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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 9th September 2010

No. 7592—li/1(B)-42/2004-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th June 2010 in Industrial Disputes Case No. 65 of 2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar and its workman Shri Raj Kishore Rao was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 65 OF 2004

Dated the 5th June 2010

Present :

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

Between :

The Management of .. First Party—Management
M/s Orissa State Co-operative Agricultural
and Rural Development Bank Ltd.,
Bhubaneswar.

And

Their Workman .. Second Party—Workman
Shri Raj Kishore Rao.

Appearances :

Shri B. Sahoo, Advocate .. For the First Party—Management
Shri S. P. Sethi, Advocate .. For the Second Party—Workman

A W A R D

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. 9049—li/I(B)-42/2004-LE., dated the 11th October 2004 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 Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar in terminating the employment of Shri Raj Kishore Rao with effect from the 13th June 2002 is legal and/or justified ? If not, to what relief is Shri Rao entitled ?”

3. The case of the workman in brief is that he was working as a Driver under the management since the 1st November 1977 by virtue of the appointment order issued by the management Bank. There were two departmental disciplinary proceedings against the workman vide Order No. 917, dated the 8th May 2000 and send additional proceeding vide Order No. C/150 (M.D.), dated the 14th September 2000. The workman had been ordered by the Managing Director of the management to proceed with Office Jeep bearing Registration No. OSP 4350 to Bargarh CARD Bank for one week, i.e. from the 18th February 2000 to the 25th February 2000 with the Law Officer of Sambalpur Branch in connection with collection duty. On the 22nd February 2000 the Jeep was not in running condition for which it required repairing. The workman reported the matter to the Secretary of Bargarh CARD Bank, but the Secretary without taking any step for repairing of the Jeep, asked the workman to wash the Jeep. Since there was no availability of sufficient water at Bargarh CARD Bank, the workman was directed by the Secretary to take the Jeep to the canal to wash it. While the workman was washing the Jeep unfortunately the Jeep went inside the canal. The workman guarded the Jeep at the canal site in the night and on the next day morning, i.e. on the 22nd February 2000 morning took the help of nearby villagers and lifted the Jeep out of the canal water and brought the Jeep to the campus of Bargarh CARD Bank and informed about the matter to the Secretary of CARD Bank. As the Jeep had to be repaired by incurring expenditure of Rs. 5,345.50 a charge was framed against the workman stating that due to negligence of the workman, the Jeep had met with an accident and that the workman had taken the Jeep unauthorisedly. Other charges included misbehaviour of the workman to the staff of Bargarh CARD Bank and to the Law Officer of Sambalpur Branch of OSCARD Bank alleging that the workman had asked for his fooding charges and on the refusal of the Law Officer to provide such fooding charge, the workman abused him. Subsequently an additional charge was framed against the workman alleging therein that on the 17th January 2000 at about 11 A.M. the workman had been to Head Office of the management in a drunken state and scolded Superintendent of Type Section in abusive language and thereafter the workman uprooted the flower trees of the office garden and had broken the window glasses of the office. The workman replied to the charge on the 23rd May 2000 in his show cause. During pendency of the enquiry, the workman was put under suspension. Shri Umakanta Satapathy, Law Officer was appointed as Enquiry Officer to enquire into the disciplinary proceeding. The Enquiry Officer fixed the date of enquiry at Bargarh CARD Bank on the 11th August 2000 at 11 A.M. and the workman was duly intimated, but the workman could not attend the enquiry due to his illness and made a request in writing for an adjournment. Notwithstanding the prayer of the workman seeking adjournment, the Enquiry Officer conducted enquiry in the absence of the workman at Bargarh, depriving the workman a chance to defend himself and thereby it had occasioned in gross violation of natural justice. As regards additional disciplinary proceeding the workman submitted his show

cause on the 10th October 2000. Shri Umakanta Satapathy, Law Officer enquired into the additional charge and intimated the workman to attend the enquiry at Bhubaneswar Head Office at 11 A.M. on the 15th December 2000. On the 15th December 2000 the workman had to perform special Puja and therefore, he sought for an adjournment. The Enquiry Officer allowed adjournment and fixed the date to the 23rd January 2001. The workman duly attended the enquiry into the additional charge on the 23rd January 2001 and also on the 15th March 2001. After completion of the enquiry, the Enquiry Officer submitted his enquiry report. The workman was directed to show cause by way of second show cause notice as to why major punishment should not be imposed to him as because he was found guilty of the charges. The workman on receipt of notice submitted his show cause on the 25th June 2001 but the management without considering the show cause submitted by the workman, terminated the services of the workman and the termination order was communicated to him. According to the workman the Managing Director of the management has no power to appoint the Enquiry Officer for which the report of the Enquiry Officer is not a statutory one and is not a report according to law. The enquiry was not proper. However, after termination of the service of the workman he raised an industrial dispute and when the conciliation failed this Industrial Dispute Case has been initiated and the workman has prayed for reinstatement in service with all service benefits.

