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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th August 2010

No. 7321—li/1(B)-113/2003-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 14th January 2010 in I. D. Case No. 41 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Disputes between the Management of Cuttack Central Co-operative Bank Ltd., Cuttack and its workman Smt. Indulata Samal was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 41 OF 2004

Dated the 14th January 2010

Present :

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

Between :

The Management of Cuttack Central Co-operative Bank Ltd., Cuttack. .. First-party Management

And

Its Workman Smt. Indulata Samal .. Second-party Workmen

Appearances :

Shri A. C. Mohanty, Advocate }
Shri P. K. Sahoo, Advocate } .. For First-party Management
Shri S. Mishra, Advocate }

Shri Prahallad Sahoo, Advocate .. For Second-party Workman

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 to this Court vide Order No. 4963—li/1(B)-113/2003-L.E., dated the 14th June 2004 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference reads as follows :

“Whether the termination of services of Smt. Indulata Samal, ex-Peon with effect from 1-7-1995 by the management of Cuttack Central Co-operative Bank Ltd., Cuttack is legal and/or justified ? If not, what relief is Smt. Samal entitled to ?”

3. The case of the workman in brief is that the father of the workman was a permanent Cadre Secretary of Ranpur Service Co-operative Society in Binjharpur Block and after his accidental death under the Rehabilitation Scheme the workman was appointed as contingent staff on a consolidated pay of Rs. 300 per month by the management and was posted in the Central Co-operative Bank Ltd., Jajpur Branch vide Order No. 6169, Dt. 9-11-1984 at the place of practising of her husband, Shri Prahallad Sahoo, Advocate. The work of Diarist was allotted to her. The workman continued to work as Diarist in the said Branch for the entire satisfaction of the authority. Surprisingly, her service was regularised in the scale of pay of Peon instead of Diarist vide Order No. 9313, Dt. 29-1-1986 by the management. When the workman appealed to the higher authority to absorb her in the post of Diarist and regularised her accordingly, the management withdrawn the workman from the Diary and Despatch Section without assigning any reason thereafter vide Order No. 438, Dt. 10-11-1986. The workman protested such illegal action and made representation to cancel of the illegal order but it was in vain. The gradation list of Peon the name of the workman was at Sl. No. 93 and was communicated to the workman vide memo. No. 15111, Dt. 27-4-1986 which was also protested by the workman. Thereafter the workman was illegally transferred and relieved to the Branch of Binjharpur. The workman approached the management to allow her reasonable opportunity to represent to the proper authority to get her said transfer order cancelled, but it was also in vain. The workman was put under suspension from 10-3-1989 to 13-3-1995 and an enquiry was made and she was reinstated in service without regularising her suspension period. The workman was forced to work as Peon when she joined and was not allowed to work as Diarist. The workman being humiliated was constrained to submit her resignation letter on protest and when the management did not accept the said resignation letter, she submitted withdrawal petition on 18-7-1995 to the management and when it was refused to receive, she despatched the same under certificate of posting on the same day, i.e., on 18-7-1995. On 18-8-1995 another withdrawal application was also submitted. No notice to the show cause was issued to the workman on her letter of resignation and her withdrawal application. The management did not allow the workman to attend the office at Binjharpur Branch from 25-10-1995 onwards disclosing that her resignation letter was accepted on 1-7-1995. The action of the management is gross violation of natural justice and so in this background the workman has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement by partly admitting and partly denying the plea of the workman. It is admitted that the workman was working under the management. But her post is being disputed by the management. According to the management there was no contract of employment existing between the workman and the management to allot the workman any particular work and she was a contingent staff and was not appointed in any regular post of vacancy under the management. She has no right to any post and was required to work in any post which was considered contingent depending upon the exigency of the work of the management Bank. Since the workman did not satisfy in her letter of resignation as to from which date the same was to be accepted, it was open to the management to accept the same from the very date of the letter

