

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1086 CUTTACK, SATURDAY, MAY 7, 2011/BAISAKHA 17, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 27th April 2011

No. 4073—li/1 (B)-97/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th February 2011 in Industrial Dispute Case No. 169 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s. Utkal Galvanizers Ltd., and its workman Shri Abhimanyu Mallick was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 169 OF 2008
(Previously registered as I. D. Case No. 119 of 1998
in the file of the Presiding Officer, Labour Court, Bhubaneswar)
The 17th February 2011

Present :

Shri Raghubir Dash, O. S. J. S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of . . . First-party Management
M/s. Utkal Galvanizers Ltd.,
At Kapursingh,
P. O. Oranda, Dist. Cuttack.

And

Shri Abhimanyu Mallick, . . . Second-party Workman
At Amathpur, Via Indupur,
Dist. Jajpur, Orissa.

Appearances :

S. T. Ullah, Advocate . . . For the First-party Management
Shri Subrata Mishra, Advocate . . . For the Second-party Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 11087—li/1(B)-97/1998-L.E., dated the 13th October 1998 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-L.E., dated the 4th April 2008. This Schedule of Reference runs as follows :

"Whether the termination of service with effect from the 1st January 1998 of Shri Abhimanyu Mallick by the management of M/s. Utkal Galvanizers Ltd., At Kapursingh, P. O. Oranda, Dist. Cuttack is legal and/or justified ? If not, to what relief Shri Mallick is entitled ?"

2. In the claim statement, the workman has narrated that vide letter, dated the 20th June 1992 he was appointed as a Sr. Lineman in the establishment of the first-party. He worked continuously as such till the 28th May 1997 when he was orally directed to report for duty at Duburi sub-station which is 150 kms away from the factory site of the first-party. As no written order was served on him and as the terms of appointment did not contain anything regarding transfer of his services, the workman raised protest against the oral order of transfer and sought for clarification. Being annoyed the management suddenly disengaged him on the same day without following any of the mandatory provisions of the Act. When the workman raised the industrial dispute the management during conciliation took the stand that the services of the workman had been terminated with effect from the 1st January 1997.

Further contention of the workman is that on the 28th May 1997 the workers of the factory had resorted to stoppage of work on the ground of non-fulfilment of their demand. The workman was actively taking part in the strike. Therefore, he was refused gate entry with effect from the 28th May 1997.

Thus, according to the workman he was refused employment with effect from the 28th May 1997.

3. In the written statement it is contended by the first-party that the main work of its establishment is to obtain Turn-Key Projects of erection and installation of Electrical Power Transmission Towers for which its workman are required to move outside to work at different worksites for erection work. Even as per the Certified Standing Orders of the first-party, transfer of workman to work sites is a condition of service for all its employees.

So far the second-party is concerned he was earlier directed to work at the work site in Balasore. As regards his transfer to Duburi sub-station, it is contended that the second-party had in fact, joined at Duburi on the 28th May 1997 at about 11 A.M. but then left his work place at about 3 P.M. without permission from the authority. Thereafter he did not resume his duty at Duburi. Therefore, the management sent a registered letter, dated the 30th May 1997 to the second-party directing him to join at Duburi site. A copy of the said letter was displayed on the Company's Noticeboard. The registered letter was received back undelivered with the remark that the addressee was absent. So, another letter, dated the 3rd June 1997 was sent to the workman by registered post. That letter also came back undelivered. On the 9th June 1997 there was a discussion between the management and its employees in the office of the District Labour Officer, Cuttack and it was agreed upon that the workers of the factory would resume duty on the 10th June 1997. The second-party workman

was one of the signatories to the Minutes of the said discussion. But, he did not resume duties on the 10th June 1997. On the 18th June 1997 the management issued another registered letter asking the second-party to join in his duties at Duburi but the same was returned undelivered. Therefore, on the 26th June 1997 a charge-sheet was framed against the workman and three persons were sent as Special Messengers to serve it on the workman who went through the contents of the charge-sheet but refused to receive it. Therefore, on the 28th June 1997 there was a newspaper publication in the local newspaper namely, "The Nyayabati" calling upon the workman to submit his written explanation to the charge-sheet, dated the 26th June 1997. The workman did not submit any explanation nor did he join in his duty. Since it amounted to gross indiscipline and serious misconduct the management was forced to dismiss him from service vide its letter, dated the 1st July 1997.

