

The Orissa Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 10 CUTTACK, MONDAY, JANUARY 3, 2011 / PAUSA 13, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th December 2010

No. 10859—li/1 (BH)-50/2000-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th March 2010 in Industrial Dispute Case No. 5 of 2001 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the management of M/s. Polar Latex Ltd., Somanathpur, Balasore and its workman Shri Manoranjan Khatua was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 5 OF 2001

The 16th March 2010

Present :

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

Between :

The Management of M/s. Polar Latex Ltd., . . . First-party Management
Somanathpur, Balasore.

And

Their Workman, Shri Manoranjan Khatua . . . Second-party Workman

Appearances :

Shri P. K. Pattnayak . . . For the First-party Management

Shri M. R. Khatua . . . For the Second-party Workman himself

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. 1898—li/1 (BH)-50/2000-L.E., dated the 13th February 2001 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. Polar Latex Ltd., Somanathpur, Balasore in terminating Shri Manoranjan Khatua, Chemist with effect from the 24th June 1997 is legal and/or justified ? If not, to what relief Shri Khatua is entitled to ?"

3. The case of the workman in brief is that he joined as Chemist in the factory of the management situated at Somanathpur, Balasore on 14-11-1990 basing on the appointment letter 3-11-1990. On 6-12-1996 at about 6-15 P. M. the General Manager of the management namely Mr. P. G. Mohan Das was attacked by some unknown culprits by tangia blows. The said General Manager was admitted into the District Headquarters Hospital, Balasore for treatment and was subsequently shifted to Belle View Nursing Home, Culcutta where he succumbed to his injuries on 18-12-1996 and expired. The police has registered a criminal case for such murder. The workman was falsely implicated in this case by the Police with the hands of the management. He was arrested by the local Police inside the factory and a G. R. Case No. 1491 of 1996 was registered. The workman alongwith two others faced trial in S. T. Case No. 25/130 of 1997 for such offence and accordingly the case was ended and they were acquitted by the Additional Sessions Judge, Balasore. The workman was on leave from 25-11-1996 to 11-12-1996 and resumed to duty on 12-12-1996. On 13-12-1996 the Police brought the workman to the Police Station in custody. After release from the Jail custody on the basis of acquittal in the Sessions Case, the workman sent message to the management to join in his duty as Chemist on 1-4-1999. But on 1-4-1999 he was not allowed to enter inside the factory premises.

Thereafter on subsequent working days the workman was going to the factory daily but the Security Officer of the factory was not allowing to enter the inside the factory. The other officers of the management also did not allow him to resume his duty. So he was returning everyday to home. The management has illegally terminated his service while the workman was in jail custody and for the first time he came to know from the Conciliation Officer. As his termination was illegal, he raised an Industrial Dispute and when the conciliation failed, the matter was referred to the Government and the reference has been made by the Government to this Court for adjudication. In this back ground the workman has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. It is admitted by the management that the workman joined as Chemist in its establishment on 14-11-1990 and continued to work under the management till 12-12-1996. Thereafter he did not attended his duty. As the workman remained absent from duty continuously from 13-12-1996, his service was terminated vide letter 24-6-1997 on the ground that his service

was no longer required. His work was distributed to other existing Chemist as per arrangement made by the management. The letter of termination was sent to the workman in his home address being accompanied with a cheque of Rs. 27,041 which includes compensation for termination, gratuity, pay for three months in lieu of notice, encashment of leave for days and salary for two days for the month of December 1996. The said registered letter was returned back alongwith the cheque being unserved. However, subsequently on the written request of the workman, another cheque for the said amount was again sent to the workman and he received the same and also encashed the same as revealed from the letter 6-5-2000 of the workman. During the period from 25-11-1996 to 11-12-1996 the workman remained absent from duty. The General Manager of the management was murdered on 6-12-1996 while he was returning home from the factory of the management. The workman alongwith two others were arrested by the Police in connection with that murder and the charge-sheet was submitted by the Police. But the workman was acquitted in the trial alongwith co-accused persons. Since the Government has not filed any appeal, the informant of the case filed a revision before the Hon'ble High Court against the order of acquittal which has been admitted. Subsequently the State Government thought it prudent, proper and wise to file an appeal for the ends of justice and notice of admission has already been issued to the workman. The workman was not terminated from service because of his complicity as an accused in the murder case. His service has not been terminated on the ground of misconduct rather it is a termination simplicitor. He remained absent for six months for which the management arranged his work to be performed by others and consequently his service was no longer required. The workman remained in jail custody for a period of more than three years. He never sent any application to the management from the jail expressing his intention to work after his release from custody. It was therefore, thought proper to terminate the services of the workman by making payment of all legal dues even he has been paid notice pay for three months although according to law he is entitled to get notice pay for one month. The termination is *bona fide* and the management has not appointed any other person in his place. The termination of the workman from service is just, proper and legal for which it has been prayed for answer the reference in favour of the management.

