

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No.1033 CUTTACK, MONDAY, JULY 5, 2010/ASADHA 14, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 11th June 2010

No.4908—li/1(B)-62/1993—L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 11th December 2009 in I. D. Case No.2 of 1994 of the Presiding Officer, Labour Court, Sambalpur to whom the Industrial Dispute between the Management of Laramba Service Co-operative Society and their workman Shri Suresh Ch. Chhuria was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTES CASE No.2 OF 1994

Dated the 11th December 2009

Present :

Miss Sarojini Mahapatra, M. A., LL. B.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of Laramba Service ... First-party Management
Co-operative Society,
At/P.O. Laramba,
Dist. Bargarh.

And

Their Workman Shri Suresh Ch. Chhuria ... Second-party Workman
At/P.O. Dulumpur,
Dist. Bargarh

Appearances :

Shri S. C. Pradhan . . . For the First-party Management
Auth. Representative.

Self . . . For the Second-party Workman

AWARD

1. This matter arises out of reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12 read with Clause (c)/(d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) in their memo. No.17353, dated 29-12-1993 for adjudication of the following question :

“Whether the dismissal of Shri Suresh Chandra Chhuria, the Assistant Secretary, Laramba Service Co-operative Society from service by the management vide their Order No.15-C.S., dated 20-9-1989 is legal and/or justified ? If not, what relief the workman is entitled to ?”

2. The case of second-party workman may be stated briefly :

The second-party workman was appointed as Assistant Secretary of the first-party society and since his appointment he was working honestly and sincerely and during the tenure of his service from 1-12-1979 to 20-9-1989 there was no black spot. Then he was terminated from service on false charge of misappropriation of Society Fund. The President and the Secretary were dead against the workman for his failure to meet with their unreasonable demands. So they made a plan to remove the workman from service. They created documents, suspended the second-party workman from service on 4-10-1986. They filed a Complaint Case bearing No.1-C.C., Case No.31 of 1987 in the Court of S. D. J. M., Bargarh, which ended in conviction on 8-9-1989. Subsequent to the order of conviction, the management dismissed the second-party workman from service vide their letter No.1508, dated 20-9-1989 alleging misappropriation of fertiliser of stock of 484 quintals during the period from 1-7-1985 to 11-11-1985. Then the workman preferred Criminal Appeal No.113/39 of 1989 before the Learned Additional Sessions Judge, Bargarh and the Learned Additional Sessions Judge set aside the conviction order of the Lower Court and the second-party workman acquitted on the charge of misappropriation levelled against him. Thereafter, the workman applied before the management for his reinstatement in service but it was in vain. The allegation against the workman second-party regarding misappropriation of 484 quintals of fertiliser during the period from 1-7-1985 to 11-11-1985 is false, frivolous and *mala fide*. No audit was done in his presence nor the stock verification of fertiliser was made in his presence. The dismissal order is neither legal nor justified for non compliance of Section 25-F of the Industrial Disputes Act. So the second-party workman prayed for his reinstatement in service with full back wages and consequential benefits.

3. The first-party management stated as follows :

Laramba Service Co-operative Society Ltd., is a primary co-operative society constituted for the Socio-economic upliftment of its constituent Members, Agriculturist etc. The Society is a body corporate managed in accordance with the Orissa Co-operative Societies Act, Rules made thereunder and its registered bye-laws. The Society in furtherance of its activities use to carry on

business of fertiliser and pesticides. The said fertiliser stock are being sold to the Members of the Society and Agriculturist. At that time, the Society was having three godowns located at Chakuli, Laramba and Kumelsingha for keeping its fertilisers and pesticide stocks.

The second-party workman was working as Assistant Secretary in the Laramba S. C. S. Ltd. and was the custodian of fertilisers and pesticides stocks of the Society in respect of Laramba and Chakuli Godown. The second-party workman was also responsible for truth and correct maintenance of accounts in respect of the stocks of fertilisers held by him. During the period from 1-7-1984 to 30-6-1985 and from 1-7-1985 to 11-11-1985 the second-party workman caused fertilisers and pesticides shortage of Rs.91,938.15 paise and Rs.1,27,824.16 paise total of Rs.1,79,762.21 paise respectively and misappropriated the same. On 4-10-1986 the Society suspended the second-party workman from service and charge sheeted him for the aforesaid misappropriation. During the period of suspension the headquarters of the workman was fixed at Laramba. The workman initially attended the office during the period of suspension. Thereafter, did not turn up and in respect of the period of the attendance the workman has been paid with his wages. The workman submitted explanation from the charges which the management found unsatisfactory and subsequently the management passed an order for domestic enquiry. The domestic enquiry could not be completed due to dilatory tactics adopted by the workman.

