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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 5th June 2009

No. 5004—li/1(BH)-27/2001(Pt.)-L E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th April 2009 in Industrial Dispute Case No. 11/2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Regional Co-operative Marketing Society Ltd., Balasore and their workman Shri Prema Chandra Naik was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 11 OF 2002

Dated the 30th April 2009

Present :

Shri M. R. Tripathy,
Presiding Officer, Labour Court, Bhubaneswar.

Between :

The Management of the Regional Co-operative Marketing Society Ltd., Balasore. . . First Party —Management

And

Their Workman . . Second Party—Workman
Shri Prema Chandra Naik

Appearances :

For the First Party—Management . . Shri B. D. Choudhury

Second Party—Workman himself . . Shri P. C. Naik

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute between the parties to this Court vide Order No. 1467—li/1 (BH)-27/2001-LE., dated the 5th February 2002 of the Labour & Employment Department, Orissa, Bhubaneswar for adjudication.

2. The Schedule of Reference is as follows :

“Whether the action of the management of R. C. M. S., Balasore in dismissing the services of Shri Prema Chandra Naik, Peon, with effect from the 31st December 2000 is legal and/or justified ? If not, what relief is he entitled to ?”

3. The case of the workman may be briefly stated as follows :

He was appointed as a Peon on the 1st December 1962 in the Regional Co-operative Marketing Society Ltd., Balasore (shortly stated as the management). While he was working, he was reverted to the post of Choukidar and transferred to Bampada Rice Mill in place of one Nakaphudi Jena on the 17th January 2000. After his transfer to Bampada Rice Mill he was not allowed to sign in the attendance register. He requested the newly appointed Secretary of the management, but no action was taken by him to enter his name in the attendance register. In this way five months passed. The management also did not pay his salary for the said period. So he served a notice on to the management to start hunger strike. The Secretary paid him Rs. 500 and requested him not to sit in the hunger strike. Subsequently on the 31st December 2000 he was dismissed from service. He approached the labour machinery and an attempt was taken for conciliation between the parties but it ended in failure. Hence the reference.

4. The management has admitted that the workman was a Class IV staff of the management who was appointed on the 1st December 1962. The post of Peon, Watchman and Choukidar are equivalent posts with equal salary, as such, inter changeable. On the 17th January 2000 he was transferred to Bampada Rice Mill to work as a Watchman. Since the said Rice Mill is situated at a distance of 7 Km from the office of the management, the officials of the management made surprise visit to supervise the work of the workman on different dates in the year 2000. But it was found that he was not doing his duty in the Rice Mill. So a disciplinary proceeding was initiated against him. He was placed under suspension and charges were framed against him on the 9th May 2000. He was asked to file his show cause but he did not file any show cause against the charges. One Enquiry Officer was appointed and after completion of the enquiry, the management dismissed him from service on the basis of the enquiry report with effect from the 31st December 2000. The enquiry was conducted in a fair and proper manner and therefore, the workman is not entitled to get any relief in this case.

5. The following issues were framed in this case :

ISSUES

- (i) "Whether the action of the management of Regional Co-operative Marketing Society Ltd., Balasore in dismissing the service of Shri Prema Chandra Naik, Peon, with effect from the 31st December 2000 is legal and/or justified ?
- (ii) If not, what relief is he entitled to ?"

6. The workman examined himself as W. W. 1. Similarly the management also examined the present Secretary as M. W. 1.

FINDINGS

7. *Issue Nos. (i) and (ii)* :—Both the issues are taken up together for the sake of convenience.

According to Section 2 (00) of the Industrial Disputes Act, 1947 retrenchment means the termination by the employer of the service of a workman for any reason whatsoever otherwise than a punishment inflicted by way of disciplinary action. In the present case the management dismissed the services of the workman with effect from the 31st December 2000 by way of inflicting punishment on him in a disciplinary proceeding. So it is necessary to examine as to if the disciplinary proceeding was conducted in a fair and proper manner affording all reasonable opportunities to the workman to defend himself.

