

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1225 CUTTACK, TUESDAY, MAY 24, 2011 / JAISTHA 3, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th May 2011

No. 4565—li/1(B)-7/2007-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th April 2011 in Industrial Dispute Case No. 22 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Jayadev College of Pharmaceutical Sciences, Naharakanta, Bhubaneswar and its Workman Shri Ramesh Chandra Naik was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 22 OF 2007
Dated the 18th April 2011

Present :

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

Between :

The Management of . . . First Party—Management
M/s. Jayadev College of
Pharmaceutical Sciences,
Naharakanta,
Bhubaneswar.

And

Their Workman . . . Second Party—Management
Shri Ramesh Chandra Naik

Appearances :

Shri M. Ghosh, Principal . . . For the First Party—Management
Shri R. C. Naik . . . 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. 7182-l/1(B)-7/2007-LE., dated the 1st June 2007 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the termination of services of Shri Ramesh Chandra Naik, Peon-*cum*-Attendant by the management of Sri Jayadev College of Pharmaceutical Sciences, Naharakanta, Bhubaneswar with effect from 16-11-2001 is legal and/or justified ? If not, to what relief Shri Naik is entitled ?”

3. The case of the workman in brief is that he was engaged as a Peon-*cum*-Attendant under the management on Dt. 16-11-1988 vide letter No.220, Dt. 16-11-1988 and after completion of 13 years of satisfactory service, the workman was confirmed vide order Dt. 18-8-2001 of the Principal of the management college. The workman was covered under E.P.F. Scheme. On 17-11-2001 the workman went on medical leave and was under treatment of Dr. K. K. Mohanty till 10-5-2003. During the period of his medical treatment, the workman was falsely implicated in a murder case by the Baliana Police Station on 19-11-2001. The workman was released on bail by the Court of S.D.J.M., Bhubaneswar on 13-4-2002 after an anticipatory bail order from the Hon'ble High Court. On 10-5-2002 the workman went to join in his duty but he was not allowed by the management. He was acquitted in the said criminal case. The workman again went on medical leave from 14-5-2002 to 20-4-2006. He extending his leave from time to time. But the management terminated his service which is quite intentional, unjust and *mala fied* and contrary to the principle of natural justice. At the time of termination he was receiving pay scale of Rs.3,671 per month. So the workman raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received and this I.D. Case has been initiated wherein the workman has prayed for reinstatement in service with full back wages.

4. The management appeared and filed written statement in the form of case history which is not proper form and it was accepted by this Court (the then Presiding Officer, Labour Court, Bhubaneswar) vide Order No.13, Dt.3-2-2009. According to the management, the management has admitted the relationship of employer and employee between the management and the workman and also admitted his joining in service on 16-11-1988. The management has also admitted the salary of the workman of Rs. 3,671 per month. According to the management, the workman applied for leave without prior approval of the management on health ground on 18-11-2001 which was seized by the Police. The workman remained absent from duty unauthorisedly without any application. A show cause notice was issued to the workman for his unauthorised absence from duty in his local address through a special messenger which was received by his mother and subsequently it published in the local newspaper. The management received a telegram from the workman about his sick leave. A charge was framed against the workman vide Order No. 295, Dt. 11-2-2002 and was sent to the workman by registered post which was received his brother. Thereafter application was received from the workman regarding his extension of leave up to

1-4-2002 on medical ground. Thereafter by paper publication in the local newspaper, the workman was asked to appear before the Enquiry Officer on Dt. 13-4-2002 to defend the charges but he did not appear. The workman failed to attend the enquiry on 13-4-2002 and 8-7-2002. Thereafter the Enquiry Officer submitted his report recommending the dismissal of the workman from services subsequently an application was received from the workman for extension of his leave. On the basis of the enquiry report, the workman was dismissed from service vide Order No. 372, Dt.12-5-2003 which was sent to him by registered post but returned back as refused.

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

ISSUES

- (i) “Whether the termination of services of Shri Ramesh Chandra Naik, Peon-*cum*-Attendant by the management of Sri Jayadev College of Pharmaceutical Sciences, Naharakanta, Bhubaneswar with effect from 16-11-2001 is legal and/or justified ?
- (ii) If not, what relief Shri Naik 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 10. Similarly the management has examined his Principal as M.W.1 and proved documents marked as Exts.A to Z and A-1 to B-1.

FINDINGS

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

The management has taken the plea about the conducting of the domestic enquiry against the workman for his unauthorised absence, misconduct etc. Though specific issue has not been settled in regard, both the parties have knowledge about it. Therefore the fairness of domestic enquiry should be discussed first before discussing about other issues.

