

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1042 CUTTACK, TUESDAY, JULY 6, 2010 / ASADHA 15, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 19th June 2010

No. 5110—li/1-68/1990-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th March 2010 in I.D. Case No. 107 of 1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Jaikishan Dasmall Jute Products Pvt. Ltd., Rupsa, Balasore and its Workman Shri Bijaya Kumar Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 107 OF 1991
Dated the 26th March 2010

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

The management of M/s. Jaikishan .. First-party Management
Dasmall Jute Products Pvt. Ltd.,
Rupsa, Balasore.

And

Their workman .. Second-party Workman
Shri Bijaya Kumar Mohapatra.

Appearances :

Shri S. S. Alli, Advocate	.. For first-party management
Shri S. Mohanty, Advocate	} .. For second-party workman
Shri S. K. Das, Advocate	
Shri S. S. Mohapatra, Advocate	

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 7652–li/1-68/1990-L.E., dated 9-5-1991 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s. Jaikishan Dasmall Jute Products (P) Ltd., Rupsa in terminating the services by way of striking off the name of Shri Bijaya Kumar Mohapatra from the Muster Rolls with effect from 18-9-1989 is legal and/or justified ? If not, to what relief is he entitled ?”

3. The case of the workman in brief is that he was an employee under the management and was also Organising Secretary in the Rupsa Jhota Karakhana Shramik Sangha which was at the relevant time was the recognised Union. On 17-4-1989 in connection with some dispute relating to individual workers, some office bearers of the Union had been to Kalma for discussion with the management of another industry and after return they came to know that the General Secretary of the Union was assaulted by some of the co-workers of the locality and the Mill. The office bearers of the Union when arrived at the gate of the Mill they were also assaulted by the antisocial elements and one Shri Jogendra Prasad Das, Vice-President of the Union was severally assaulted and was taken to Balasore Headquarter Hospital for treatment. The tension near the Mill mounted so much and the hoodlums with the help of the management prohibited the entry of the office bearers and members of the Union inside the Mill to join their duties. The management has informed the workman to wait for some days and asked them not to come near the Mill as the tension near the Mill was high and advised to wait till the tension ceases and normally comes on the area. In June, 1989 the workman and others felt that the tension in the area has been subsided and they came to join to their duties. According to the workman, he and others represented to the management for allowing them to join in their duties. On receipt of the representation of the workman, the management served show-cause notice on the workman indicating therein that from 18-4-1989 without any permission the workman remained voluntarily absent from duty and why such conduct should not be treated voluntary abandonment of service. The workman submitted his show-cause explaining the circumstances and also requested the management to allow the workman to be heard in the matter. without holding any enquiry or giving an opportunity of personal hearing, the management took a decision that the workman had abandoned his service. It is also contended by the workman that the workman had never any intention to abandon his service but the circumstances and the situation was such for which the workman had remained absent for some days with due intimation to the management. Since the show-cause notice was issued, a domestic enquiry against the workman was warranted under the law and the management having not done so, the decision to

the effect that the workman voluntarily abandoned his service cannot be allowed to stand. In the past, other workers of the Mill had remained absent without any sanction of the management for which no penal action has been taken by the management against them, but in case of the workman the management had taken a penal action despite the fact that for such absence the workman had no roll to play. So in this background the workman has raised an industrial dispute before the Labour authority and when the conciliation failed, the matter was informed to the Government and this reference has been received from the Government for adjudication. The workman has prayed for reinstatement in service with full back wages and other service benefits.

4. The management appeared and filed written statement admitting the workman to be his workman. But according to the management, the management struck off the name of the workman from the rolls of the factory on account of long absence from duty without intimation/information and/or permission for reasons known to the workman. Despite repeated opportunities being given, the workman did not resume his duty for a period of about three and half months. The management left with no other alternative than to hold that the workman will not join in his duty and all practical purposes has abandoned his service. The management after waiting for a period of about two and half months from 18-4-1989 a show-cause notice was issued to the workman as to why his name should not be struck off from the rolls of the management. The workman received the said notice on 6-7-1989 and submitted his reply antidating the same as 24-6-1989 and asked the management to give a date for his joining his duty. The management again wrote a letter on the workman on 11-7-1989 and asked him to give reply to its letter dated 29-6-1989. The workman received the same on 18-7-1989 and again submitted a reply praying to give a date of joining in his duty. Again on 16-7-1989 the management wrote a letter to the workman informing that the management is suffering from financial loss on account of absence of the workman from duty along with 10 other workers in a concreted manner. The workman along with others remained absent for about three months by the time letter dated 16-7-1989 was issued and the management having no other alternative than to strike off the name of the workman from the rolls of the factory of the management and intimating this fact vide letter dated 29-7-1989. The workman received the letter on 7-8-1989 and remained silent and did not turn up inspite of repeated opportunities being given to him. Therefore the management published the news of striking off the names of 11 workmen including the present workman in the newspaper daily 'The Samaj' dated 19-9-1989. After the news was published, the workman lodged a complaint before the District Labour Officer, Balasore. It is also contended that the management cannot remove the feelings or apprehensions from the mind of the workman unless the workman actually reports for duty and prevented by others. It was not possible for the management to wait for an indefinite period for the present workman who remained absent for months together when such absence resulted in financial loss to the management on account of loss in production. Further it is contended that Article 20(C) of the Certified Standing Order applicable to the factory of the management empowers the management to strike off the name of an employee who remains absent without leave for more than consecutive eight days and since the present workman remained absent for about three and half months without submitting any leave application, the management is justified enough in striking off the name of the workman from the rolls. According to the management, the workman and others misappropriated the Trade Union fund and more extorting money from the workers. When this fact was detected and became known to others the workman and his associates did not have any face to show or meet their brother workers to whom