The management has filed I.C. Case No. 31 of 1987 in the Court of S. D. J. M., Bargarh u/s.408 of the I. P. C. against the workman for misappropriation of fertiliser for the period from 1-7-1985 to 11-11-1985. The said case ended in conviction by Judgement dated 8-9-1989. That apart the workman also misappropriated pesticides stocks during the year 1983,1984,1985. The Management Society also filed dispute Case No.362/1992-1993 against the second-party workman in the Court of A. R. C. S., Bargarh u/s.68 of the O. C. S. Act for misappropriation of pesticides stocks by the workman. The Learned A. R. C. S. after hearing both the parties by judgment dated 4-5-1994 decreed a sum of Rs.24,398.44 paise along with the interest thereon in favour of the management and against the workman. The workman has not preferred any appeal against the said decree. Thereafter, the management examined the matter in detail and satisfied as to the guilty of the workman and dismissed him from service on 20-9-1989. The workman after dismissal from service has been carrying on private business and maintaining luxurious life.

The workman filed Criminal Appeal No.113/39 of 1989 against the conviction order in the Court of the Additional Sessions Judge, Bargarh. The learned Sessions Judge by judgment dated 10-4-1991 set aside the order of conviction. The management being aggrieved with the order of acquittal of the Learned Additional Sessions Judge, Bargarh filed an appeal before the Hon'ble High Court which is *subjudice*. It is a fact that in Misc. Case No.20 of 1990 this Court by order dated 2-8-1993 determined a cash of Rs.33,100 in favour of the second-party workman towards subsistence allowance. The management being aggrieved with the said order dated 2-8-1993 filed O. J. C. No.1837 of 1994 before the Hon'ble High Court which is *sub-judice*. As per the case of the first-party management the second-party workman has misappropriated the Society money. So the management prayed for an order in favour of the management and against the workman.

4. The rejoinder filed by the second-party workman denying all the averments made in the written statement by the management. As per the case of the second-party, he has never misappropriated the cash of Rs.1,79,762.21 paise. No audit was done. If there was any audit it was

not the knowledge of the second-party nor the audit was conducted in his presence. Neither the auditor nor the Society called the second-party to explain for the shortage if any. No charge sheet was ever served on him for the alleged shortage in 1984-1985, 1985-1986. No dispute case was also started for the alleged shortage of cash of Rs.91,938.15 paise. The dispute case started before the A. R. C. S. for Rs.1,27,824.16 was dismissed. Criminal case started on the basis of complaint alleging misappropriation of Rs.1,27,824.16 paise was ended in acquittal of the second-party. The second-party has filed Misc. Case No.20/1990 u/s. 33-C(2) of the I. D. Act for non-payment of wages during the period of suspension which was allowed by this Court. The second-party has never submitted any explanation. No Enquiry Officer was appointed nor was he noticed by any one to attend the enquiry. The domestic enquiry was never conducted by the management. As against the order of A. R. C. S., Bargarh in dispute case No.362 of 1992-1993 the second-party preferred appeal before the Co-operative Tribunal which was rejected without admission on 17-10-1994. It is false to say that the workman second-party has been leading a luxurious life by carrying with private business. He is unemployed. The second-party is not aware of institution of O. J. C. 1837/94 as alleged. So the workman second-party claimed the dismissal order passed against him by the management is illegal and not justified and with *mala fide* intention and vindictive attitude of the management.

ISSUES

5. In view of the pleadings of the parties, the following issues have been framed for adjudication of this case as per the reference :

- (i) "whether the dismissal of Suresh Ch. Chhuria, the Assistant Secretary, Laramba Service Co-operative Society from service by the management vide their Order No.15-C.S., dated 20-9-1989 is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to ?"

6. The workman second-party and the management first-party adduced evidence and the documents in support of their respective cases. The workman Shri Suresh Ch. Chhuria himself has been examined as W. W.1. He has filed documents which are marked Ext.A to F-1. On behalf of the management two witnesses have been examined as M. W. 1, Shri Bitan Kumar Biswas, Inspector of the Co-operative Society, A. R. C. S., Bargarh, M.W.2 Shri Suresh Chandra Pradhan, Secretary, Laramba Service Co-operative Society Limited. The management has filed documents which are marked Ext.1 to Ext.14.

