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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd December 2010

No. 10796—li/1 (B)-22/1994-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 17th September 2010 in Industrial Dispute Case No. 76 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s. First Flight Couriers Pvt. Ltd, Bhubaneswar and its workmen represented through Carrier Transport Employees Union, West Bengal, Orissa Unit, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 76 OF 2008

(Previously registered as I. D. Case No. 195/95
in the file of the P. O., Labour Court, Bhubaneswar).

The 17th September 2010

Present :

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

Between :

The Management of M/s. First Flight .. First-party Management
Couriers Pvt. Ltd., Bhubaneswar.

And

Their Workmen represented through .. Second-party Workmen
Courier Transport Employees Union,
West Bengal, Orissa Unit, Bhubaneswar.

Appearances :

Shri Debasish Mohanty, Authorised Representative.	..	For the First-party Management
Shri Natabar Rana, Branch Secretary of the Union.	..	For the Second-party Workmen

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No. 9176-li (B)/1-22/1994 dated 25-7-1995 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 4-4-2008. The Schedule of reference runs as follows :—

"Whether the termination of service of S/Shri Purna Chandra Nayak (2) S. K. Allaudin (3) R. C. Samantaray, (4) M. K. Bai (5) B. Rana (6) Rahim Khan (7) P. C. Paramanik and (8) D. Behera, Pick-up Delivery Clerks with effect from dated 17-11-1993 by the management of First Flight Couriers Pvt. Ltd., Sahidnagar, Bhubaneswar is legal and/or justified ? If not, what relief these workers are entitled to ?"

2. Eight workmen represented through the Courier Transport Employees' Union, Orissa Branch have raised the dispute challenging the termination of their services with effect from dated 17-11-1993 by the first-party management. In the claim statement it is pleaded that the following workmen had been working as Pick-up Delivery Clerks with the management in its branch at Bhubaneswar since the dates mentioned against each of their names :—

Sl. No.	Name	With effect from
1	Purna Chandra Nayak	1-12-1989
2	S. K. Allaudin	1-11-1991
3	R. C. Samantray	7-12-1989
4	M. K. Bai	2-10-1990
5	B. Rana	18-12-1991
6	Rahim Khan	1-5-1988
7	P. C. Paramanik	1-4-1991
8	D. Behera	28-10-1991

It is alleged that since they were active members/office bearers of the Union and had raised demands before the management, the latter became vindictive and terminated the services of the workmen with effect from the 17th November 1993. It is claimed that the retrenchment by way of termination of services is illegal inasmuch as the statutory provisions contained in the Act have not been complied with. Reinstatement of the workmen with back wages is demanded by them.

3. In the written statement filed by the first-party, it is contended that the Union which espouses the cause of the workmen has no *locus standi* and that Natabar Rana who has signed the claim statement and who has been representing the workmen has no *locus standi* to represent the workmen under Section 36 of the Act.

On the assertion made on behalf of the workmen, it is pleaded that they were casual and unskilled labourers. They used to be engaged as and when work was available and they were being paid their wages for the number of days they used to be engaged. They had committed some misconduct and act of indiscipline for which they were served with notice to show-cause on the charges of misconduct but they refused to accept the notice. Having come to know that they had been charge-sheeted they did not report for duties with effect from dated 17-11-1993. So far S. K. Allaudin, R. C. Samantaray and P. C. Paramanik are concerned, the management has taken the plea that they had voluntarily resigned with further assertion that they have settled their final accounts with the management.

4. The second-party filed rejoinder asserting that the Union has the right to espouse the cause of the workmen and Shri Natabar Rana is capable of representing the workmen. It is denied that three of the workmen had resigned and others had abandoned their job. It is also denied that the workmen had ever committed any misconduct and for that they had been ever charge-sheeted.