4. The management appeared and filed written statement denying the plea of the workman. According to him, the workman was found guilty of the charges levelled against him after due enquiry against him for gross violation and disobedience of office orders, negligence in his duty, coupled with misconduct, breach of trust and doing acts detrimental to the interest of the management. Prior to the charge relating to the present case, the workman on two prior occasions, i.e. in the year 1987 and in the year 1988 had been placed under suspension and departmental proceedings had been initiated into against him and in the said two departmental proceedings also he had been awarded with the punishment after due enquiry. It is contended that as per Office Order the workman arrived at Bargarh CARD Bank with the Office Jeep in the evening of the 17th February 2000 accompanied by Shri I. C. Mohanty, Law Officer, Sambalpur Branch, but on the 22nd February 2000 the workman refused to drive the vehicle to proceed for collection duty demanding payment of Rs. 50.00 per day in advance as his fooding charge and submitted an application to the Secretary of Bargarh CARD Bank in the matter and threatened that unless such fooding charge is paid to him, he would return to the Sambalpur Branch with the Office Jeep in spite of a lot of persuasion by Shri Mohanty, Law Officer and CARD Bank staff for which office work was hampered. In the evening of the 22nd February 2000 the workman left the CARD Bank with the Office Jeep at about 6 P.M. without permission and without intimation and did not return to the office in the night. On the 23rd February 2000 at about 11 A.M. the workman informed that the vehicle had met with an accident somewhere at Lakhampur. When the CARD Bank staff accompanied with the workman went to the spot they found that the vehicle had fallen into canal water at Nuagada on the way to Bhedan about 15 Kms. away from Bargarh. The vehicle was brought out from the canal with the help of the local people and was towed to Bargarh and was repaired with a cost of Rs. 5,345.50. Shri I. C. Mohanty, Law Officer, Sambalpur submitted a preliminary report in the matter on the 28th February 2000 to the Head Office. Because of such negligence and misconduct of the workman, charge was duly framed and charge-sheet was supplied to the workman and after due enquiry, the Enquiry Officer Shri Umakanta Satapathy found the workman guilty of the charge. On the 15th July 2000 at about 9-20 A.M. while the main gate of office building at the Head Office at Bhubaneswar was locked, the workman came in a drunken state and tried to enter into the office building forcibly and struck the gate by kick resulting in breaking of the gate of the Head Office.

After entering into the office building the workman asked one D. D. Patra, sub-staff for telephone key and on refusal of the said staff, the workman rushed to upstairs and knocked the entrance door of the hall and shouted loudly to enter into the Managing Director's Chamber. The staffs present there tried to restrain the workman from forcibly entering into the Chamber of the Managing Director. An additional charge was also framed for such misconduct. After due enquiry as per procedure and after giving full scope to the workman to defend himself, it was found that the charge had been established and the show cause submitted by the workman was not satisfactory and therefore after adopting due procedure the service of the workman was terminated vide Order No. 1640, dated the 13th June 2002. At the time of termination of service of the workman, the management has duly followed the provisions of Section 25-F of the Industrial Disputes Act and paid him all his dues including gratuity amount after deducting the dues those were to be recovered from the workman. On these averments, the management has prayed for answered the reference in his favour.

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

ISSUES

- (i) "Whether the action of the management of M/s Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar in terminating the employment of Shri Raj Kishore Rao with effect from the 13th June 2002 is legal and/or justified ?
- (ii) If not, what relief Shri Rao is entitled to ?"

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved documents marked as Exts. 1 to 11. Similarly the management has examined six witnesses altogether on their behalf out of whom, M. W. 1 is the Secretary of CARD Bank, Bargarh, M. W. 2 is the Lift Operator of OSCARD Bank, Bhubaneswar, M. W. 3 is the Peon in OSCARD Bank, M. W. 4 is the Superintendent, Premises, OSCARD Bank, Bhubaneswar, M. W. 5 is the Junior Assistant Establishment of OSCARD Bank, Bhubaneswar and M. W. 6 is the Law Officer of OSCARD Bank, Bhubaneswar. The management has also proved documents marked as Exts. A to P on their behalf.

7. Initially this case was disposed of by way of an Award on the 13th March 2007. But such Award was set aside by the Hon'ble Court in W. P.(C) No. 14268 of 2007 with a direction to hear and dispose of the matter afresh, in accordance with law, after providing opportunity of hearing to the parties. Hence this case came for fresh disposal.

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 basing on a illegal enquiry, the workman was dismissed from service and such enquiry is in gross violation of principle of natural justice and no reasonable opportunity was given to the workman and the appointment of the Enquiry Officer was also illegal for which his report is not a statutory report. On the other hand, it has been argued by the Advocate for the management that after due domestic enquiry, the charges levelled against the workman were found guilty and taking his previous conduct the disciplinary authority has terminated the service of the workman. There is no illegality in doing so. So in the contrary plea now I have to see whether the domestic enquiry conducted against the workman was fair and proper and the principle of natural justice have been followed.