they had exploited for a long time. So in this background the management has prayed for answering the reference holding that the termination of service of the workman was just and proper.

5. In view of the above pleadings of the parties, the following issues have been settled :-

ISSUES

- (i) whether the action of the management in terminating the services by way of striking off the name of the workman from the Muster Roll with effect from 18-4-1989 is legal and/or justified ?
- (ii) If not to what relief is he entitled ?

6. In order to substantiate the same the workman has examined himself as W. W. 1 and proved the documents marked as Exts. 1 to 3. Similarly the management has examined two witnesses altogether on their behalf out of which M. W. 1 is the Accountant-*cum*-Cashier of the management whereas M. W. 2 is the Office Executive of the management. The management has also proved the documents marked as Exts. A to U on their behalf.

7. Initially the case was disposed of by an Award on 5-5-2001 and it was quashed by the Hon'ble Court vide order No. 4, dated 27-11-2008 passed in O.J.C. No. 200 of 2002 with a direction for fresh consideration in accordance with law. After remand M. W. 2 has been examined afresh on behalf of the management.

FINDINGS

8. *Issue Nos. (i) and (ii)* – Both the issues are taken up together for discussion for convenience.

It has been argued by the advocate for the workman that the workman along with other workmen were office bearers and leaders of the Union and a charter of demand was submitted on behalf of the workers through the Union before the management and during pendency of such charter of demands the management deliberately terminated the service of the workman with *mala fide* intention to victimise the workman and others for their Trade Union activities and to make the demands weak. The reason for termination that he has been abandoned himself from duty from 18-4-1989 is not correct. The workman has never been charge-sheeted and no enquiry was held before inflicting punishment. So the entire termination is bad in law for which the workman should be reinstated in service with full back wages. On the other hand, it has been argued by the management that since the workman has voluntarily abandoned his service and did not resume his duty in spite of repeated notices given by the management, there is no legal necessity to hold an enquiry and the principle of natural justice is no way violated if no enquiry was held in case of abandonment of service. So the action of the management is justified for which the workman is not entitled to get any relief. Basing on these arguments now I am to verify the evidence available with this record. The workman has stated that he was working under the management since 20-6-1987 and continued to work till 18-4-1989 when his service was terminated. No written termination order has been given to him. Only he came to know from the newspaper advertisement 'The Samaj', dated 19-8-1989, vide Ext. 1. From the date of joining till his termination, he was working continuously without any break and was receiving his pay by signing in the wage slip. He was also given pay slip vide Ext. 3. During his tenure of service more than 650 employees have been working in the management. During his

tenure of service, the manager was looking after the affairs of the workers. He made representation to the management regarding his termination. As there was no effect, he informed the matter to the Labour Officer. There was no conciliation due to nonco-operation of the management. Prior to his termination there was no charge-sheet against the workman. No domestic enquiry was also held. No notice or notice pay and retrenchment compensation was given to the workman at the time of termination though it is a pre-condition of termination as per law. After his termination some other persons have been engaged in his place and they are continuing now. The workman has stated that he had not voluntarily abandoned his service since 18-4-1989. After 18-4-1989 he was repeatedly going to the Mill but he was not allowed to work. However, in support of it, no specific document has been proved that after termination he has not gainfully employed elsewhere and since he challenged the termination bad in law, he claims for reinstatement in service with full back wages and consequential service benefits.