5. In terms of the reference, the following issues have been settled :—

ISSUES

- (i) "Whether the termination of services of S/Shri Purna Chandra Nayak (2) S. K. Allaudin (3) R. C. Samantaray (4) M. K. Bai (5) B. Rana (6) Rahim Khan (7) P. C. Paramanik and (8) D. Behera, Pick-up Delivery Clerks with effect from dated 17-11-1993 by the management of M/s. First Flight Couriers Pvt. Ltd., Sahidnagar, Bhubaneswar is legal and/or justified ?
- (ii) If not, to what relief these workers are entitled ?"

6. On behalf of the second-party two witnesses have been examined. W. W. No. 1. is S. K. Allaudin, one of the concerned workman and W. W. No. 2 is said Natabar Rana, the representative of the workmen. The management has examined its Area Manager as M. W. No. 1.

FINDINGS

7. *Issue No. (i)*—There is no dispute that on or about dated 17-11-1993 the employment of the second-party members was brought to an end. According to the management, three out of the eight workmen resigned and the rest did not report for duties with effect from dated 17-11-1993. If the plea of abandonment of job is found to be unacceptable, then the plea of termination of service effected by the management is to be accepted. The disruption of employer-employee relationship took place on dated 17-11-1993. On the next day a dispute was raised before the local Conciliation-*cum*-District Labour Officer alleging that all the second-party members had been terminated illegally. Since then the second-party members have been struggling to get relief. The management takes the plea that for some misconduct the workmen were asked to show-cause

and thereafter they did not report for duties. It is very difficult to accept this plea particularly when the management has failed to show that after the alleged refusal to accept the show-cause notice the management took further action against the second-party members. The circumstances rather make-out a case of termination of services effected by the management for some reason may be for some misconduct of the workmen.

The management has failed to adduce any reliable evidence in support of its contention that three of the workmen had voluntarily resigned and they have settled their differences with the management. In the memo of argument filed by the management it is stated that the management filed some documents to prove the alleged resignation by three workmen but inadvertently the documents could not be marked as exhibits. It is the responsibility of the party concerned to see that the documents relied on by it have been duly exhibited. Mere filing of documents is not sufficient and there cannot be automatic marking of such documents as exhibits. That apart, one of the three workmen who allegedly resigned has adduced evidence as W. W. No. 1. He does not admit to have had submitted letter of resignation. Rather, he has taken the plea that his signature was forcibly taken by the management on a blank sheet of paper. In spite of such plea the management failed to confront the so-called letter of resignation to this witness in order to give him an opportunity to explain on such documents. With the materials available on record alongwith the facts and circumstances of the case this Tribunal is of the considered view that the management had terminated the services of the workmen with effect from dated 17-11-1993. Since the management does not take the plea that such termination was in accordance with the statutory provisions of the Act, it is to be held that the termination of service of the workmen is illegal.

8. Now the argument on the point of maintainability of the reference proceeding may be taken-up. Admittedly, the dispute has been raised by the General Secretary, Courier Transport Employees' Union, Orissa Branch. According to the management, the Union is meant for the employees in the transport industry only. Courier service employees, it is contended, cannot become members of that Union. The workmen being not members of the said Union the dispute could not have been taken-up by the Union. In my considered view, this objection after the insertion of Section 2-A in the Act is irrelevant. As per Section 2-A of the Act, a dispute relating to retrenchment or otherwise termination of service of an individual workman is to be deemed to be an industrial dispute and such dispute will not require espousal of workmen or any Union.

Coming to the contention that Shri Natabar Rana has no *locus standi* to represent the workmen, it is to be mentioned that there is no dispute that said Natabar Rana is not the Branch Secretary of Courier Transport Employees' Union. Under Section 36 of the Act, a workman shall be entitled to be represented in a proceeding under the Act by—

- (a) any member of the executive or other office bearer or a registered trade union of which he is a member ;
- (b) any member of the executive or other office bearer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated ;
- (c) where the worker is not a member of any trade union by any member of the executive or other office bearer of any trade union connected with, or by any workman employed in the industry in which the worker is employed and authorised in such manner as may be prescribed.

