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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th January 2011

No. 196—li/1(BH)-5/2006(Pt.)-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd October 2009 in Industrial Dispute Case No. 21/2007 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of M/s Debasis Engineering Works, a Contractor's Establishment under the Utility Power Tech. Ltd., Qrs. No. B-79, BHEL Colony, NTPC Ltd., Talcher Thermal Power Station, Post Talcher Thermal, Dist. Angul and their workman Shri Dharani Naik 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. 21 OF 2007

Dated the 23rd October 2009

Present :

Shri Sarojini Mohapatra, M.A. LL.B.,
Presiding Officer,
Labour Court, Sambalpur.

Between :

The Management of
M/s Debasis Engineering Works,
A Contractor's Establishment
under the Utility Power Tech. Ltd.,
Talcher Thermal Power Station,
P.C. Talcher Thermal
Dist. Angul.

. . First Party—Management

And

Their Workman
 Shri Dharani Naik,
 C/o Shri Chakradhar Naik,
 At/P.O. Lodhani,
 P.S. Parjang,
 Dist. Dhenkanal.

.. Second Party—Workman

Appearances :

None .. For the First Party—Management

None .. For the Second Party—Workman

A W A R D

1. This case arises out of a reference Memo No. 7615 (5) Dt. 11-6-2007 from the Government of Orissa, Labour & Employment Department referring the dispute under sub-section (5) of section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 for adjudication in the following grounds :

“Whether the termination of services of service of Mr. Dharani Naik with effect from 13-1-2006 by the management of M/s Debasis Engineering Works, a Contractor’s Establishment is legal and/or justified ? If not, to what are the benefits relief is Mr. Naik is entitled to ?”

2. The case of the workman is stated as follows :—

3. The second party—workman has been appointed by the first party—management as a Gardener on Dt. 1-7-2004 to work under him in Horticulture jobs in different quarters on N.T.P.C. Ltd., T.T.P.S. as a skilled workman with a monthly scale of Rs. 1313 where from 12% had been deducted towards P.P. On 13-10-2006 the second party—workman came to know that one Kuna Naik has been engaged in the said work in place of the workman by the management without giving any notice to him. The applicant workman approached the Opposition party—Management to allow him to continue in this service as his service was satisfactory during his engagement and also interested to work for the management. Subsequently the management is directed to the workman not to come to his service as he has already been terminated from his service i.e. 13-3-2006. The

5. In view of the above pleadings of the parties, the following issues have been settled.

I S S U E S

(i) “Whether the termination of services of the workman with effect from the 18th April 1989 by the management is legal and/or justified ?

(ii) If not, to what relief is he entitled ?”

6. In order to substantiate same the workman has examined himself as W.W.1 and proved the

documents marked as Exts. 1 and 2. Similarly the management has examined two witnesses altogether on their behalf out of which M.W.1 is the Accountant-*cum*-Cashier of the management whereas M.W.2 is the Office Executive of the management. The management has also proved the documents marked as Exts. A to R on their behalf.

7. Initially the case was disposed of by an Award, Dt. 2-5-2001 and it was quashed by the Hon'ble Court vide Order No. 5, Dt. 21-3-2005 passed in O.J.C. No. 3114 of 2002 with a direction to dispose of this case *de novo* after giving an opportunity of hearing to the parties. After remand W.W. 1 was re-examined and cross-examined and M.W. 2 has been examined afresh.

FINDINGS

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

It has been argued by the advocate for the workman that the workman alongwith other workmen were the office bearers and Leaders of the Union and a charter of demand was submitted on behalf of the workers through the Union before the management and during pendency of such charter of demands the management deliberately terminated the services of the workman with *mala fide* intention to victimise the workman and others for their Trade Union activities and to make the demands weak. The reason for termination that he has been abandoned himself from duty from 18-4-1989 is not correct. The workman has never been charge-sheeted and no enquiry was held before inflicting punishment. So the entire termination is bad in law for which the workman should be reinstated in service with full back wages. On the other hand, it has been argued by the management that since the workman has voluntarily abandoned his service and did not resume his duty in spite of repeated notices given by the management, there is no legal necessity to hold an enquiry and the principle of natural justice is no way violated if no enquiry was held in case of abandonment of service. So the action of the management is justified for which the workman is not entitled to get any relief. Basing on these averments now I have to verify the evidence available in the case record. The workman has stated that he was working under the management since 26-6-1976 and continued to work till 18-4-1989 when his service was terminated. No written termination order has been given to him. Only he came to know from the newspaper advertisement "The Samaj", Dt. 19-9-1989 vide Ext. 1. From the date of joining till his termination, he was working continuously without any break and was receiving his pay by signing in the wage slip. During his tenure of service more than 200 employees were working in the management and subsequently more workers are working. During his tenure of service, the Manager was looking after the affairs of the workers. He made representation to the management regarding his termination. As there was no effect, he informed the matter to the Labour Officer. There was no conciliation due to non-co-operation of the management. Prior to his termination there was no charge-sheet against the workman. No domestic enquiry was also held. No notice or notice pay and retrenchment compensation was given to the workman at the time of his termination though it is a precondition of termination as per law. After his termination some other persons have been engaged in his place and they are continuing now. The workman has stated that he had not voluntarily abandoned his service since 18-4-1989. After 18-4-1989 he was repeatedly going to the Mill but he was not allowed

to work. However, in support of it, no specific document has been proved that after termination he has not gainfully employed elsewhere and since he challenged the termination bad in law, he claims for his reinstatement in service with full back wages and consequential service benefits.