8. It is an admitted fact that the workman was working as Peon-*cum*-Attendant under the management. He has applied casual leave for 3 days with effect from 16-11-2001 to 17-11-2001 and 19-11-2001 on his health ground and availed the same with the public holiday, i.e. on Sunday on 18-11-2001. But thereafter the workman did not resume his duty nor applied for extension of leave for which the management called upon him to show cause as to why disciplinary action deemed proper will not taken against him for the lapses vide Ext.C which was not received by him but was received by his mother in his absence. When the workman did not turn up, another show cause notice was issued to him which was also received by his mother vide Exts.D and D/1. Thereafter the said matter was published in the local newspaper in Oriya daily vide Ext.F. The workman has extended his leave vide Ext.J. The local police was asked about involvement of the workman in a Criminal Case vide Ext.K., Ext.L is the xerox copy of the application of leave of the workman on medical ground. Charge was framed vide Ext.M his negligence in duty, purposefully absence from duty and of misconduct which was also received by the father of the workman vide Ext.N. But in the written statement it has been stated by the management that it has been received by the brother of the workman. Ext.P is the xerox copy regarding intimation to the management about the involvement of the workman in a murder case. But such Ext.P is not clear as to who was

the sender of that letter. But under the signature a black strip is there which suppress the identity of the signature but the original of it has not produced by the management to know about the correctness of it. Ext.Q series are the xerox copies of leave extension letters of the workman. As per paper publication in Oriya daily vide Exts.F, G and H the workman was directed to appear before the Principal-*cum*-Secretary of the college of the management on 13-4-2002 at 10.00 A.M. to show cause regarding charge. But the detailed charge as per Ext.M has not been published. Thereafter Ext.R discloses that one M.D. Srichandan, Enquiry Officer issued a letter to the workman directing him to appear before him on 8-7-2002 at 11 A.M. to submit show-cause before him about his unauthorised absence as he had failed to appear before him on 13-4-2002. It was sent through registered post with A.D. But no postal receipt and postal A.D. has been filed to show that actually it was issued to the workman. The contents of Ext.R regarding attendance on 13-4-2002 before the Enquiry Officer is contrary to Exts.G and H wherein the workman has been directed to appear before the Principal-*cum*-Secretary of the College of the management. Further from the contents of Ext.R it does not show that the workman was noticed to appear for any enquiry rather it is for show-cause. Thereafter the enquiry report was prepared vide Ext.S wherein the Enquiry Officer has suggested for dismissal of the workman from service. Thereafter the termination order was passed vide Ext.T which was passed on 12-5-2003 but the workman was terminated from service retrospectively with effect from 16-11-2001. According to the management a copy of termination order was sent to the workman by registered post which was returned back with endorsement 'refused' but the original of such postal endorsement has not been filed for perusal of the case to know about the correctness of it. In Ext.U only the word 'refused' has been mentioned without any initial or signature of the writer. Thereafter the paper publication was made vide Ext.V intimating that the workman was terminated from service vide order No. 372, Dt. 12-5-2003 without publishing the termination order in detail. Perused the documents marked as exhibits on behalf of the workman and rest of the documents marked as exhibits on behalf of the management.

9. From the materials available in the case record it has been argued by the management that domestic enquiry conducted against the workman was fair and proper and it needs no interference. But on the other hand, it has been argued on behalf of the workman that the domestic enquiry conducted against him was not fair and proper at all. The workman was not properly intimated about the date, time and place of enquiry and there is contradiction between Ext.R and paper publication in Oriya daily vide Exts.G and H. The enquiry report discloses that the Enquiry Officer has summoned the workman on 13-4-2002 and 8-7-2002 but there is no material on record to show that the Enquiry Officer has summoned the workman to attend on 13-4-2002 and notice to appear on 8-7-2002 was not served properly. It has been further argued that proper procedure was not followed for such domestic enquiry. The Enquiry Officer has neither examined any witness in the enquiry nor recorded any statement and no document was also proved and marked exhibits to prove the charges levelled against the workman. The Enquiry Officer did not consider the time to time leave applications of the workman. There is also no order regarding appointment of the Enquiry Officer as no such document has been furnished by the management in support of it. So it has been argued on behalf of the workman that the Enquiry Officer acted without any basis. The details of enquiry proceeding file has not been filed in the Court. The enquiry report shows that from the study of the file of the workman the Enquiry Officer came to know about the involvement in a criminal case and the workman was avoiding to attend the enquiry but he has occasionally submitting applications for leave on health ground. Without giving any specific finding about the charges, the Enquiry Officer suggested the punishment of dismissal against the workman. Though the Enquiry Officer has suggested about the dismissal of the workman from service the Principal-*cum*-Secretary

