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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 8th February 2008

No. 1579—li/1(B)-27/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 15th December 2007 in I. D. Case No. 92 of 1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of Secretary, Jajpur Subdivisional House Building Co-operative Society Ltd., Jajpur and their workman Shri Khetrabasi Mishra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 92 OF 1992

Dated the 15th December 2007

Present :

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

Between :

The Management of Secretary, .. First Party—Management
Jajpur Subdivisional House Building
Co-operative Society Ltd.,
Jajpur.

And

Their Workman .. Second Party—Workman
Shri Khetrabasi Mishra.

Appearances :

Shri M. B. Das .. For First Party—Management

Shri T. Lenka, Advocate .. For Second Party—Workman

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of Secretary, Jajpur Subdivisional House Building Co-operative Society Ltd., Jajpur and their workman Shri Khetrabasi Mishra under Notification No. 14679-L.E., dated the 21st October 1991 vide memo No. 9688(5)-L.E., dated the 23rd July 1992 for adjudication by this Court.

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

“Whether the termination of Shri Khetrabasi Mishra from services by the management of Jajpur Subdivisional House Building Co-operative Society Ltd., Jajpur with effect from the 30th September 1990 is legal and/or justified ? If not, to what relief Shri Mishra is entitled ?”

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

The workman was initially appointed as Assistant Secretary under the Jajpur Subdivisional House Building Co-operative Society Ltd., Jajpur (hereinafter referred to as the management Society) with effect from the 1st February 1990 and continued as such for about two months. Thereafter the Board of Directors of the management Society by passing a Resolution directed the workman to work as Secretary. Subsequently the workman was made Secretary of the management Society after being selected by the Appointment Committee on a monthly salary of Rs. 700. However the management paid the workman a monthly salary of Rs. 500 only. The workman had previous experience of working as Secretary of Jajpur Consumers' Co-operative Society Ltd. Subsequently the workman became a member of Board of Directors of Jajpur Consumers' Co-operative Society Ltd. In order to join the present management Society, the workman resigned from the post of Board of Directors of Jajpur Consumers' Co-operative Society Ltd. The A. R.C.S., Jajpur illegally terminated the services of the workman with effect from the 30th September 1990. When the A. R.C.S., Jajpur terminated the services of the workman, he was the Authorised Officer to take over charge of the management Society because its Board of Directors had been superseded. No charge had been framed against the workman before termination of his service and there was no domestic enquiry. Being aggrieved by the order of termination from services, the workman raised an industrial dispute before the labour authorities who tried for a conciliation which did not yield any result and therefore, the present reference.

4. The management Society in its written statement has contended that it is governed by its own bye-laws and all Assistant Secretaries are appointed subject to approval of the Registrar, Co-operative Societies and all Secretaries are selected by a Committee of the Society constituted for the purpose and such selection has to be approved by the Registrar, Co-operative Societies unless such Secretary is an Officer from the Co-operation Department. The appointment of the workman as Secretary in-charge by the then President of the management Society was highly irregular. On the 5th February 1990 a Resolution had been passed to constitute a Committee for selecting a person to hold the office of the Secretary and in the said Committee the A.R.C.S., Jajpur was a member. In spite of that, before the Board sat down to select the Secretary, the Resolution, dated the 5th February 1990 was sent to the A.R.C.S., Jajpur on the 20th March 1990. On the 27th March 1990 the President of the management Society made a decision for selection to fill up the post of Secretary in absence of any Director on behalf of the Government and without conducting any type of test. The appointment was hastily made and was highly irregular. The A.R.C.S., Jajpur directed the President of the Society not to allow the workman to work as Secretary of the management

Society but in spite of such direction, the workman was allowed to continue as Secretary. Prior to his appointment as Secretary in the management Society the workman had committed financial irregularities while working at Jajpur Consumers' Co-operative Society Ltd. After the management Society was taken over by the Government one Krutibas Jena, Inspector of Co-operative Society was appointed as Secretary of the management Society vide Government Order, dated the 5th July 1990 and the workman was allowed to work as Assistant Secretary temporarily until further order of the A.R.C.S., Jajpur. On the 25th September 1990 the management by passing a Resolution terminated the services of the workman after paying him all his dues. The management has also taken a stand that the second party is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 (hereinafter referred to as the I. D. Act.). On these averments the management has sought for denial of any relief to the workman.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the workman rendered service under the first party-management continuously for a period exceeding 240 days in a calendar year ?
- (ii) Is his termination of services with effect from the 30th September 1990 legal and/or justified ?
- (iii) If not, to what relief ?”