9. The M. W. 1 was working as Accountant-*cum*-Cashier under the management. He knows the workman. He is no longer working under the management. According to him as the workman did not turn up for work, the management issued notice on 29-6-1989, 11-7-1989 and 16-7-1989 vide Exts. A, A/1 and A/2 respectively. After receipt of the letters vide Ext. A/3, A/4, A/5 the workman did not turn up for work. Finally the management intimated the workman on 29-7-1989 that his name has been struck off as he did not turn up for work vide Ext. C. The workman did not turn to receive his financial dues. Even after the paper publication the workman did not turn up. This witness denied the fact that the workman was regularly going to the Mill but he was not allowed to join. In the cross-examination he has stated that in 1989 he was the Accountant and there was three Managing Directors who were looking after the affairs of the Mill. The letters exhibited were sent by the Manager, Shri Mahendra Kumar Sarada, who left the job. On a reference to Ext. 1 the publication in 'The Samaj', dated 19-9-1989, it appears that the present workman along with 10 others were informed through press that since 18-4-1989 they remained absent for which his name has been struck off from the list of workers and the workman along with others were informed to collect their dues from the office of the management. The M. W. 2 proved certain documents and deposes that due to bad financial condition of the management, whenever the workman do not work, they do not claim any wages for those days on the principle of 'no work no pay' followed being agreed by the workmen of the Mill. He has also proved the attested copy of the Certified Standing Order marked as Ext. U. The Article 20 (c) of Ext. R discloses about absence without leave which reads as follows :

"20 (c)—Absence without leave shall be a misconduct and shall be dealt with accordingly to accordance with the Standing Orders, but if a workman remains absent from duty for more than 8 days consecutively, it will be deemed that he has voluntarily left services under the management of his own accord and his name may be struck off from the Muster Roll of the Mill."

The learned counsel appearing for the management submitted that since the workman did not join in his duty in spite of notices issued to him nor applied for any leave, in view of the provisions of the Certified Standing Order, it is deemed that the workman has voluntarily abandoned his service and such abandonment cannot be treated as retrenchment or termination of service and in that case the workman is not entitled to get the benefit as contemplated under Section 25-F of the Industrial Disputes Act. The learned counsel appearing for the workman submitted that the workman

was absent with effect from 18-4-1989 without any permission. It is well known that remaining absent without leave application and permission amounts to misconduct. Once the management take the plea of misconduct against the workman, the management is under obligation to hold a domestic enquiry affording reasonable opportunity to the workman following the principle of natural justice to come to the conclusion that the workman was guilty of misconduct and thereafter the management may take action in accordance with the rules proportionate to the act done by the workman. In the authority reported in 1999 Lab. I. C. 1254 it has been held that under Standing Order raising presumption that workman has left service in case of unauthorised absence of workman from duty for eight days cannot be effected on such assumption basis without affording hearing to him. But in the instant case no opportunity has been given to the workman as revealed from the case record. Similarly in view of the authority reported in 1969 Lab. I. C. 1094 it has been held that order of dismissal cannot have effect from any date prior to that on which it is communicated to delinquent. In the instant case the termination of service was with effect from 18-4-1989 and published on 19-9-1989. Similarly in the authority reported in 1993-SCC-3-259 it has been held that retrenchment is comprehensive and intended to cover any action of management to put an end to the employment of an employee for any reason whatsoever, and the action of the management must be fair, just and reasonable and principle of natural justice are to be followed and principle of natural justice must be read into the Standing Orders. So in the instant case, the management had not conducted any domestic enquiry and on the basis of the Standing Order, the action taken by the management is not only illegal but also violating the principle of natural justice. So on careful consideration of the materials as discussed above, now I came to the finding that the termination of service of the workman by the management with effect from 18-4-1989 is neither legal nor justified.

10. Now the point of reinstatement in service is to be considered. It has been prayed by the workman to reinstate him in service with full arrear back wages. It is now well settled by reasons of catena of decisions of the Hon'ble Supreme Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. Similarly determination of compensation in lieu of reinstatement to a workman, various factors like manner, method of recruitment, nature of employment, and more important his length of service are also to be considered. As per legal position if the termination of an employee is found to be illegal earlier view was of relief of reinstatement with full back wages. But, in the recent past, there has been a shift in the legal position and in long line of cases the Hon'ble Supreme Court has consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. In the instant case it appears from the case record that the management has taken new persons in place of the workman. It is a case of termination of the year 1989. The age of superannuation is 58 years as per the Certified Standing Order. The evidence of the management shows that at present the management is running the factory with heavy loss and some time no work no pay principle has been followed in respect of the workmen working there with reference to the settlement between the workers Union and the management. In the meantime long period has been passed and the persons who are working in place of the workmen must be working. Now giving a direction for reinstatement of the workman may not be appropriate. Taking into consideration

of length of service, present age and the age of superannuation unless the order of reinstatement is given, the question of payment of back wages will not be appropriate. However, taking into consideration of all the materials available in the case record as discussed above, compensation instead of reinstatement will meet the ends of justice and in my opinion a sum of Rs. 25,000 as lump sum compensation will meet the ends of justice. Therefore the workman is entitled to get a lump sum amount of Rs. 25,000 (Rupees twenty five thousand) only as compensation from the management and the management is to pay the said compensation amount to the workman within a period of three months from the date of publication of the Award in the Official Gazette failing which the workman will be entitled to get interest at the rate of 9% (nine per cent) per annum on the amount of compensation from the date the amount became payable by the management till the same is actually paid.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
26-3-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
26-3-2010
Presiding Officer
Labour Court, Bhubaneswar

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