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LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION

The 17th April 2010

No. 3110—li/ 1(B) - 64/1997 - L. E. — In pursuance of 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 26th February 2010 in I.D. Case No. 158 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the Orissa State Police Housing & Welfare Corporation Ltd., Bhubaneswar and their Workman Shri Tophan Kumar Padhiary, S/o Nabaghan Padhiary of Timor, Puri was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, ORISSA, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 158 OF 2008

Dated the 26th February 2010

Present :

Shri P. C. Mishra, o.s.J.S. (Sr. Branch),
Presiding Officer,
Industrial Tribunal, Bhubaneswar.

Between :

The Chairman-*cum*-Managing Director, .. First Party—Management
Orissa State Police Housing &
Welfare Corporation Ltd.,
Janapath, Bhubaneswar.

And

Shri Tophan Kumar Padhiary, .. Second Party— Workman
S/o Nabaghan Padhiary,
At Timor,
P.O. Patalada,
Via Astaranga,
Dist. Puri

Appearances :

For the First Party — Management .. Shri S. R. Mohanty
Section Officer

For the Second Party— Workman himself .. Shri Tophan Kumar Padhiary

AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 6952—LE., dated the 9th July 1998 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li-21-32-2007-LE., dated the 4th April 2008 :

“Whether the action of the management of Orissa State Housing and Welfare Corporation Ltd., Bhubaneswar in terminating the services of Shri Tophan Kumar Padhiary, Orderly Peon w.e.f. the 7th September 1994 is legal and/or justified ? If not, to what relief the workman is entitled to ?”

2. The case of the workmen in brief is that initially joined as an Orderly Peon under the management on the 10th April 1989 on a daily wage of Rs. 15 but subsequently he was discharged from service on the 10th September 1989 owing to his remaining on leave due to illness. It is stated that on his approach to the Authority he was again reappointed on the 27th October 1989 as Orderly Peon and while working so he remained on leave from the 13th August 1994 due to ‘Jaundice’ by submitting application for leave till the 15th September which he again extended till the 26th September 1994 and on recovery when he want to join duty along with the medical certificate and joining report he was told that his services have been terminated w.e.f. the 8th September 1994 and thereby his entry into the office premises was refused. The specific case of the workman is that inspite of his rendering continuous service from the 27th October 1989 till August 1994 the management has neither served on him any notice nor notice pay in lieu thereof and compensation as provided under the Industrial Dispute Act. It is stated that the Authorities of the management have also granted experience certificates in his favour which could show his continuous employment under the management from 1989 to 1994. Disputing the order dated the 8th September 1994 the workman has stated that his absence was not because of his sending leave applications to the authority intimating about his ailment. According to the workman, since the management has neither followed the principles of justice nor complied with the mandatory requirements of Law while doing away with his job, its action is not sustainable in the eye of Law and consequently he is entitled to reinstatement in service with full back wages.

3. The management has filed its written statement stating therein *inter alia* that the workman was engaged as an Orderly Peon on daily wage basis w.e.f. the 10th April 1989 but due to his unsatisfactory performance he was disengaged from employment on the 10th September 1989. Admitting his second spell of engagement from the 27th October 1989 the management has stated that such engagement of the workman was subject to certain terms and conditions, in as much as, he was intimated in the letter of engagement the same was purely temporary and may be terminated at any time and no mercy would be shown to him if he would commit his previous act of desertion. It is stated that violating the said stipulations the workman remained absent from duty unauthorisedly from the 13th August 1994 onwards and did not report thereafter and finding no other way the management disengaged him service w.e.f. the 8th September 1994. It is stated that the workman having accepted the said action of the management has also received his full and final dues and on his request to serve elsewhere experience certificates were also granted to him. The specific stand of the management is that the disengagement of the workman was on account of his voluntary desertion of job and therefore, the same has got nothing to do with the present reference. It is pleaded that since the workman has been gainfully employed immediately

after his disengagement from job, he is not entitled to the reliefs claimed in the present dispute.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) Whether the action of the management of Orissa State Police Housing and Welfare Corporation Ltd., Bhubaneswar in terminating the services of Shri Tophan Kumar Padhiary, Orderly Peon w.e.f. the 7th September 1994 is justified or not and/or justified ?
- (ii) If not, to what relief the workman is entitled ?

5. Both the parties in order to substantiate their respective stand have adduced oral as well as documentary evidence in the case. The workman while examined himself to be the sole witness on his behalf and filed and proved documents Exts. 1 to 8/1, the management examined two witnesses on its behalf and brought on record documents which have been marked as Exts. A to F.