4. In terms of the reference made by the State Government, the following issues have been framed :—

ISSUES

- (i) "Whether the termination of service with effect from the 1st January 1998 of Shri Abhimanyu Mallick by the Management of M/s. Utkal Galvanizers Ltd., At Kapursingh, P. O. Oranda, Dist. Cuttack is legal and/or justified ?
- (ii) If not, what relief Shri Mallick is entitled to ?"

5. The workman examined himself as W. W. No. 1 and exhibited documents marked Exts. 1 to 5. Similarly, the management examined its Personnel Officer as M. W. No. 1 and through him exhibited documents marked Exts. A to H.

FINDINGS

6. *Issue Nos. (i) and (ii)*—In his deposition the workman has stated that as he was sick and under treatment of the E. S. I. Doctor from the 19th May 1997 to the 26th May 1997 he reported for duty on the 27th May 1997 but on that date he was asked by the management to proceed to Duburi work site to work there. He has further stated that as he was not fully cured he refused to proceed to Duburi. So he was denied employment. The other workers of the factory protested the denial of employment to the second-party for which the management did not allow them to resume their duties. There was a discussion between the management and the workmen on the 9th June 1997 and it was decided that all the workers would be allowed to perform their duties with effect from the 10th June 1997. But the second-party was not allowed to work when he reported for duty on the 10th June 1997. As regards the alleged dismissal, the workman has stated in his deposition that the management had never charge-sheeted him and no enquiry was conducted against him.

In his cross-examination the workman has stated that on the 27th May 1997 he was asked by the Managing Director of the first-party to proceed to Duburi but since there was no written order he did not proceed to Duburi. He has also stated that when other workmen resumed their duties on the 10th June 1997 he did not go to the work site at Duburi to report for duty on the 10th June 1997.

M. W. No. 1 in his affidavit has reflected all the facts pleaded in the Written Statement. During cross-examination he has stated that the management did not dismiss the workman from service. He has also admitted that no written order of transfer was served on the second-party.

7. Thus, from the pleadings as well as evidence adduced by the parties it is found that the second-party was a workman of the first-party and that he was orally directed to go to the work site at Duburi to work there. The workman has admitted that he did not report for duties at Duburi work site. Though it is claimed by the management that the workman had in fact joined at Duburi on the

28th May 1997 but left the work place at 3 P.M. and thereafter did not resume duties, it is denied by the workman. The management has not proved any document in support of this contention. Therefore, it can be said the workman was directed to work at the work site at Duburi but he did not obey the instruction which, according to the management, is a gross misconduct.

The further case of the management is that when the workman did not report for duties at Duburi several notices were sent to the workman asking him to report for duty at Duburi but the workman refused to receive the notices which were sent to him by registered post. The management has exhibited the registered letter marked Exts. A and B, each addressed to the workman but not delivered to the addressee with report that the addressee used to remain absent. The workman has not cross-examined M. W. No. 1 on these two letters in order to elicit from him as to whether those were correctly addressed to the workman in his address. However, there is no evidence that any of the notices was personally served on the workman.

The management has proved the newspaper publication marked Ext. E. But merely on the basis of Ext. E it cannot be said that the workman had come across the newspaper publication marked Ext. E. It is an Oriya newspaper with Athagarh as its main circulation area. The Newspaper gets published in Athagarh as stated by M. W. No. 1. It is not brought on record that when the Newspaper publication was made the workman was residing within Athagarh area. Though it is claimed by the management that the charge-sheet framed against the workman was sent to him through three Special Messengers and after going through its contents the workman refused to receive the same, none of the named Special Messengers have been examined by the management to prove the said assertion. Therefore, it cannot be said that the workman was duly served with any of the notices about which there is reference in the Written Statement so also in the affidavit evidence of M. W. No. 1.

