

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 104 CUTTACK, THURSDAY, JANUARY 13, 2011 / PAUSA 23, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th December 2010

No. 11002-li/1(J)-17/2007-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th April 2010 in I. D. Case No. 03 of 2008 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of Sambalpur District Co-operative Central Bank Ltd., Bargarh, Dist. Bargarh and its workman Shri Ananta Narayan Mishra, Cadre Supervisor, Grade- II, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER,
LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 03 OF 2008
The 30th April 2010

Present :

Miss Sarojini Mahapatra, M.A., LL. B.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of Sambalpur District Co-operative Central Bank Ltd., Bargarh, Dist. Bargarh. . . First party-Management

And

Its Workman Shri Ananta Narayan Mishra, Cadre Supervisor Grade-II, S/o Late Shri Krutibash Mishra, At/P.O. Kabrapali Via Goudapali, Dist. Sambalpur. . . Second party-Workman

Appearances :

Shri R. K. Satapathy, Advocate . . . For the first party-Management

Shri K. C. Rath, Advocate . . . For the second party-Workman

A W A R D

This matter arises out of the reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), in Memo No. 1258 (5), dated the 2nd February 2008 for adjudication of the Schedule questions :-

“Whether the action of the management of M/s Sambalpur District Co-operative Central Bank Ltd., Bargarh in terminating the services of Shri A. N. Mishra, Cadre Supervisor, Grade-II with effect from 7-8-1980 is legal and/or justified ? If not, what relief Shri Mishra is entitled to ?”

2. The Second party-Workman's case stated as follows :-

The Second party-Workman was appointed by the Maneswar Service Co-operative Society as Secretary and was working to the satisfaction of the superior authority till 14-9-1968. When he was appointed as Cadre Supervisor, Grade-II by the first-party management on pay scale of Rs.255-330-8-EB-10-410, but reposted as Secretary, Maneswar S. C. S. and since then he was serving in Maneswar S. C. S. Ltd., as its Secretary. There was no black spot in his service record. The second-party workman was transferred by the first party-management to different S. C. S. at different times and in his absence from Maneswar S. C. S. on transfer, accounts of the society were said to have been Audited and Audit report submitted showing Rs. 46,115.08 paise, Rs. 50,475.80 paise and Rs.3,187.64 paise as recoverable from the second party-workman during the financial year 1974-75.

Further it is alleged in the statement of claim that then the President of Maneswar S. C. S. sent a letter to the second-party to make good the loss and in reply, the second-party challenged the propriety and correctness of the audit report and required for a fresh audit in his presence. But his request for a fresh audit was not complied by the management. Then the management placed the second-party workman under suspension vide order No.12816, dated 18-5-1977 and communicated vide Memo. No. 12817, dated 18-5-1977 and fixed his headquarters at Sambalpur regional office. On 12-5-1977 the management served charge-sheet on the second-party vide Reference No. 276 with a direction to submit explanation to the charges levelled against him before the Enquiry Officer Shri R. Panda, Additional Secretary of the Bank within a week. The management has provided him the relevant documents. He submitted his explanation denying charges levelled against him as wrong and *mala fide*. The domestic enquiry conducted by the management is perfunctory. He was served with a letter of termination of his service vide Order No. 102, dated 7-8-1980 by the management. The termination order of the management is illegal on the following Grounds :-

- (a) Suspension allowance was not paid at any point of time
- (b) The second-party ought to have been asked to file explanation to the charge to the management instead of directing to submit to the E. O.
- (c) List of documents to be relied on and the list of witnesses to be examined at the enquiry not supplied.
- (d) Copies of relevant documents not supplied to the workman
- (e) Copy of the enquiry report not supplied to the workman
- (f) No second show-cause notice served before awarding punishment
- (g) No personal hearing was also given.

The first party-management also filed a Criminal case bearing I. C. C. No. 66/1978 in the Court of C. J. M., Sambalpur alleging misappropriation of Rs. 46,115.08 paise and not for the other two amounts of Rs. 50,475.80 and Rs. 3,187.64 paise as per charge-sheet. The learned C. J. M., Sambalpur convicted the second party-workman in I. C. C. Case No. 66/78 (R. R. No. 120/79) but in Criminal Appeal No. 35/83 the second party-workman was acquitted by the learned Additional Sessions Judge, Sambalpur on 29-1-1986. As against the order of acquittal the first party-management through the Secretary, Maneswar S. C. S. filed Criminal Appeal No. 191 of 1986 before the Hon'ble High Court of Orissa which was dismissed on 23-4-2003.