of the College of the Management vide Ext.7 terminated the service of the workman with effect from the date of his prolonged absence from his duty i.e. from 16-11-2001. This order was passed on 12-5-2003 vide Ext.T as mentioned earlier and this order was also not properly served on the workman. The copy of the enquiry report was also not served on the workman before taking any action against him which is a mandatory one. M.W.1 in his cross-examination has also admitted that the workman had worked under the management for 11 years continuously. He has also admitted that no charge sheet was served on the workman in this case. The enquiry report was served on the workman. He also admits that he has not filed any document to show that the enquiry report was served on the workman. The M.W.1 further admits that no second show -cause notice was served on the workman before punishment. The Enquiry Officer has also not been examined in this case for the reasons best known to the management. In Ext.K the management has informed the Police Officer that the disciplinary proceeding was also being initiated against the workman for his removal from service. So before conclusion of the enquiry the management has decided to remove the workman from service. So the enquiry conducted against the workman was a formal and eye wash only. The termination order vide Ext.T terminating the service of the workman is a retrospective one which is also not permissible in the eye of law. So basing on the above irregularities pointed out and on careful consideration of all the materials available in the case record, I came to the conclusion that the domestic enquiry conducted against the workman was not fair and proper.

It has been argued by the management that the establishment of the management is not an industry and the workman of this case is not a workman as per the provisions of the Industrial Disputes Act but such plea has not been taken at the earlier in his pleading. However, in view of the materials available in the case record and in view of the authority reported in AIR 1978 SC 548 in the case of Bangalore Water Supply and Sewerage Board Vrs. A. Rajappa and others I came to the finding that the establishment of the management is a industry and the workman of his case is a workman as per the Industrial Disputes Act.

10. The management has not examined any other witness in the Court to prove the charges levelled against the workman on merit. It has been argued that the workman involved in a criminal case vide S.T. case No. 303/45 of 2003 at Bhubaneswar Sessions Court, and was attending the said Court on the date fixed. If he has able to attend the Court on the date fixed how he was under the medical treatment of the doctor. So it has been argued by the management that the medical certificate produced by the workman vide Exts.A-1 and A-1/1 are not correct and fabricated one and should not be taken into consideration. The workman has also produced the xerox copies of the medical certificates of Dt. 23-4-2006 along with his joining report Dt. 24-4-2006 vide Ext.10. He was under the treatment of Dr. (Prof.) K. K. Mohanty who had certified that the workman was treated from 17-11-2001 till date i.e. 23-4-2006 and was declared fit to resume his duty on 24-4-2006. So it has been argued by the workman that merely because he had attended the Criminal Court on the date fixed it cannot be said that he was not under the treatment of the doctor. The doctor who had treated the workman has duly issued the medical certificate which has been marked as Exts. A-1 and A-1/1. The management has not taken a little pain to examine the said doctor to elicit from his mouth anything contrary to his certificate and regarding the materials to disbelieve such medical certificate. So the medical certificate is presumed to be correct unless and until contrary is proved as per the settled principle of law. The management has not been able to establish the charges levelled against the workman on merit in the Court. The workman has already been acquitted from the said criminal case vide judgement marked as Ext.9. While terminating the service

of the workman with retrospective effect, the provisions of Section 25-F of the Industrial Disputes Act has not been followed at all, which is a pre-condition and mandatory one as the M.W.1 has admitted that the workman has worked under the management for 11 years continuously. So on careful consideration of all the materials available in the case record as discussed above, I came to the finding that the termination of service of the workman by the management with effect from 16-11-2001 is neither legal nor justified, and he is entitled for reinstatement in service.

11. Regarding back wages, admittedly the workman has not worked under the management from the date of alleged termination of service. It is now well settled by reason 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. Further as per settled principle of reported in 2004 (Supp.) OLR 694 that when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. However, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that instead of granting full back wages a lump sum amount of Rs. 50,000 as compensation will meet the ends of justice, in this case. Hence both the issues are answered accordingly.

12. Hence Ordered :

That the termination of service of Shri Ramesh Chandra Naik, Peon-*cum*-Attendant by the management of Sri Jayadev College of Pharmaceutical Sciences, Naharakanta, Bhubaneswar with effect from 16-11-2001 is illegal and unjustified. The workman Shri Naik is entitled for reinstatement in service with a lump sum amount of Rs. 50,000 (Rupees fifty thousand) only as compensation in lieu of back wages. The management is directed to implement this Award within a period of one month from the date of its publication failing which amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
18-4-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
18-4-2011
Presiding Officer
Labour Court
Bhubaneswar

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