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

ISSUES

- (i) "Whether the action of the management of M/s. Polar Latex Ltd., Somanathpur, Balasore in terminating Shri Manoranjan Khatua, Chemist with effect from dated 24-6-1997 is legal and/or justified ?
- (ii) If not, to what relief Shri Katua is entitled ?"

6. In order to substantiate his plea the workman has examined two witnesses out of whom the workman is the W. W. 1 himself and W. W. 2 is the co-worker of the workman. The workman has proved the documents marked as Exts. 1 to 14 on his behalf. Similarly the management has examined one witness on its behalf who is a Personnel Officer of the management and has proved documents marked as Exts. A to K.

FINDINGS

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

It has been argued by the by the workman that he was falsely implicated in the alleged murder case for the murder of the General Manager of the management and while facing trial remained in the Jail custody, the management has terminated his service by way of retrenchment without following the necessary mandatory provisions of law by issuing one month notice or notice pay and retrenchment compensation, etc. for which he is entitled for reinstatement in service even if he has received the retrenchment compensation, etc. after releasing from the jail custody, on acquittal from the sessions case. On the other hand, it is the case of the management that as alleged in the written statement that it is a termination simplicitor for which the workman is not entitled to get any relief and he has already received the retrenchment benefits of Rs. 27,042. So on these materials I have to scrutinise the evidence available.

8. According to the workman W. W. 1 he joined in the service on 14-11-1990 as a Chemist. The xerox copy of his appointment order has been marked as Ext. 1 which discloses that he was appointed as Shift Chemist and M. W. 1 has also deposed that the workman was working as Shift Chemist. He continued in employment till 13-12-1996. In connection with a criminal case, the Police brought him to Police Station and kept him finding till dated 16-12-1996 and on 17-12-1996 forwarded him to the Court under Section 302, read with Section 120-B/34 I. P. C. He was in custody till 30-3-1999. Ext. 2 is the xerox copy of the judgment of the Sessions Court passed in S. T. Case No. 25/130 of 1997. Perused the same. It was held that the prosecution signally failed to bring home the charges under Section 302, 120-B/34 I. P. C. for which the accused persons are held not guilty and acquitted thereunder. On 1-4-1999 the workman intended to join in the service. So when he reported in duty he was not allowed to join in duty and he sent his joining report by registered post. He came to know that he was terminated from the service with effect from 24-6-1997 but he was not given any termination letter. No communication was also made to him relating to his termination of service. The management has neither issued any charge-sheet nor conducted any enquiry against him. So the termination of his service is illegal and unjustified. This witness in the cross-examination admits that he has received a sum of Rs. 27,042 from the management by cheque. He accepted the cheque but returned the accompanied letter to the management by registered post. Such amount is towards termination dues. A criminal revision has been initiated by the management challenging the order of acquittal which is pending. M. W. 2 deposes that after being acquitted the workman had gone to the factory of the management to join but the Police man present there did not allow the workman to enter inside the factory premises. In the cross-examination W. W. 2 admitted that he has been dismissed from service four to five month back. However, this witness of this case in no way much helpful in passing the real context of this case.

