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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th September 2007

No.11022-1i/1(S)-15/2004/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 29th August 2007 in I.D. Case No. 4 of 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Kalapathar Service Co-operative Society Limited represented by the President/Secretary, Kalapathar Service Co-operative Society Limited, At/P.O.- Kalapathar, District-Sonepur and its workman Shri Jadumani Mallick, son of Sadasiba Mallick, At-Babupali, Post-Kalapathar, District-Sonepur 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. 4 OF 2005

The 29th August 2007

Present :

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

Between :

The Management of
Kalapathar Service Co-operative
Society Limited represented by
the President/Secretary
At/P.O.- Kalapathar,
Dist.-Sonepur.

.. First-party—Management

And

Its workman
 Sri Jadumani Mallick,
 S/o Sadasiba Mallick,
 At-Babupali,
 Post-Kalapathar,
 District-Sonepur.

.. Second-party—Workman

Appearances :

For the First Party Management .. Shri Tripurari Panda, Secretary

For the Second Party Workman .. Self

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department, U/s. 10 & 12 of the Industrial Disputes Act, 1947 vide Memo No. 2972(5) dated the 19th March 2005 for adjudication scheduled below: —

“Whether the action of the Management of Kalapathar Service Co-operative Society Limited, Sonepur in terminating the services of Shri Jadumani Mallick, Ex-Assistant Secretary with effect from 16th July 2003 is legal and/or justified ?
 If not, what relief is he entitled to ?”

2. In the claim statement the workman has averred that he was appointed as an Assistant Secretary of the Management Society since 10th July 1997 and he worked till 15th July 2003. Without any break, but on 16th July 2003 he was served with an order of termination without any good cause and while doing so, the requirements of Section 25-F of the I.D. Act were not complied, as a result, the termination may be treated as illegal and he may be reinstated in service with full back wages.

3. The Management society has contested the above claim by stating that the workman was appointed on temporary basis with the condition that his service can be terminated at any moment without assigning any reason and by taking note of the fact that during his incumbency a lot of financial irregularities have been committed, he was removed from service as per the resolution of the general body meeting on dated the 28th May 2003 and the claim of the workman that it is intentional act cannot be easily swallowed. It is also the case of the Management that at the relevant time, the financial condition of the Society was very weak and by then the board felt that there was no requirement of the services of an Assistant Secretary and accordingly he was removed from service. They have also taken the plea that the termination of the services of the workman is not a retrenchment, as a result, the compensation as visualized under Section

25-F of the I.D. Act is not to be paid to him. By mentioning the above facts and circumstances the Management has prayed for answering the reference against the workman.

4. The workman has filed a rejoinder. In it, the stand taken by the Management were challenged and it is further averred that while terminating him, the principles of natural justice were not followed and accordingly he may be given full benefit as claimed by him in his claim statement.

5. By taking note of the pleadings of the parties, the following issues have been framed for adjudication.

ISSUES

(i) "Whether the action of the Management of Kalapathar Service Co-operative Society Limited, Sonapur in terminating the services of Shri Jadumani Mallick, Ex-Assistant Secretary with effect from 16th July 2003 is legal and/or justified ?

(ii) If not, to what relief he is entitled ?"

6. During the course of hearing the workman is figured as the only witness from his side and he has proved Exts.1 to 5 to substantiate his case.

The Management side has examined the Secretary as the only witness and exhibited as many as 14 documents to suffice their claim. I will deal with the merit of the issues by keeping in view the oral and documentary evidence adduced by the parties.

FINDINGS

7. Issue Nos. i and ii:— Both the issues are taken up together as those are interlinked. In the written note of argument emphasis is given to the words used in the appointment order which is marked as Ext.C in this case. On perusal of Ext.C it is forthcoming that can be terminated at any moment without assigning any reason and he has to furnish cash security and landed property security. If condition No.1 is taken into account then it can be said that the appointment of the workman is purely temporary and can be terminated at any moment without assigning any reason. But the said condition cannot be said to be a contractual one. The exception available is Section 2(oo)(bb) cannot be utilized in case of the present workman as it is not a case of non-renewal of contract of employment on expiry of such contract being terminated under stipulation contained therein. While removing an employee it is the incumbent duty of the Management to give him an opportunity of being heard and without that it is hard to fathom that by virtue of a resolution of the board the services of an employee can be taken away. Admittedly the workman was not appointed on contract basis and even he was not