The second party-workman wanted to challenge the order of termination of service raising dispute under the I. D. Act but he was advised by Senior Advocate to wait till disposal of Criminal case. So it has been delayed. The termination order is neither legal nor justified. Since the second party reached the age of superannuation on 1-8-2001, his date of birth being 1-8-1943, he is entitled to get back wages from the date of suspension order till the date of his retirement at the rate admissible from time to time.

So the workman prayed for an award in his favour holding the termination order as neither legal nor justified and he may be paid his wages from the date of suspension till the age of his superannuation at the rate admissible from time to time.

3. The first party-management appeared and contested in this case and filed written statement stating that the claim of the workman cannot be sustainable and is liable to be rejected. There is no merit on the statement of claim on the workman. The statement of claim of the workman is not maintainable and is liable to be dismissed. The statement of claim of the workman cannot be sustainable as it is barred by limitation. The dispute case is not maintainable due to availability of alternative remedy under the Orissa Co-operative Societies Act, thereby the same is liable to be rejected. The second party-workman who has been dismissed from service on 7-8-1980 and 28 (twenty-eight) years after reference made on 2-2-2008 by invoking power under Section 12(5) and 10(1) (c) of the I. D. Act. cannot be sustainable and is liable to be dismissed as the same is grossly barred by limitation.

It is further case of the management, that the second party-workman was initially appointed as the Secretary of Maneswar S. C. S. in the year 1964-65. The said Society has been registered on 28-2-1955 affiliated to the management. He continued as a Secretary of the Maneswar S. C. S. till 14-9-1968. Thereafter he was appointed as a Cadre Supervisor, Grade-II and reposted as Secretary of Maneswar S. C. C. While he was discharging his duty as Secretary of the said Society, he had misappropriated the Society money for which he was placed under suspension. Thereafter on consideration he was reinstated in service with effect from 1-10-1975 and has been warned. Then the workman committed such mistake again. He has misappropriated a cash of Rs. 46,115.08 paise, Rs. 50,475.80 paise and Rs. 3,187.64 paise. Then the workman was placed under suspension on 18-5-1977. Charge was framed against him and he was asked to submit explanation to the charges levelled against him to the Enquiry Officer. The workman submitted his explanation. The Enquiry Officer submitted the enquiry report. Then the workman has been terminated from his service on 7-8-1980. He has never challenged the termination order before any authority.

The management initiated departmental proceeding and also filed Criminal case I. C. C. No. 66/1978 before the learned C. J. M., Sambalpur against the workman alleging misappropriation. The learned C. J. M., Sambalpur convicted him. The workman preferred appeal before the Additional District Sessions Judge who acquitted him on contest. The management then filed Criminal Appeal No. 191 of 1986 before the Hon'ble High Court of Orissa and the said appeal was dismissed on 23-4-2003.

Since the workman found guilty in Departmental Proceeding, in consequence thereof he has been terminated from service. He kept silent over the matter and after dismissal in the Criminal case on 23-4-2003, he raised an industrial dispute. He has raised this matter at a belated stage on expiry of more than 28 (twenty-eight) years which is not sustainable. So the claim dues are barred by limitation and the management prayed to dismiss this case with cost.

4. The workman filed rejoinder/counter denying the case of the management.

5. Out of the pleadings of the parties the following issues have been framed for adjudication.

ISSUES

(i) "Whether the reference is maintainable ?

(ii) Whether the domestic enquiry conducted by the management is fair and proper ?

(iii) Whether the action of the management of M/s. Sambalpur, District Co-operative Central Bank Ltd., Bargarh in terminating the services of Shri A. N. Mishra, Cadre Supervisor, Grade-II with effect from 7-8-1980 is legal and/or justified ?

(iv) If not, to what relief Shri Mishra is entitled ?"

6. During the trial the *issue No. (ii)* whether the domestic enquiry conducted by the management is fair and proper, has been taken at the preliminary stage and it was found as per Order dated 17-2-2010 passed by this court that the domestic enquiry conducted by the management is unfair and improper. Then hearing was taken up for the other issues.

7. Although the management was given opportunity to adduce further evidence on other issues. The management declined to adduce further evidence. Then the workman A. N. Mishra himself was examined as W. W. 1.

Both the parties have filed documents in support of their case.

