

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 793 CUTTACK, SATURDAY, JUNE 20, 2009/JAISTHA 30, 1931

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th June 2009

No. 5056—li/1(B)-18/1999(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th April 2009 in I. D. Case No. 207 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Managing Director, M/s Duro Pipes Pvt. Ltd., Plot No. 51/A, Sector-A, Zone-A, Mancheswar Industrial Estate, Bhubaneswar and Shri Dharanidhar Swain, Vill. Kendupalli, Post Mallipadar, Via Baghamari, Dist. Khurda-752061 was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 207 OF 2008

Dated the 29th April 2009

Present :

Shri P. C. Mishra, o.s.J.s. (Sr. Branch)
Presiding Officer, Industrial Tribunal
Bhubaneswar

Between :

The Managing Director .. First Party—Management
M/s Duro Pipes Pvt. Ltd.
Plot No.51/A, Sector-A, Zone-A
Mancheswar Industrial Estate, Bhubaneswar

And

Shri Dharanidhar Swain .. Second Party—Workman
Vill. Kendupalli, Post Mallipadar
Via Baghamari, Dist. Khurda-752061

Appearances :

Shri S.T. Ullaha, Authorised Representative .. For the First Party—
Management.

Shri Dharanidhar Swain .. For the 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. 5254—li/1(B)-13/1999-LE., dated the 18th April 2000 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138— li/21-32/2007-LE., dated the 4th April 2008:—

“Whether the action of the management of M/s Duro Pipes Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar in dismissing the services of Shri Dharanidhar Swain, Turner with effect from the 16th March 1999 is legal and/or justified ? If not, what relief he is entitled to ?”.

2. In this case, the workman instead of filing a complete claim statement has filed a chart showing his monetary claim against the management to the tune of Rs. 2,17, 283.10 paise.

3. The management, on the other hand, filed its written statement stating therein that the workman was working under the management as a Lathe Machine Operator and on the 5th October 1998 while he was working in the ‘B’ Shift it was reported against him that before end of the Shift he had stopped the Lathe Machine at about 9.35 P.M. and on being questioned about the same by the Supervisor, the workman got irritated and abused him in obscene language and threatened him to assault outside the factory. It is stated that the aforesaid act on the part of the workman being a misconduct, he was chargesheeted and called upon to show- cause. The explanation submitted by the workman was found unsatisfactory for which a domestic enquiry was conducted against the workman in which he participated and after giving due opportunity to the workman to defend himself in the enquiry the Enquiry Officer concluded the enquiry and submitted his report holding the charges to have been established

against the workman . It is stated that on receipt of the enquiry report a second show-cause notice was issued to the workman along with a copy of the enquiry report and the reply submitted by the workman to the second show-cause being not satisfactory, he was dismissed from service. It is averred in the written statement that the misconducts alleged having been proved in a duly constituted domestic enquiry, wherein the workman participated and was afforded all reasonable opportunities in his defence, the action taken by the management needs no interference and accordingly it has prayed to answer the reference in its favour.

4. The issues which have been framed in the case are—

ISSUES

(i) Whether the action of the Management of M/s Duro Pipes Pvt. Ltd., Mancheswar Industrial Estate, Bhubaneswar in dismissing the services of Shri Dharanidhar Swain, Turner with effect from the 16th March 1999 is legal or justified ?

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

5. To substantiate its plea, the management has examined one witness in the case and has brought on record six documents which have been marked as Exts.1 to 6. The workman submitted his evidence on affidavit but did not chose to adduce any documentary evidence.

6. Sk. Sarparaj Ulla is the Enquiry Officer, who has been examined as M.W. No. 1 in the case. He deposed that as per Ext. 1 he was appointed as the Enquiry Officer to conduct enquiry against the workman. He stated that on the 16th January 1999 he held the enquiry, wherein the workman participated and received the copies of list of witnesses and documents from the management's representative Shri Niranjana Panda and after explaining the procedure of enquiry it was adjourned to the 29th January 1999. Referring to Ext. 2, he stated that on the 29th January 1999 he examined the departmental witnesses, who were cross-examined by the workman and on closure of evidence from the side of the Department, he examined the workman and deferred the date of enquiry to the 16th February 1999 for examination of witnesses, if any, from the side of the workman. On the 16th February 1999 as the workman declined to adduce any further evidence, the enquiry was concluded and on the 22nd February 1999 he submitted his report as per Ext. 6. He has proved Ext. 3, the memo filed by the workman in the enquiry stating therein that except his own statement he has no more witness to give in the enquiry and that he had received all the papers from the management relating to the enquiry. He has also proved the statements of the witnesses recorded in the enquiry, marked Ext. 4 and the petition of the Presenting Officer indicating the list of documents to be relied in the enquiry, Ext. 5, wherein the workman has acknowledged the receipt of the documents. M.W. No.1 deposed that while proceeding with the enquiry the principles of natural justice was followed and opportunity was given to the workman to have his say and to cross examine the management's witnesses. Except a suggestion that whatever M. W. No.1 has

deposed are all false, nothing was elicited from him to discredit his version in his examination-in-chief .

Although the workman submitted his evidence on affidavit but he has deposed nothing relating to the domestic enquiry conducted against him nor regarding the punishment imposed on him. In his evidence he has only stated about non-receipt of his Provident Fund dues.

7. On a close scrutiny of the evidence available on record, it comes to limelight that on the workman's committing misconduct he was proceeded against followed by a domestic enquiry in which he participated and the Enquiry Officer after affording all reasonable opportunities to the workman in his defence and adhering to the principles of natural justice has concluded the enquiry finding the workman guilty of such misconduct. The workman though contested and took part in the proceeding but no infirmity/ prejudice was shown to have been made to the workman while conducting the said enquiry. In the premises, therefore, the enquiry conducted against the workman cannot be said to be either unfair or improper.

8. Now coming to the question of punishment imposed on the workman, it is appropriate to refer to a decision of the Hon'ble Supreme Court of India in the case between L. K. Verma Vrs. H.M. T. Ltd., and another, reported in 2006 (108) FLR-1101, wherein Their Lordships of the Hon'ble Apex Court have held that " verbal abuse has been held to be sufficient for inflicting a punishment of dismissal". Since the misconduct committed in the instant case relates to using verbal abuse by the workman towards his superior authority and the same is established in an enquiry, as indicated above, the action of dismissal taken against the workman needs no interference and accordingly the same is confirmed.

9. In the result, the action of the management in dismissing the services of the workman with effect from the 16th March 1999 is held to be legal as well as justified and consequently the workman is held entitled to no relief.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
29-4-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

P. C. MISHRA
29-4-2009
Presiding Officer
Industrial Tribunal, Bhubaneswar

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