9. It is an admitted fact that the workman had been entrusted with Office Jeep bearing No. OSP 4350 and had been directed to proceed to Bargarh for use of the said Jeep in collection of Bargarh Branch of the management. M. W. 5 in his evidence has deposed about the application, dated the 22nd February 2000 submitted by the workman marked as Ext. 1 demanding daily fooding charge of Rs. 50.00 is paid to him he would not drive the office vehicle and he would take away the office vehicle to Sambalpur Branch Office. It is also admitted by the workman that the vehicle in question had fallen into a canal. M. W. 1, who is the Secretary of Bargarh CARD Bank, in his evidence has stated that on the 22nd February 2000 at about 11 A. M. the workman came to the office and stated that the vehicle had met with an accident on the way to Sambalpur at village Lakhanpur, but when the M. W. 1 went to the accident spot with the workman he found that the vehicle had been kept by the road side at Nuagada village on Bargarh-Bheden Road about 12 Kms. away from Bargarh and further found that there was water inside the engine of the vehicle. The workman told him that the vehicle had fallen into the canal by the road side. According to him, on his return, he submitted a report to the management in-charge and the vehicle in question was towed with a hired vehicle at a cost of Rs. 5,345.50 the vehicle was repaired. According to him, the workman had taken the Office Jeep to Nuagada without any authority and without any permission from the higher authority and had caused the accident. M. W. 1 has stated that there was washing facility inside the Bargarh CARD Bank. In the cross-examination of M. W. 1 only few suggestions have been given denying the evidence of M. W. 1 but nothing substantial has been brought out to discard his evidence. M. W. 1 has admitted that the charges had been framed into the allegations regarding his negligence in duty at Bargarh and regarding his misconduct at the Head Office. In his cross-examination the workman has categorically admitted that under Ext. 7 the General Manager of the management had supplied him the copies of documents Exts. 1 to 6 and had directed him to make representation if any within 15 days and had also intimated him that charge had been duly proved against the workman and major punishment was proposed to be imposed on him. The workman has also proved the second show cause notice to him vide Ext. 9. Ext. 1 is the copy of the disciplinary proceeding No. 917, dated the 8th May 2000 drawn up against the workman and Ext. 3 is the xerox copy of the enquiry report, Ext. 4 is the xerox copy of the additional proceeding, dated the 14th September 2000 and Ext. 6 is the enquiry report regarding additional proceeding. The workman has admitted that all the documents have been supplied to him. Now looking at the report of the Enquiry Officer vide Ext. 4, it is clear that the Enquiry Officer had duly enquired into the charges. The pleading of the workman that he had prayed for adjournment due to his illness and the Enquiry Officer without giving him adjournment proceeded with the enquiry has not been duly proved by the workman because he has not proved a scrap of paper regarding his supposed illness. In the pleading, the workman has admitted that the date of enquiry had duly been intimated to him. The very pleading and the evidence of the workman himself make it clear that the workman had been supplied with all the relevant documents into the alleged charges and he had been duly intimated about the dates of enquiry and due opportunity was given to him to defend himself and therefore, there has not been any violation of the principle of natural justice. In the cross-examination W. W. 1 has admitted that prior to the present proceeding vide Exts. 1 and 4, he had been suspended from service on the 24th January 1987 and on the 12th September 1988. The management has proved the documents marked as Exts. A to P which substantiate that the domestic enquiry against the workman was duly conducted and before a major punishment was inflicted, he had been duly given chance to make representation if any and thereafter second show cause notice was issued to him. Ext. N is the order of termination and Ext. P is the copy of the Service Book of the workman.

All these documents pinpoint to the fact that the workman was guilty of serious misconduct and gross dereliction in duty. Exts. 3 and F are the same document whereas Exts. 6 and J are the same documents, Exts. M and 9 are the same documents and Exts. N and 11 are the same documents. In Ext. 3 except one charge, all the charges are proved as discussed in his report. In the conclusion portion the Enquiry Officer had given view that the workman is guilty of misconduct :

1. Negligence in duty
2. Disobedience of office order
3. Damaging Bank's property
4. Act detrimental to the interest of the Bank,

Similarly in Ext. 6 the Enquiry Officer has come to the finding that the workman is guilty of forcing open the gate by application of force and other charges are not proved. However, on careful consideration of all the materials available in the case record, I came to the finding that the domestic enquiry conducted against the workman is fair and proper and the principle of natural justice has been followed.

10. Regarding punishment, on careful consideration of all the materials available I also came to the finding that the punishment of the workman by way of termination from service is also proportionate as found guilty thereon with reference to his previous conducts. So when it is a case of termination of service after a domestic enquiry, Section 25-F of the Industrial Disputes Act is not attracted at all.

11. So now on careful consideration of all the materials available now I came to the finding that the action of the management of M/s Orissa State Co-operative Agricultural and Rural Development Bank Ltd., Bhubaneswar in terminating the employment of the workman namely, Shri Raj Kishore Rao with effect from the 13th June 2002 is legal and justified. The workman Shri Rao is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
5-6-2010
Presiding Officer, Labour Court
Bhubaneswar

S. K. DASH
5-6-2010
Presiding Officer, Labour Court
Bhubaneswar

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