FINDINGS

8. *Issue No. (iii)*:- As alleged the workman while functioning as Cadre Secretary of Maneswar S. C. S. was charge-sheeted for the allegation of misappropriation of Rs. 46,115.08 paise and Rs. 50,475.80 paise on the basis of audit report for the year 1974-75 and Rs. 3,187.64 paise on the basis of letter No. 2656, dated 19-4-1977 of the Branch Manager, Sambalpur and was terminated from service on 7-8-1980. It is an admitted fact that the management filed complaint case in Criminal Court, Sambalpur for the alleged misappropriation of Rs 46,115.08 paise for which the second party-workman was convicted by the learned C. J. M., Sambalpur on 26-2-1983. The workman preferred Criminal Appeal and his conclusion order was set aside by the learned A. D. J., Sambalpur on 29-1-1986 and he was acquitted all the charges of misappropriation levelled against him. The management has filed Criminal Appeal No. 191 of 1986 before the Hon'ble High Court of Orissa against the acquittal order of the learned A. D. J., Sambalpur and the Hon'ble High Court dismissed the Criminal Appeal and confirmed the order of the learned A. D. J., Sambalpur. So the second party-workman made a representation to the management praying to reinstate him in service but there was no effect. The second party-workman raised an industrial dispute case before District Labour Officer, Sambalpur. The first party-management was noticed and appeared and conducted the case on merit and also on the ground of limitation. Ultimately the dispute was referred to Government and Government in turn, referred the dispute to this court for adjudication.

As alleged no dispute raised by the management on other point except on the point of limitation of filing this case by the management. The domestic enquiry was unfair and improper. The learned advocate on behalf of the workman submitted that if the enquiry proceeding goes, the allegation as

alleged against the workman is also goes. Admittedly the management declined to adduce evidence orally and documentary on other issues. The learned advocate for the workman further submitted that the termination hold by the management was not justified. So the workman relied on the reported decision 1987 L. L. J., Supreme Court 114–Termination–Relief–if termination is unjustified employee is entitled to be reinstated–when once the termination is found to be unjustified, the employee is entitled to be reinstated in the post which he held before termination. Employee gave up the claim of back wages for the period when he was kept out of employment.

9. Admittedly the second party-workman has already attained the age of superannuation. So there is no question of reinstatement merely because the workman has already attained the age of superannuation.

The workman prayed for payment of back wages. As per the case of the management, the second party-workman is not entitled to get any relief on the ground of limitation as he raised the dispute about 28 (twenty-eight) years after the termination order of the management. On the other hand the workman's case leads to the fact that he approached to the senior most advocates to take relief who advised not to take any steps in the matter till the disposal of the Criminal case. The learned Advocate on behalf of the workman submitted that the workman consolidated the senior most advocate, Cuttack dealing with Labour Law who advised him the same like the previous advocate. So the second party did not raise the dispute immediately after the termination order of the management. So there was delay of twenty-eight years. The management has taken the ground in his written statement that the advice given by the advocate is wrong. In this regard the learned advocate on behalf of the workman further submitted that the advice of the learned previous advocate is not wrong and for the advice of the advocate the client should not be suffered. So the workman relied on the reported decision 1988 L. L. J. P. 470 "Disciplinary Action–Disciplinary Proceeding *vis-a-vis* criminal trial–Stay of disciplinary proceedings-No hard and fast rule can be evolved–where criminal action and departmental proceedings are based on same set of facts, disciplinary proceedings should be stayed pending criminal trial–In appropriate cases disciplinary proceedings can await disposal of criminal case.

10. In the instant case, the second party workman moved before the management to stay departmental proceeding till the disposal of the Criminal proceeding in writing which is marked as Ext. M-21. But the management has not taken any steps on his application. So the departmental proceeding was going on. Relying on the above decision the learned advocate on behalf of the workman submitted that the challenge can be made after disposal of the Criminal case. Admittedly, Criminal case has finally disposed of on 23-4-2003 and the present dispute was raised by the workman in the year 2004. The learned Advocate on behalf of the workman further submitted that in I. D. case there is no provision of limitation and I. D. Act does not provide any limitation. Limitation is subject to condonation of delay. It is the settled law that the I. D. case should be disposed of with reasonable time. If there is any reasonable ground, the delay can be condoned. U/s 5 of the Limitation Act, the ground of delay should be reasonable. So as per the case of the workman due to pendency of criminal case, there was delay in filing the I. D. case and there was sufficient ground of delay. So the learned advocate on behalf of the workman submitted that the charges which have not been established the workman is entitled to get the back wages.