appointed for a particular period nor for a project. If he was appointed for a specific period, his termination at the end of that period will not be retrenchment U/s. 2(oo)(bb) of the I.D Act. In absence of the same, the removal of the workman from service can be treated as termination. It is a well settled law that retrenchment means termination of the service of the workman for a reason whatsoever other than those expressly excluded by Section 2(oo) of the Act. The constitutional bench of the Apex Court in the case Punjab Land Development and Reclamation Corporation Limited, Chandigarh and others *Vrs.* Presiding Officer, Labour Court, Chandigarh 1990(3) SCC 682 have held that the expression 'retrenchment' has to be understood in its wider and liberal meaning to mean termination of service of workman for any reason whatsoever other than those expressly excluded in the section. In the termination notice the Management has given emphasis to the resolution passed in the General body meeting on dated the 28th May 2003. The said resolution is marked as Ext.H in this case. In it the general body felt that there should be cut of expenses and accordingly the post of Assistant Secretary should be abolished. In consonance with that resolution the workman was served with a notice (Ext.L) and on perusal of the same what emerges is that, he was removed from service for his bad and insubordination behaviour in addition to cut expenses of the Management Society. So far the bad behaviour of the workman is concerned, the Management has filed some documents which are marked as Exts. D, E & F. But those documents cannot be given legal importance as mere filing of the same will not be a good ground to accept the contentions available in it. The workman should get reasonable opportunity to have his say in that regard and there should be a discreet enquiry to substantiate the same. Even if for the sake of argument it is accepted to be true then the duty of the Management to comply the requirements of Section 25-F cannot be ignored. As per law compliance of the same is necessary to give one month notice to the retrenched employee to search for alternate employment and he must be paid retrenchment compensation at the time of retrenchment, so that there will be no need for him to go near his employer demanding retrenchment compensation as held by the Apex Court in the case of Gurmail Singh and others *Vrs.* State of Punjab and others (1991) 1 SCC P.199. In this regard the Management has taken the plea that one month pay was offered to him, but he refused to receive it. This fact cannot be easily accepted in absence of any documentary evidence. Ext.K is filed in this regard, but no connecting evidence is led to prove that the same was served on the workman. In absence of the same the termination of the workman is bad in law. Where the retrenchment is invalid in law, the only alternate left to this Court is to pass an order of reinstatement with continuity of service and back wages. But there are judicial

pronouncements to the effect that the Labour Court while passing an order of payment of back wages should apply its mind to the various aspects available in the matter. It no longer is to be treated as an automatic consequences of reinstatement. Judicious application of mind on the basis of record produced before the Labour Court would be the condition precedent for grant or denial of full or partial back wages to the workman.

While considering the above aspect it would be better to take note of the pleading of the parties. In the written statement the Management society has taken the plea that it is not financially sound to even bear the monthly pay of the existing staff. This indicates that the society is running with financial difficulty. This aspect is also available in the evidence of M.W.1. In this connection para-9 of the evidence of M.W.1 is highly relevant. So the back wages is fixed at 50%. The plea for lost of confidence on the workman cannot be easily swallowed as the same is not available in the written statement. At this belated stage the said plea cannot be judicially noted. Hence the workman is entitled to reinstatement in service with 50% back wages. Hence the following award :—

AWARD

The reference is answered on contest in favour of the workman and against the Management. The action of the Management. The action of the Management of Kalapathar Service Co-operative Society Limited, sonapur in terminating the services of Shri Jadumani Mallick, Ex-Assistant Secretary with effect from 16th July 2003 is held to be illegal and unjustified and the workman is entitled to reinstatement in service with 50% back wages. The Management is directed to reinstate the workman in service with continuity of service benefits and to pay 50% back wages to the workman within two months of the publication of the award in the official gazette failing which the Management is to pay 10% simple interest on the amount of 50% back wages to the workman.

Dictated and corrected by me

P.K. Mohapatro
Dt. 29-08-2007
Presiding Officer,
Labour Court,
Sambalpur.

P.K. Mohapatro
Dt. 29-08-2007
Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

N.C.RAY

Under-Secretary to Government