6. In the context, it is appropriate to quote the relevant portion of Ext. F/Ext. 7, the copy of the disengagement order of the workman dated the 8th September 1994, which reads as under :—

“ x x x x x x x x

Shri Tophan Kumar Padhiary, who was engaged on daily wage basis and posted to the residence of Manager (Admn.) is hereby disengaged from temporary daily wages engagement with effect from the 7th September 1994 P.M. because of his unauthorised prolonged absence from duty without any intimation with effect from the 13th August 1994 onwards. . He will not get any wages for the period of absence i.e. w.e.f. the 13th August 1994 to the 7th September 1994.

x x x x x x x x “

A perusal of Ext. F/Ext. 7 reveals that on account of the workman's absence from duty the workman was disengaged from employment and as such by a stretch of imagination it can be said to be a case of retrenchment. Rather, it reveals therefrom that as a disciplinary measure the management has passed such orders against the workman. In this connection, it is the stand of the management that since the workman remained absent from duty on and from the 13th August 1994 therefore after awaiting his resumption to duty for a considerable period it straight-away passed the order Ext.F (Ext.7) and instructed therein that the workman would not be paid the wages for the period of his absence. To fortify such action, the management has argued that it was a case of voluntary cessation of employment by the workman. To sustain such a stand it is the management who is to establish that despite written intimation issued to the workman he did not resume his duty. In connection with this, the decision reported in 2004 (103)FLR-102 [M/s Nicks (India) Tolls Vrs. Ram Surat and another] may be referred to wherein their Lordships of the Hon'ble Apex Court have held that “ since the respondent workman was in the service of the appellant management, the burden of proving that he voluntarily left the services then falls on appellant-management.” To the same effect there is also another decision of our Hon'ble High Court, reported in 2004 (Supp.) OLR-694 (Divisional Manager, Orissa Forest Development Corporation Ltd., Boudh Commercial Division Vrs. Kanista Bisoi and another) wherein their Lordship of the Hon'ble Court have held as follows :—

“ x x x x To constitute ‘abandonment of service’ there must be total or complete giving up of duties and/or expression of the intention not to serve any further. This being a question of fact, onus lay on the management which took such a plea to prove with cogent evidence that in fact the workman had abandoned his service. x x x x “

In the case in hand no evidence is forthcoming from the side of the management that it has discharged its burden by recalling the workman to duty before arriving at the presumption that he

had deserted his employment voluntarily. Apart from that, the documentary evidence produced by the workman such as Exts. 4 and 5, the copies of his leave applications and Ext. 6 the copy of the doctor certificate certifying that the workman was suffering from 'Viral Hepatitis' and was under treatment from the 13th August 1991 till he was declared fit on the 26th September 1994 have not at all been challenged and those documents have been brought on record without there being any objections from the side of the management. The documents as indicated above clearly show that the workman due to compelling circumstance could not attend to his duty and in that view of the matter it was incumbent upon the management to cause an enquiry into the matter and only after *prima facie* satisfaction of the truth or otherwise of the ground advanced by the workman, punishment could have been imposed on him. For the absentism of the workman, no explanation has been called for from him nor any enquiry was conducted by the management. Hence, while disapproved the action of the management in terminating the services of the workman on the ground of misconduct, it is held that the management has not been able to establish that such action was preceded by a due enquiry. The termination of service of the workman carries a stigma and therefore, the management ought to have conducted an enquiry into such misconduct. The principle of natural justice having been violated by the management, its action is not at all sustainable in the eye of law. Hence this Tribunal is of the view that the action of management in disengaging the workman from service w.e.f. the 7th September is neither legal nor justified.

7. Even assuming for the sake of argument that the order of disengagement of the workman is a termination simpliciter but still the same is not sustainable in view of the fact that the workman in spite of his rendering continuous service for more 240 days prior to his disengagement under the management had faced with the aforesaid situation and while affecting the said termination the management had not complied with the mandatory requirements as provided under Section 25-F of the Industrial Disputes Act. So, in any event, the action of the management cannot be said to be either legal or justified.

8. Now coming to the question of relief to which the workman is entitled, in view of the discussions made above, the workman is held entitled to reinstatement in service. As regards back wages since there is nothing on record that from the date of his disengagement the workman is not gainfully employed elsewhere, he is held not entitled to any back wages. The management is directed to implement the Award within a period of one month hence.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
26-2-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. C. MISHRA
26-2-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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