of resignation. The said letter did not stipulate any condition or any particular date regarding the acceptance of the same, the acceptance of the resignation of the workman by the management by no stress of imagination, as such it is not at all a case of retrenchment under the Industrial Disputes Act. The workman was reinstated in service as a result of the enquiry and the period of suspension was treated as such. The management has rightly directed the workman to work in the post of Peon after reinstatement in the said post which was holding earlier. The workman submitted her letter of resignation and withdrawal of the same so-called withdrawal letter reached the management at a time when the letter of resignation had already been accepted from the very day, i.e., on 1-7-1995. The past service record of the workman reveals that while working at Jajpur Branch, she was rowdy, aggressive and arrogant for which all the members of the Branch staff complained against her behaviour in the office and at one stage information was lodged against her before the local Police and Sub-Collector, Jajpur. So in this background she does not deserve any sympathy or clemency and above all any relief in this case.

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

ISSUES

- (i) “Whether the termination of services of Smt. Indulata Samal, ex-Peon with effect from 1-7-1995 by the management of Cuttack Central Co-operative Bank Ltd., Cuttack is legal and/or justified ?
- (ii) If not, what relief is Smt. Samal entitled to ?”

6. In order to substantiate her plea, the workman has examined herself as W. W. 1 and proved documents marked as Exts. 1 to 14. Similarly the management has examined one witness on its behalf as M. W. 1 and proved the documents marked as Exts. A to E.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for discussion being co-related and convenience.

It has been argued by the Advocate for the workman that she has submitted her resignation on 1-7-1995 on protest against her posting as Peon though she was working as Diarist under the management. Subsequently she withdrew her resignation by submitting an application on 18-7-1995 but the management without considering her withdrawal application accepted her resignation and her service has been terminated. On the other hand, it has been argued by the Advocate for the management that after receiving the resignation letter of the workman it was duly accepted. So once resignation is accepted subsequent withdrawal has no value at all and the case of the workman does not come under the purview of retrenchment and the principle of the Industrial Disputes Act has not at all applicable in the present case. So in view of the contrary submission, now I am to see the materials available in the case record in respect of it. The workman has taken the plea that she was appointed as contingent staff on a consolidated salary of Rs. 300 per month by the management under Rehabilitation Scheme vide Order No. 7018, Dt. 28-11-1984 but the management has protested regarding his appointment under Rehabilitation Scheme. On the other hand, it has been submitted that the workman has entered into the service by backdoor method. But the xerox copy of the appointment order of the workman has been marked as Ext. 14 and the said document is vide Order No. 6169, Dt. 9-11-1984 which reveals as follows :

“Smt. Indulata Samal, c/o P. Sahoo, Advocate, Jajpur is engaged as contingent staff on payment on daily wage basis @ Rs. 300 (Rupees three hundred) per month and posted to Jajpur Branch.”

So the appointment order of the workman discloses that she was working on daily wage basis as contingent staff. It has been argued by the Advocate for the workman that as she was engaged as contingent staff she was allotted the work according to the availability in the office and she was posted as Peon and the work of Diarist was allotted to her. This contention of the Advocate for the management has some force with reference to the document marked as exhibits on behalf of the parties. Let us see some documents in this regard. Ext. 2 is the Office Order No. 438, Dt. 10-11-1986 which discloses that the workman was working as Peon in charge of Issue and Diary Section was directed to hand over the charge of Issue and Diary Section to one Jayant Kumar Swain, Accounts Assistant. Ext. 13 another Office Order vide No. 10142, Dt. 17-2-1986 discloses that the workman (Peon) was allowed to continue to work in the Diary and Despatch Section at the Branch. Ext. 12 is the Office Order No. 9313, Dt. 29-1-1986 which reads as follows :

“Smt. Indulata Samal (Peon) is allowed to draw regular scale of pay of Rs. 220—3—235—EB—4—275—5—300 per month with other allowances as admissible to other Bank employees with effect from Dt. 1-1-1986 on *ad hoc* basis.”