8. The workman in his deposition has stated that the management has dismissed him from service illegally on the 31st December 2000. Prior to that the management had reverted him from the post of Peon to the post of Choukidar and had transferred him to Bampada Rice Mill. According to the management the workman was a Class IV employee and the post of Peon, Watchman, Choukidar, etc. are of the same cadre. Since it is contended by the workman that he was reverted to the post of Choukidar from the post of Peon, it was for him to file relevant documents to prove the above fact. But he has not filed any paper to the above effect and so I find no merit in his contention that he was reverted to the post of Choukidar from the post of Peon.

It is further stated by the workman that on receipt of the transfer order he went to his new place of posting but he was not allowed to sign in the attendance register. The Secretary of the management did not enter his name in the attendance register and did not pay his salary for five months. When he issued a notice, the Secretary gave him only Rs. 500 and thereafter he was dismissed from service. During cross-examination he denied the fact that he did not go to Bampada to join in his duty. In this regard M. W. 1 has stated that after the workman was transferred to Bampada he did not join there and remained absent for a long period for which a disciplinary proceeding was initiated against him. He placed under suspension with effect from the 29th January 2000 and thereafter on the 9th May 2000 charges were framed against him. He has filed the copy of the charge-sheet marked as Ext. B. He has further stated that the workman was asked to file his show cause within 15 days from the date of receipt of the charge, but he did not file any show cause against the charges levelled against him. Thereafter Shri Madan Mohan Panda was appointed as Enquiry Officer. After completion of the enquiry the Enquiry Officer submitted the enquiry report to the disciplinary authority on the 21st October 2000. A copy of the enquiry report was supplied to the workman. He further stated that the

workman had participated in the enquiry and all the charges framed against him were established. Therefore he was dismissed from service with effect from the 31st December 2000. The workman during the time of cross-examination has admitted that the charges were framed against him and he had participated in the enquiry proceeding. The management has filed the copy of the enquiry report marked as Ext. F. The Enquiry Officer has dealt with each point of charge and has come to a conclusion that all the charges were established against the workman. There is nothing to say that the enquiry was not conducted in a fair and proper manner or following the principles of natural justice. Ext. G is the dismissal order which reveals that the charge of gross misconduct, disobedience of orders, unlawful activities towards higher authorities, using filthy languages to the superiors, etc. were established against the workman and for the said reason he was dismissed from service with effect from the 31st December 2000. It is stated by M. W. 1 that the workman did not receive the order of dismissal and so the matter was published in the daily Oriya Newspaper 'The Sambad' and in order to prove the said fact he filed a copy of the newspaper publication and the letter written by the Secretary of the management to the Advertisement Executive of the newspaper marked as Ext. D.

9. In the enquiry report, the Enquiry Officer has recorded the findings that the workman did not join in his duty at Bampada Rice Mill in view of the order passed on the 17th January 2000, he used filthy and offensive words against his higher authorities/officials, etc. Since as per the enquiry report he was found absent at his place of service, i.e. at Bampada Rice Mill on various dates by the staff of the management, so the punishment of dismissal inflicted on him cannot be said as disproportionate to the gravity of misconduct. Therefore, I am of the opinion that the action of the management in dismissing him from service with effect from the 31st December 2000 is legal and justified and the workman is not entitled to get any relief in this case. Accordingly both the issues are answered.

10. Hence ordered :

The action of the management of Regional Co-operative Marketing Society Ltd., Balasore in dismissing the service of Shri Prema Chandra Naik, Peon with effect from the 31st December 2000 is legal and justified. The workman Shri Naik is not entitled to get any relief in this case.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY
30-4-2009
Presiding Officer
Labour Court, Bhubaneswar

M. R. TRIPATHY
30-4-2009
Presiding Officer
Labour Court, Bhubaneswar

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