6. *Issue No. (i)*—Before answering Issue No. (i), it is to be first decided as to whether the second party was a workman or not. The very name of the management Society suggest that it is engaged in giving loans to its members for building houses and for this purpose it utilises the services of Secretary, Assistant Secretary and other staffs who are hired for the purpose. Therefore, the management Society is an industry within the meaning of Section 2(j) of the I.D. Act and as because the second party was working for the management being hired for the purpose he is obviously a workman within the meaning of Section 2(s) of the I.D. Act. The meaning of term 'Industry' is very wide and also includes the Co-operative Societies. In this context the Land Mark Judgment of the Hon'ble Apex Court in the case Bangalore Water Supply and Sewerage Board *Vrs.* A. Rajappa reported in AIR 1978 Supreme Court 548 can be relied on.

The workman was appointed as Secretary of the management Society with effect from the 1st April 1990 vide order Ext. 3. The appointment of the workman was on monthly salary basis as seen from Ext. 3. As per Ext. 6 the services of the workman was terminated with effect from the 30th September 1990. M. W. 1 in his evidence at Para. 6 has stated that the workman was acting as Honorary Assistant Secretary till, the 30th March 1990 and thereafter on the 5th February 1990 a Resolution was passed by the Managing Committee of the management Society for selection of a full time Secretary in the pay scale of Rs. 700. In Ext. 3 there is absolutely no mention that the workman had been appointed as Honourary Secretary. Rather it has been mentioned that he had been appointed as Secretary of the management Society on a consolidated salary of Rs. 700 per month. There is no evidence whatsoever on record that between the period, the 1st February 1990 to the 30th September 1990 the

workman had been disengaged from his service. The management has placed reliance in Ext. C/9 which is the relevant Resolution in which it was decided on the 12th January 1990 that the workman who was then a member of the Board would work as Assistant Secretary on Honorary basis till a regular Secretary is appointed. In his evidence W.W. 1 has stated that on the 3rd February 1990 the President gave him a letter to take over the charge of the Secretary under Ext. 2 and by that date he had been given a total sum of Rs. 1,000 for his work. In his cross-examination W.W. 1 has made it clear that the payment of Rs. 1,000 to him was for working as Assistant Secretary. It was being paid to him in vouchers and had not been entered in the acquittance roll. However in his cross-examination W.W. 1 has admitted that in the month of June, 1990 he had been paid for 17 days. The acquittance roll has been proved in this case and the same has proved as Ext. B. Relevant entries regarding salary of the workman are Ext. B/1 to B/3. In Ext. B/2 it has been noted that the workman had worked for 17 days only. Ext. B/2 is sufficient to show that the workman had not worked for 240 days between the period, the 1st February 1990 to the 30th September 1990 even if it is accepted that in the post of Assistant Secretary also the second party was a workman. The Issue No. (i) is answered accordingly.

7. *Issue No. (ii)*—Since the workman had not worked for the requisite 240 days during his entire service period under the management, it cannot be said that he was working continuously under the management within the meaning of Section 25-B, of the I. D. Act. and therefore, the workman was not entitled to any of the benefits enumerated under Section 25-F of the I. D. Act. In such a situation the termination of the workman by the management with effect from the 30th September 1990 cannot be said to be illegal or unjustified. The Issue No. (ii) is answered accordingly.

8. *Issue No. (iii)*—In view of my answer to Issue No. (ii), the workman is not entitled to any relief whatsoever. The Issue No. (iii) is answered accordingly.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
15-12-2007
Presiding Officer
Labour Court
Bhubaneswar

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15-12-2007
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor
K. TRIPATHY
Under-Secretary to Government