Similarly Ext. 5 is the tentative gradation list of Peons and list of Peons on *ad hoc* basis and in Sl. No. 93 the name of the workman found place under the heading Peon on *ad hoc* basis which shows that she had joined on 12-11-1984. So these documents clearly show that she was working as a Peon under the management on *ad hoc* basis. So the plea of the workman that she was posted as Diarist and working as such has no force. The workman was suspended from service and was reinstated in service subsequently as revealed from the evidence adduced by the parties. But in connection with the reference of the State Government this fact has a little help to come to the conclusion in answering the reference. The sole question is now to be considered whether the workman has voluntarily resigned and subsequently filed withdrawal of the same. The resignation letter of the workman has been marked as Ext. A on behalf of the management which discloses that as the workman was unable to perform the duty of Peon she submitted her resignation. It is the plea of the workman that subsequently under cool mind she withdrew her aforesaid resignation by filing written application on 18-7-1995. She sent it to the management under certificate of posting. Thereafter again on 15-1-1996 she requested the management in writing to reinstate her in service. The management has taken the plea that by the time they have received the withdrawal letter of the workman her resignation has already been accepted. Ext. E is the xerox copy of the acceptance of the resignation letter vide Order No. 4953, Dt. 17-10-1995 which reads as follows :

“The resignation of Smt. Indulata Samal, Peon, Binjharpur Branch is accepted with effect from 1-7-1995.”

In this context it is argued that submitting the withdrawal application under certificate of posting has no evidentiary value of the submission of the same. There was no proof to show that the management has received the same before accepting the resignation letter. In support of this contention the management has relied upon the authority reported in AIR 2006 S.C. 825 wherein it has been held that in absence of any record by the postal authority, a certificate of posting may be of very little assistance, where the despatch of such communications is disputed or denied. In the instant case the management has admitted to have received the withdrawal letter of the workman but the management is disputing about the date when it was received. When the management has admitted that they have received the resignation letter but it was after the acceptance of the resignation letter. It is the duty of the management to prove on which date the management had received the such withdrawal application of the workman. But the management is silent in this regard. They have not produced the withdrawal letter of the workman received by the management. If the

withdrawal letter would have been received prior to the acceptance of the resignation letter, the management has no scope to accept the resignation letter of the workman. In the instant case, the acceptance of the resignation letter was passed on 17-10-1995. But order was passed that it was accepted with effect from 1-7-1995. Such inordinate delay in accepting the resignation letter has not been explained by the management at all. The plea of the management that after acceptance of the resignation letter the management received the withdrawal letter has also not proved by clear and cogent evidence. So under general prudence it can be believed that the management has received the withdrawal letter of the workman. By suppressing of the same, the acceptance order of resignation letter was passed and the acceptance is clear violation of the legal procedure. The Central Co-operative Bank Staff Rule marked as Ext. D though deals about the resignation under Rule 40 but it is not clear about withdrawal of the resignation letter. In the instant case on protest the workman has submitted her resignation letter and thereafter under cool mind she withdraw the same. So it is the duty of the management to accept her withdrawal application and not the resignation letter. Such acceptance of the resignation letter clearly violated the normal rule of law and principle of natural justice and in my opinion it amounts retrenchment from service. But the management has not followed the specific provisions of Section 25-F of the Industrial Disputes Act. Further the management has taken the plea that there is inordinate delay in raising the industrial dispute by the workman without any sufficient reason for which the plea of the workman should not have been taken into consideration. But according to the settled principle of law strict principle of limitation is not applicable to the Industrial Dispute Cases. So the argument of the management has no force. So on careful consideration of all the materials discussed above, I came to the finding that the acceptance of the resignation letter of the workman by the management is illegal and the termination of her service with effect from 1-7-1995 by the management is also neither legal nor justified.

8. Admittedly the workman had not worked under the management after her retrenchment. When the workman had not worked for the management during the period in question and though she had not proved by cogent evidence that she was not gainfully employed elsewhere, payment of back wages is also not justified in view of the authority reported in 2004 (Supp.) O. L. R. 694. It is also now well settled by reason of catena of decisions of 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 considered. So on careful consideration of all the materials available in the case record, I am of the opinion that the workman is entitled for reinstatement in service but without any back wages or any compensation in lieu of back wages.

Hence, the reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
14-1-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
14-1-2010
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
P. K. PANDA
Under-Secretary to Government