FINDINGS

7. *Issue No.(i)*—Admittedly the workman was working as Assistant Secretary of Laramba Service Co-operative Society with effect from 1-12-1978. As alleged during the period from 1-7-1984 to 30-6-1985 and from 1-7-1985 to 11-11-1985 the workman caused fertiliser and pesticides shortage amounting to Rs.1,79,762.21 paise and misappropriated the same. So on 4-10-1986 the management Society suspended the second-party workman from service and chargesheeted him for misappropriation of the above amount. While departmental proceeding on the charge of misappropriation against the workman was pending he was convicted by the Court on 8-9-1989. Thereafter the workman was dismissed from service on 20-9-1989 on charge of misappropriation.

The workman filed Criminal Appeal No.113/39 of 1989 before the Learned Additional Sessions Judge, Bargarh wherein the order of conviction was set aside on dated 10-4-1991. Thereafter the management filed leave application vide Criminal Misc. Case No.846 of 1991 before the Hon'ble High Court seeking leave to file appeal against the order of the acquittal and the appeal was allowed by the Hon'ble High Court. Thereafter the management has filed appeal in Criminal Appeal No.371 of 1992 before the Hon'ble High Court against the acquittal judgment in Criminal Appeal No.113/39 of 1989 passed by the Learned Additional Sessions Judge, Bargarh and the said appeal is sub-judice. It is an admitted fact that the order of this court passed in Misc. Case No 20 of 1990 has been modified by the Hon'ble High Court in O. J. C. No.1837 of 1994 directing the management to pay Rs.24,063.18 paise to the workman towards his subsistence allowance. As per the case of the management, the second-party workman was dismissed from service on the charge of misappropriation amounting to Rs.1,79,762.21 paise from 1-7-1984 to 30-6-1985 and from 1-7-1985 to 11-11-1985.

8. The workman Suresh Chandra Chhuria has filed some documents marked as Ext. A to E/1 in support of his case. The burden lies on the management to establish the alleged allegation of misappropriation levelled against the workman. M.W. 1 the Inspector of Co-operative Society, A. R. C. S., Bargarh stated in his evidence that the workman being the Assistant Secretary of Laramba Service Co-operative Society was in-charge of fertilisers and pesticides from 1-7-1985 to 11-11-1985 and 484 quintals of fertilisers stock was found shortage amounting to Rs.1,27,824.16 paise. So he was charged for misappropriation of the said amount and while he was under suspension, the criminal case was filed against him. As per his evidence another dispute case was filed in the court of A. R. C. S., Bargarh both in respect of fertilisers and pesticides stock shortage out of which pesticides stock shortage dispute case has been decided against him as per the decree in Ext. 1. The learned A. R. C. S., Bargarh on dated 4-5-1994 passed order in favour of the management and directed the workman to pay the decretal amount of Rs.24,398.44 paise along with the court fees of Rs.100. Admittedly the management has not conducted any domestic enquiry in respect of the charges of misappropriation. M. W. 2 filed affidavit evidence regarding the case of the management giving detail facts of the management. His evidence should be scrutinised in a careful manner. As per his evidence during the relevant period he was working in Accounts Section and in addition he was in charge of fertiliser stock of Kumelsingha Branch. Besides him Dinabandhu Chhanda, Bitan Kumar Biswas, Kishore Chandra Sarangi, Santosh Kumar Panda, Jagdish Pasayat, Prahallad Majhi, Anirudha Pradhan, Satyanarayan Sethi were working as an Additional Secretary, Assistant Secretary, Salesman, Peon and Salesman respectively at the time when the second-party workman Suresh Chardra Chhuria was working as Assistant Secretary and was in-charge of fertiliser and pesticides stock of Laramba headquarter and Chakuli centre. He was also doing works of loan section. Further he stated that the workman worked in Laramba S. C. S. for the year 1978 to 11-11-1985. The workman was in-charge of fertiliser in Laramba S. C. S. from 1-7-1979 to 11-11-1985 and when he remained on leave his loan section was being managed by another worker where the fertiliser/pesticides transaction work was kept stand still. M. W. 2 has filed Ext. 5 to Ext. 9 the certified copy of the fertiliser stock, certified copy of stock register, pesticides stock register. This witness has not filed register and receipt book of corresponding period. M. W. 2 further admitted in his evidence that during such period of leave of the workman he used to

take fertiliser stock to the corresponding working place of the workman till the date of his joining. He has taken the stock of the fertilisers on the strength of the office order as well as verbal order of the superior authority. When the workman was on leave, M. W. 2 received the fertiliser stock which were kept in the Society, Bargarh and after the workman joins the same was taken to the godown stock. For this work, labourer charges were paid to the labourer. Although transaction was made by M. W. 2 but he has not stated the exact date of such transaction. Although M. W. 2 was continuing in such charge but no allegation made against him. Subsequently M. W. 2 admitted that being advised basing on the audit report of the Auditor he has deposited the shortage amount.