11. As per the case of the management, the workman was charge-sheeted for misappropriation and misutilisation of public fund. So the criminal cases have been initiated against the workman. The criminal case was disposed of on 23-4-2003. The petition has been filed by the workman on 29-9-2004 before the D. L. O. The learned advocate on behalf of the management submitted that

the management has nothing to say on the issue No. (i) and issue No. (iii). The learned advocate on behalf of the management submitted on the points of maintainability of this case basing on the point of limitation as well as disputing on issue No. (iv). Admittedly, when the conciliation failed, the management did not agree to take back the workman and the matter was sent to the Government for reference. Admittedly, the management has no dispute over issued No. (ii). The learned advocate on behalf of the management submitted on the point of limitation stating that it is a contract between the advocate and the client. The juniors nor their clerk of the concerned previous senior advocates of the workman who had given him advice are not examined in this case. Admittedly, both the previous learned advocates are dead. The learned advocate on behalf of the management further submitted that the brief notes nor any slip of papers nor documents concerned to the said advocates has not been filed in this case by the workman. Relating to the condonation of delay no petition for limitation with affidavit filed by the workman. The departmental proceeding and criminal proceeding are two separate things. The management relied on the reported decisions (1) S. L. J. 2005 (I) SC-197-Criminal case and Departmental case are different. (2) S. L. J. 2005 (3) Delhi High Court P. 94-Criminal and Departmental Proceedings can go on together.

The learned advocated on behalf of the management submitted that there is no bar for the management to proceed with the criminal proceeding and Departmental proceedings. The management can also proceed with the departmental proceeding as well as criminal proceedings. It is the settled principle of law that there can be no legal bar for simultaneous proceedings being taken, namely Criminal Proceedings as well as Departmental proceedings in view of the judgement in Delhi Cloth and General Mills Vrs. Kushal Bhan (1960-1-L.L.J.-520). On 7-8-1980 the management terminated the workman from his service. As per the case of the management, the workman has not preferred with any appeal after 7-8-1980 and not filed any petition before the management. So the learned advocate on behalf of the management submitted that in due course of time the workman created the story that he contacted with the previous advocates who are dead. Admittedly on 23-4-2003 the Hon'ble High Court passed the order. The workman has not explained the delay from 23-4-2003 to 29-4-2004 nor prior to it in filing this case. Admittedly, the management is a Co-operative Society. The workman was employed under the said society. The learned advocate on behalf of the workman submitted that the dispute in between the management and employee should be disposed of under Section 69 of the O. C. S. Act, 1962 and the limitation period is four years. As per the case of the management the workman has not filed any case before any competent authority within the said period. So the learned advocate on behalf of the management submitted that the workman failed to submit the point of limitation.

12. Admittedly the workman only relied on Ext. W-1 the copy of order of A. R. C. S. Ext. M-2 is the order of Criminal Appeal No. 191 of 1986. Ext. W-3 is the xerox copy of the application. Admittedly the workman has already attained the age of superannuation. So he cannot be reinstated again by the management.

13. The workman has taken the above plea of his delay in filing this case. Admittedly, no documents nor any evidence adduced by the workman in support of such plea. Admittedly, twenty-eight years after termination, the workman made a prayer for his back wages during such period. Admittedly the workman was terminated from service on 7-8-1980. When the management has nothing to say regarding the other issues besides the point of limitation, it can safely be said that the action of the management of M/s. Sambalpur District Co-operative Cental Bank Limited, Bargarh in terminating the services of the workman Shri A. N. Mishra, Cadre Supervisor, Grade-II with effect from 7-8-1980 is not legal nor justified.

14. Now the question arises whether the workman is entitled to get his back wages as per his claim. Admittedly, he has filed this case twenty-eight years after his termination from service. The cause or reason of delay showing by the workman in filing this case after twenty-eight years is not satisfactory. It is not the sufficient ground to condone delay.

15. Admittedly the management is a Co-operative Society which has been registered on 28-2-1955 having Registration No. 178/SM and affiliated to the present management. Therefore in view of such facts and circumstances the workman is not entitled to get any relief in this case. Besides that it is the settled principle that the employee gave up the claim of back wages for the period when he was kept out of employment. Accordingly the issue No. (iii) is answered.

16. Issue No. (i) & (iv)– In view of the above facts and circumstances the reference is not maintainable and the workman is not entitled to get any relief in this case. Issues are answered accordingly. Hence, the following Award.

AWARD

The reference is answered on contest but without any cost. The action of the management of M/s. Sambalpur District Co-operative Central Bank Ltd., Bargarh in terminating the services of Shri A. N. Mishra, Cadre Supervisor, Grade-II with effect from 7-8-1980 is not legal nor justified but in the circumstances the workman is not entitled to get any relief in this case.

Dictated and corrected by me.

S. MAHAPATRA
30-4-2010
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
30-4-2010
Presiding Officer
Labour Court
Sambalpur

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