he was allowed to function as an Accountant. Since in the seniority list, the serial number of the workman was at 64, the workman can never claim to be regularised in the post of Accountant by superseding 63 numbers of Cadre Supervisors who were senior to him in the gradation list. Ext.D is the certified copy of the order of the Registrar of the Co-operative Societies, Orissa, Bhubaneswar in Dispute Case No. 40/97 wherein the present workman Sricharan Biswal was the Plaintiff and the Secretary, Angul CARD Bank and the Managing Director, OSCARD Bank were the Defendants. In Ext.D it has been held by the learned Registrar of Co-operative Societies, Orissa that:

“ Keeping in view the seniority position of the plaintiff the OSCARD Bank can not be directed to give him promotion to the post of Cadre Accountant superseding his seniors, and accordingly the prayer of the plaintiff cannot be granted.”

Before the Registrar, Co-operative Societies the workman had claimed to be posted as regular Accountant superseding his seniors but his prayer was turned down by the Court of the registrar, Co-operative Societies, Orissa vide Ext. D.

10. Section 9-A of the I.D. Act speaks about notice of change to workman regarding any change in conditions of service applicable to the workman in respect of any matter specified in the Fourth Schedule of the I.D. Act. When a workman of lower grade is temporarily posted to a higher grade on *ad hoc* basis pending regular appointment to the higher post through promotion basing on seniority and other factors, the workman who had been posted to a higher post on *ad hoc* basis has no right to claim such a higher post on regular basis by superseding his seniors. When such workman is relegated to his original post when the senior post is filled up by giving promotion to a senior employee it does not come within the meaning of change of any condition of service of a workman and more over such matter have not been included in the Fourth Schedule of the I.D. Act. Consequently the workman of this case was never entitled to any notice under Section 9-A of the I.D. Act. When a senior man was posted as Cadre Accountant on the basis of promotion taking into account his seniority it was obvious that a workman who was simply functioning in the post of Accountant is to be reverted to his original post of Supervisor. Therefore the Management has not acted illegally by reverting the workman from the post of Accountant to the post of Supervisor with effect from 8th July, 1997. Issue No.1 is answered accordingly.

In view of my answer to issued No. (i), the workman in the instant case is not entitled to any relief whatsoever, Hence the issue No. (ii) is answered accordingly.

11. In the light of the discussion made above, the reference is answered as follows:

(i) The reversion of Shri Sricharan Biswal from the post of Accountant to the post of Supervisor by the Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar with effect from 8th July, 1997 is legal and justified. (ii) The workman namely Shri Sricharan Biswal is not entitled to any relief whatsoever.

Dietated and corrected by me.

S.K. Mohapatra
25-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
25-6-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government