9. It is further elicited from the cross-examination of M. W. 2 that as per the indent placed by the Branches, the management used to supply fertiliser and pesticides stock to them either in one instalment or different instalments according to the availability. During the tenure of this workman there were three numbers of fertiliser godowns under Laramba S. C. S., the Laramba headquarters, Chakuli Sub-Centre and Kumelsingha Sub-Centre. During that period M. W. 2 was incharge of fertiliser stock of Kumelsingha Sub-Centre. The indent for fertiliser stock of all the above custodians are sent combinedly. It is further alleged from the evidence of M. W. 2 that after this indent either workers from society used to be deputed to the godown depot or warehouses for bringing fertilisers and also carrying the fertilisers. By that time on such occasions M. W. 2 also used to bring fertilisers for his sub-centre godown together with fertilisers for other godowns and used to bring that stock by putting his signature on lifting challan in the depot. The M. W. 2 also admitted that unless he put his signature on those lifting challans, no fertiliser stock issued to him. M. W. 2 admitted in his cross-examination that some challans as per annexures 23, 24, 25, 28 and 26 did not carry the signatures of the person who brought the fertilisers from the depot to the society and all the challans also did not carry signature of the workman Suresh Chandra Chhuria and other challans contain the signatures of the Suresh Chandra Chhuria which are marked as Exts. A, B, C and D.

As alleged from the evidence of M. W. 2 on lifting of such fertiliser stocks were directly recorded in the stock book of different Sub-Centres godown. But a bill for the corresponding stock lifting challan if issued in favour of the Laramba S. C. S. from where the management of Laramba S. C. S. could know the total stock of fertiliser lifted by all the Sub-Centres under it. After receiving the bill from the depot or the society, the management does not call for any report from the Sub-Centre to verify the truth of lifting of such stock verification from depot and the management could know the fact from the monthly progress report submitted by each Sub-Centre reflecting in detail the opening stock of fertiliser stock lifted and stock sold etc. in the year and the verifying Officer used to verify the stock of fertiliser for the purpose of reconciliation. The management has not filed such type of progress report in this court.

10. M. W. 2 further admitted in the evidence that the delivery challan showing bringing of fertiliser from godown to society there are some entries in his own handwriting. M. W. 2 has not filed all the relevant documents and registers for the disputed period from 1-7-1985 to 11-11-1985. At the time of audit M. W. 2 was present along with all the employees involved in the stock transaction. The records of the society for the disputed period have been subjected to audit as well as special audit. Copy of the Audit Report Ext. 10 for the year 1985-1986 has been filed by the management. As per Ext. 10 the audit report has been prepared taking Q.46.00 of fertilisers has verified balance

as on 30-6-1986. Neither the audit report nor the special audit report were supplied to the workman. Further it is disclosed by M. W. 2 during the disputed period M. W. 2 was in-charge of fertiliser stock of Kumelisingha Sub-Centre under Laramba S. C. S. M. W. 2 has no knowledge whether during the period from 1-7-1985 to 11-11-1985 the workman was doing fertiliser transaction in Chakuli Sub-Centre and Larambal main godown.

11. The management has filed Ext.14 the original audit report for the year 2006-2007 which is not relevant to this case. There is no such document filed by the management to show that the workman has misappropriated the fertiliser stock of Q.484.00 during the period from 1-7-1985 to 11-11-1985. The documents filed by the management does not relate to this above allegations levelled against the workman. On perusal of the evidence on record as well as the documents filed by the management it is seen that the management has failed to prove the detail facts against the workman. So the workman is not liable to this allegations levelled against him. There is no evidence nor any documents filed by the management to show that the workman was engaged himself in transacting fertilisers independently or on his own sweet will within that period. Hence the following Award :

AWARD

The reference is answered on contest against the management but in the circumstances without cost. The dismissal of Shri Suresh Ch. Chhuria, the Assistant Secretary, Laramba Service Co-operative Society from service by the management vide their Order No.15-C.S., dated 20-9-1989 is illegal and unjustified. The management is directed to reinstate the workman in service within one month after publication of this award in the *Orissa Gazette*. The workman shall not get back wages in this case.

Dictated and corrected by me.

S. MAHAPATRA
11-12-2009
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
11-12-2009
Presiding Officer
Labour Court
Sambalpur

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