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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th June, 2009

No. 5783-1i/1(B)-1/99/L.E.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 26th May, 2009 in Industrial Dispute Case No. 187 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Singidi Service Co-operative Society Limited, At/P.O.-Katana, Via-Rajakanika, Dist-Kendrapara and Shri Balaram Behera, was referred to for adjudication is hereby published as in the scheduled below:—

SCHEDULE

INDUSTRIAL TRIBUNAL : BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 187 OF 2008
The 26th May, 2009

Present:

Shri P.C. Mishra, O.S.J.S., (Senior Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The President/Secretary,
Singidi Service Co-operative
Society Limited,
At/P.O.- Katana,
Via- Rajakanika,
Dist- Kendrapara. .. First-Party—Management

(And)

Shri Balaram Behera,
At-Biradia,
P.O.-Katana,
Via-Rajakanika,
Dist-Kendrapara. .. Second-Party—Workman

Appearances:

Shri Basudev Das, Secretary .. For First-Party—Management
Shri Balaram Behera .. For Second-Party—Workman himself

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 4072-1i/1(B)-1/99/L.E., dated the 23rd March, 1999 but subsequently it transferred the dispute to the adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138-1i/21-32/2007/L.E., dated the 4th April, 2008.

“Whether the termination of service of Shri Balaram Behera, Ex-Secretary by the Management of Singidi Service Co-operative Society Limited, At/P.O.-Katana, Via-Rajakanika, Dist-Kendrapara with effect from 25th November, 1996 is legal and/or justified ? If not, to what relief Shri Behera is entitled ?”

2. Briefly stated, the case of the Workman is that initially he joined as a non-Cadre Secretary under the Singidi Service Co-operative Society on 1st July, 1981 and vide order No. 15319, dated the 28th April, 1984 he was promoted to hold the post of Accounts Assistant. It is stated that after working in the promotional post for sometime he was again reverted to his former post of Secretary vide order No.2354, dated the 4th November, 1986 of the Secretary, Cuttack Central Co-operative Bank. It is asserted that while working as the Secretary of the Society the Workman remained on leave from 28th October, 1996 to 28th November, 1996 on the ground of his illness and while availing the leave on 11th November, 1996 he received a letter containing the copies of three resolutions of the society dated the 25th August, 1996, 9th September, 1996 and 25th October, 1996 wherein he was asked to show-cause within seven days regarding his absence without leave application and non-handing over of important documents of the society to which he submitted his explanation on 15th November, 1996. It is stated that on recovery from illness when the Workman went to the office of the Society, he was informed that his service has been terminated by the Management as per its Resolution dated the 18th November, 1996. The Workman thereafter made complaint to the A.R.C.S. & D.R.C.S. and other officials of the Management regarding his illegal termination whereupon an enquiry was conducted but without furnishing him a copy thereof the enquiry was concluded. It is stated that soon after receiving the enquiry report and instructions from the higher authorities, the Management vide its Order No. 1, dated the 13th July, 2001 passed orders for reinstatement of the Workman in service and consequently he joined his duty on 14th July, 2001. Since his termination from service is contrary to the provisions of the Industrial Disputes Act, the Workman has prayed for all his benefits from the date of his termination i.e., 25th November, 1996 till 13th July, 2001 when he was reinstated in service.

3. Challenging the maintainability of the reference in the present forum the Management has filed its written statement stating therein that as per Section 67-B(1) of the O.C.S. Act,

1962, only the Co-operative Tribunal, Bhubaneswar has the jurisdiction to entertain the dispute and hence the present case is liable to be dismissed due to want of jurisdiction. It is averted in the written statement that as the workman committed certain misconduct in the interest of public and benefit of the society his services were terminated after holding proper enquiry and giving sufficient opportunity to the Workman. It is pleaded that there having no violation of the principles of natural justice, the order of termination passed against the Workman needs no interference. In the premises, the Management has prayed to answer the reference in the negative as against the Workman.

4. On the basis of the pleadings of the parties, the following issues have been framed:—

ISSUES

(1) Whether the termination of service of Shri Balaram Behera, Ex-Secretary by the Management of Singidi Service Co-operative Society Limited, At/P.O.-Katana, Via-Rajakanika, Dist- Kendrapara with effect from 25th November, 1996 is legal and justified ?

(2) If not, to what relief Shri Behera is entitled ?

5. To substantiate their respective stand, the Workman examined himself and brought on record documents which have been marked Exts.1 to 5. The Management also examined one witness on its behalf and got marked Xerox copy of the Audit Report for the year 2006-07 as Ext.A.

6. W.W.No.1 in his evidence has stated that he was working as Secretary of the Society since 1st July, 1981 and vide Ext.1 he was promoted to the rank of Accounts Assistant and was posted to act as the Secretary of the said Society with effect from 28th April, 1984. He stated that again vide Order No. 3354, dated the 4th November, 1987, Ext.2 he was reverted to his former post and on 25th November, 1996 vide Ext.3 his services were terminated on the allegations of unauthorized absence; non-furnishing of reply to the show-cause dated the 25th October, 1996; misappropriation of Society's money; non-handing over of cash book and other important records of the Society and for snatching away of the proceeding book on 13th November, 1996. He stated that the aforesaid allegations were enquired into by the Inspector of the office of the A.R.C.S., Kendrapara, who submitted his report vide Ext.5. Referring to Ext.4, he deposed that as per Resolution No.4, dated the 13th July, 2001 he was reinstated in service. He alleged that the Management had terminated his service with effect from 25th November, 1996 in a most illegal manner. The Management though contested the proceeding but declined to cross-examine W.W.No.1.

M.W. No.1 though submitted his evidence on affidavit and stated that termination of service of the Workman was due to various misconducts, yet no documentary evidence was produced by him showing drawal of a disciplinary proceeding against the Workman for the alleged misconduct. Even the Management has not produced a single documentary proof that the misconducts alleged against the Workman were duly enquired into following the principles of natural justice and on conclusion thereof he was visited with

the severe punishment of removal from service. In absence of any evidence either oral or documentary, it cannot be held that the services of the Workman were done away with after holding a proper enquiry into the alleged misconducts. Hence, the order of termination passed against the Workman on 25th November, 1996 as per Ext.3 is not at all sustainable in the eye of law.

7. It being the admitted fact that during pendency of the dispute the Workman has already been reinstated in service as per Ext.4, the only question that remains for consideration is whether he is entitled to any back wages for the period from 25th November, 1996 till reinstatement in service i.e. 13th July, 2001. In this connection, it is worthwhile to refer to Ext.5, the copy of the preliminary enquiry report dated the 29th July, 1997 wherein the Enquiry Officer on due enquiry into the allegations basing on which the services of the Workman were terminated has observed that there has been illegality in the matter of termination of services of the Workman. In view of such documentary evidence on record, it can be said that the Workman for no fault of his remained out of employment from 25th November, 1996 to 13th July, 2001. Hence, in the fitness of things, a lump sum amount of Rs. 45,000/- (Rupees Forty-Five Thousand only) is awarded in favour of the Workman in lieu of back wages, which should be adjusted against the recovery suggested by the Audit as per Ext. A. The balance amount, if nay, as per the Audit report, Ext.A be recovered from the Workman from his monthly salary in installments.

The reference is answered accordingly.

Dictated & corrected by me.

P.C. Mishra
26-05-2009
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

P.C. Mishra
26-05-2009
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

K.C. BASKE
Under-Secretary to Government