8. It is then the case of the management that a charge-sheet was framed against the workman and when despite of the newspaper publication the workman did not submit his showcause the management dismissed him vide its letter, dated the 1st July 1997. It is not claimed by the management that any domestic enquiry was conducted before the order of dismissal was passed. As there is no domestic enquiry the workman has not challenged the fairness as well as the validity of the domestic enquiry. As a result no issue has been framed on the fairness of the domestic enquiry. The reference is also not with regard to the legality or justifiability of the order of dismissal. Therefore, with the facts and circumstances available on record it is to be examined as to whether the service of the workman have been terminated and if so whether the same is legal and/or justified.

At this stage may it be mentioned that in the schedule of reference the termination of service is stated to be with effect from the 1st January 1998. But in the pleadings so also in the evidence of the parties neither side has claimed that the termination of service of the workman was with effect from the 1st January 1998. However, both parties have admitted that with effect from the 28th May 1997 the workman has been not performing duties under the first-party. The management takes the plea that vide its letter, dated the 1st July 1997 the workman was dismissed from service. Ext. F is the order of dismissal. It reflects that the workman was dismissed from service with immediate effect. Therefore, it may be presumed that workman was dismissed with effect from the 1st July 1997. Thus, it is found that the service of the workman was not terminated with effect from the 1st January 1998. It appears, in the schedule of reference the date of termination of service of the workman is wrongly mentioned. Since the order of dismissal is not challenged by the workman this

Tribunal is not in a position to answer as to whether the order of dismissal is justified. But since it is admitted that the workman was dismissed as a measure of disciplinary action and yet the dismissal is not preceded by a domestic enquiry, the order of dismissal is not sustainable in the eye of law. There may be a presumption that the workman has not yet been dismissed from his service.

9. There is no dispute that on and from the 28th May 1997 the second-party has been out of employment. It is admitted by both sides that the workman was directed to proceed to Duburi work site to report there for duty on the 28th May 1997 but the workman did not comply with it on the ground that no written order was served on him. The validity of the order of transfer is not the subject matter of this reference. The Labour Union has not raised any industrial dispute challenging the validity of the order asking the workman to proceed to Duburi work site allegedly for erection of transformers for 220 K. V. sub-station. It is not denied by the workman that at the relevant time the erection work was going on at Duburi sub-station. It is also not refuted by the workman that the management takes up erection work at different work sites and that 50% of its activities take place at different work sites for which at times the workers are transferred to the work sites if their services are needed there. It is admitted by the workman that he was asked to proceed to Duburi work site but he did not. As already stated, the instruction given to the workman to go to Duburi work site was never raised as an industrial dispute. So the workman ought to have obeyed the orders of the management. When he has refused to work at Duburi work site it cannot be said that the management has refused employment to him resulting in termination of his service.

10. In the aforesaid facts and circumstances, this Tribunal is of the considered view that the second-party has not been legally dismissed from service for which employer-employee relationship still exists. The workman also fails to justify his refusal to work at the work site. Therefore, to regularise the matter, the order of dismissal needs to be set-aside and the workman needs to be reinstated leaving it to the discretion of the management to take-up disciplinary proceeding against the workman on the charges said to have been framed against him. It may so happen that the workman having been out of employment for such a long period may not like to resume duties to face a Departmental enquiry. Similarly, the management after lapse of such a long period may not like to reinstate the workman and to take-up a Departmental enquiry. Under such circumstances, the parties may be given an alternative option to put an end to the dispute by making payment of a lump sum amount of Rs. 50,000 (rupees fifty thousand) only to the workman in lieu of reinstatement. However, the alternative relief must be acceptable to both the parties or else, they are to abide by the Award on the relief of reinstatement.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
17-2-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
17-2-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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