According to the management, the workmen of the first-party had no union and Courier Transport Employees' Union being not a trade union connected with the industry in which the workmen were employed cannot represent the workmen in this proceeding. In this regard, the witness for the management has simply stated that to his knowledge there was no union in the office of the first-party management. On the other hand, witness No. 1 for the workmen has stated that the workmen of the management had formed a union and when their Secretary was transferred they had raised protest for which their services have been terminated. Of course, this witness is unable to say the name of the Union of which he was a member but he says that Natabar Rana was the Secretary of their Union. Said Natabar Rana is examined as W. W. No. 2. In his deposition he claims that he is the Branch Secretary of Courier Transport Employees' Union, that he had raised a dispute before the management and submitted a memorandum vide Ext. 3 to that effect on dated 6-9-1993. The management during cross-examination did not put any question on Ext. 3. No question has been put to the witness to elicit from his mouth as to whether the Courier Transport Employees' Union is connected with the industry in which the workmen were employed. Under such facts and circumstances this Tribunal is of the opinion that there is insufficient materials to hold that Natabar Rana is not entitled to represent the second-party workmen.

8. *Issue No. (ii)*—Reinstatement with full back wages is the prayer made by the second-party. Though it is held that the impugned termination of service of the workmen is illegal, the relief of reinstatement with full back wages cannot be granted automatically. In *Ashok Kumar Sharma Vrs. Oberoi Flight Services*, reported in AIR 2010 (S. C.) 502, it is observed that in recent past the Hon'ble Supreme Court have consistently taken the view that relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention to the prescribed procedure. In *Sitaram & Sons Vrs. Motilal Nehru Farmers Training Institute*, reported in AIR 2008 (S. C.) 1955, it is observed that while considering as to what relief should be granted to a workman when his retrenchment is held to be illegal, the nature of appointment, the period of appointment, availability of the job, etc. are to be taken into consideration. In *Jagbir Singh Vrs. Haryana State Agriculture Marketing Board*, reported in AIR 2009 (S. C.) 3004, it is held that the award of reinstatement with full back wages particularly in the case of daily wagers is not proper and instead compensation may be awarded. In *U. P. State Brassware Corporation Ltd. Vrs. Udai Narayan Pandey*, reported in AIR 2006 (S. C.) 586, it is observed that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched. In *Saran Kumar Goud Vrs. State of U. P.*, reported in 1993 Supp. (2) S. C. C. 749, it is held that when work is not done remuneration is not paid and accordingly no direction for award of past salary.

In this case, it is found from the claim statement that workmen namely, Rahim Khan was with the management for about four and half years, Purna Ch. Nayak and R. C. Samantaray for about four years, M. K. Bai for about three years and the rest for about two years. The management takes the plea that the workmen were all casual and unskilled workers and duty was allotted to them as and when work was available. The management has not produced any document to show the

actual period of engagement. It has also not disputed that the workman had been working under it from the dates given against name of each of the workmen in Para 3 of the claim statement. Under such circumstances, it is to be presumed that the workmen were in continuous service under the management. The workmen having failed to prove appointment order or any other documents to show the nature of their appointment it is to be presumed that they used to be paid on daily wage basis and they were not in permanent posts. W. W. No. 1 has deposed to the effect that he used to get Rs. 750.00 per month. There is no evidence on the fact as to whether the workmen have been in gainful employment since the date of their illegal retrenchment. Taking all these factors into consideration, this Tribunal considers it to be appropriate to award compensation instead of reinstatement with back wages. Accordingly, workmen Rahim Khan, Purna Chandra Nayak and R. C. Samantaray are held entitled to compensation of Rs. 40,000 (Rupees forty thousand) only each ; Shri M. K. Bai to an amount of Rs. 30,000 (Rupees thirty thousand) only and rest of the workmen namely, S. K. Allauddin, B. Rana, P. C. Paramanik and D. Behera be paid compensation of Rs. 20,000 (Rupees twenty thousand) only each.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
17-9-2010
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
17-9-2010
Presiding Officer
Industrial Tribunal, Bhubaneswar

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