9. M. W. 1 deposes that the workman as working in the management category being a Shift Chemist for which Section 25-F of the Industrial Dispute Act is not applicable to him. Ext. G is the xerox copy of Fax message of the workman to the management for settlement of his dues and Ext. H is the xerox copy of reply to it by the management. In the written statement this plea regarding working of the workman in the managerial capacity has not been taken and for the first time this plea has been taken by the management. After going through the details of the evidence of M. W. 1 it clearly shows that his evidence in this regard is not correct. In the cross-examination he has admitted that the workman had not any power of sanction of leave, issue of gate pass, duly allocation,

calling for show-cause from any one or any power to suspend anyone. The workman never had any independent power to make any decision in the matter. Though in the written statement the plea has been taken by the management that the termination of the workman is a simplicitor and not for his commission as an accused in the murder case or on the ground of misconduct or for his absence. In the cross-examination this witness deposes that the service of the workman was terminated by the management on 24-6-1997 as because he was found absent from his duty from 14-12-1996 till the date of termination from service without any intimation to the management. The absence of the workman from duty as shows from the case record was beyond his control as he was arrested by the Police and remained in jail custody and was facing trial in the sessions case for murder. The workman has not given any intimation to the management disclosing his intention to remain in service further more under the management. However according to the management he has sent termination letter alongwith the retrenchment benefits by post in the home address of the workman which returned back. Again after acquittal of the workman on his demand a fresh cheque was issued to him alongwith the termination letter. But the amount was received by the workman and the letter was returned by registered post. Even if the workman has accepted the retrenchment compensation it cannot be said that all the mandatory provision and principle of natural justice has been followed in terminating the service of the workman by the management. Admittedly no charge was framed against the workman and there was no enquiry for such conduct of the workman. Section 25-F of the Industrial Disputes Act and definition of retrenchment discloses that reasons should be given for termination of service by way of retrenchment of a workman. But in the instant case no reason has been given and it is the plea of the management that it was a termination simplicitor. Further more M. W. 1 has deposed that the work of the workman has been divided between other staff and this plea has been taken in the written statement also. So if the work of the workman has been distributed among the other staff under what circumstances he has been retrenched from service without any reason. Merely from the long absence the services cannot be terminated by way of termination simplicitor. The Model Standing Order discloses about the disciplinary action for misconduct which includes, habitual absence without leave or absence without leave for more than 10 days. So absence of the workman was beyond his control and the management has not issued any show-cause to him nor started any domestic enquiry for such misconduct. So without following the procedure of law and without following the principles of natural justice, the services has been terminated, so it is not substantiable in law. After releasing of the workman from the Jail custody when he came to the management to join in his work, the management could have initiated an enquiry for his misconduct and the management is also at liberty to do the same at any stage. However, on careful consideration of all the materials as discussed above, now I came to the finding that the action of the management in terminating the services of the workman, with effect from 24-6-1997 is neither legal nor justified.

10. The workman has prayed for reinstatement in service with full back wages. According to the settled principle of law 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. Even when the dismissal of the workman is set aside by the Court compensation in lieu of reinstatement will be appropriate. So compensation instead of reinstatement has been held to meet the ends of justice in the several authorities of the Hon'ble Supreme Court.

Reliance can be placed in the authority reported in 2009 LLR 1281 in the case of Ashok Kumar Sharma *Vrs.* Oberoi Flight Services and 2009 LLR 966 in the case of Jagbir Singh *Vrs.* Haryana State Agriculture Marketing Board and another. In the instant case keeping in view of the murder of General Manager of the management, distributing the work of the workman among the other staff and tense situation of the establishment of the management, I am of the opinion that instead of reinstatement with back wages, a lump sum compensation amount of Rs. 1,25,000 will meet the ends of justice in this case. Hence, instead of reinstatement, the management is directed to pay a lump sum compensation of Rs. 1,25,000 (Rupees one lakh twenty-five thousand) only to the workman within two months from the date of publication of the Award in the official Gazette failing which the same shall carry interest at the rate of 9% (nine percent) per annum on the unpaid amount. The management is at liberty to deduct the compensation amount already paid to the workman.

Hence, the reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
16-3-2010
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
16-3-2010
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor

P. K. PANDA

Under-Secretary to Government