9. The M.W.1 was working as an Accountant under the management. He knows the workman. He is no longer working under the management. According to him as the workman did not turn up for work, the management issued several notices vide Exts. E, E/1, E/2 and E/3 by Registered Post with A.D. and the workman has received the letter, Dt. 11-7-1989 vide Ext. E/4. After receipt of the letter, the workman did not turn up for work. Finally the management intimated the workman that his name has been struck off as he did not turn up for work. The workman did not turn up to receive his financial dues. Even after the paper publication, the workman did not turn up. This witness denied the fact that the workman was regularly going to the Mill but he was not allowed to join. In the cross-examination he has stated that there were three Managing Directors who were looking after the affairs of the Mill. The letters exhibited were sent by the Manager. Shri Mahendra Kumar Sarada, who left the job. On a reference to Ext. 1 the publication in "The Samaj", Dt. 19-9-1989, it appears that the present workman alongwith 10 others were informed through Press that since 18-4-1989 they remained absent for which his name has been struck off from the list of workers and the workman alongwith others were informed to collect their dues from the office of the management. The M.W.2 proved certain documents and deposes that due to bad financial condition of the management, whenever the workman do not work they do not claim any wages for those days on the principle of 'no work no pay' followed being agreed by the workmen of the Mill. He has also proved the attested copy of the Certified Standing Order marked as Ext. R. The Article 20(c) of Ext. R discloses about absence without leave which reads as follows :

"20(c)—Absence without leave shall be a misconduct and shall be dealt with accordingly to accordance with the Standing Orders, but if a workman remains absent from duty for more than 8 days consecutively, it will be deemed that he has voluntarily left services under the management of his own accord and his name may be struck off from the Muster Roll of the Mill."

The learned counsel appearing for the management submitted that since the workman did not join in his duty in spite of notices issued to him nor applied for any leave. In view of the provisions of the Certified Standing Order, it is deemed that the workman has voluntarily abandoned his service and such abandonment cannot be treated as retrenchment or termination of service and in that case the workman is not entitled to get the benefit as provided under Section 25-F of the Industrial Disputes Act. The learned counsel appearing for the workman submitted that the workman was absent with effect from 18th April 1989 without any permission. It is well known that remaining absent without leave application and permission amounts to misconduct. Once the management took the plea of misconduct against the workman, the management is under obligation to hold a domestic enquiry affording reasonable opportunity to the workman following the principle of natural justice to come to the conclusion that the workman was guilty of misconduct and thereafter the management may take action in accordance with the rules proportionate to the act done by the

workman. In the authority reported in 1999 Lab. I.C. 1254 it has been held that under Standing Order raising presumption that the workman has left service in case of unauthorised absence of workman from duty for eight days cannot be effected on such assumption basis without affording hearing to him. But in the instant case no opportunity has been given to the workman as revealed from the case record. Similarly in view of the authority reported in 1969 Lab. I.C. 1094 it has been held that order of dismissal cannot have effect from any date prior to that of which it is communicated to delinquent. In the instant case the termination of service is with effect from the 18th April 1989 and published on the 19th September 1989. Similarly in the authority reported in 1993-SCC-3-259 it has been held that retrenchment is comprehensive and intended to cover any action of management to put an end to the employment of an employee for any reason whatsoever, and the action of the management must be fair, just and reasonable and principle of natural justice are to be followed and principle of natural justice must be read into the Standing Orders. So in the instant case, the management had not conducted any domestic enquiry and on the basis of the Standing Order, the action taken by the management is not only illegal but also violating the principle of natural justice. So on careful consideration of the materials as discussed above, now I came to the finding that the termination of service of the workman by the management with effect from 18th April 1989 is neither legal nor justified ?

10. Now the point of reinstatement in service is to be considered. It has been prayed by the workman to reinstate him in service with full back wages. 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. Similarly determination of compensation in lieu of reinstatement to a workman, various factors like manner, method of recruitment, nature of employment, and more important his length of service are also to be considered. As per legal position of the termination of an employee is found to be illegal earlier view was of relief of reinstatement with full back wages. But in the recent past, there has been a shift in the legal position and in long line of cases the Hon'ble Supreme Court has 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. Compensation instead of reinstatement has been held to meet the ends of justice. In the instant case it appears from the case record that the management has taken new persons in place of the workman due to financial loss and due to long absence of the workman. It is a case of termination of the year 1989. The age of superannuation is 58 years as per the Certified Standing Order. The evidence of the management shows that at present the management is running the factory with heavy loss and sometime 'no work no pay' principle has been followed in respect of the workman working there, with reference to the settlement between the workers Union and the Management. In the meantime long period has been passed and the persons who are working in place of the workman must be working. Now giving a direction for reinstatement of the workman may not be appropriate, taking into consideration of length of service, present age and the age of superannuation unless the order of reinstatement is given, the question of payment of back wages will not be appropriate. However, taking into consideration of all the materials available in the case

record as discussed above, compensation instead of reinstatement will meet the ends of justice and in my opinion a sum of Rs. 25,000 as lump sum compensation will meet the ends of justice. Therefore the workman is entitled to get a lump sum amount of Rs. 25,000 (Rupees twenty-five thousand) only as compensation from the management and the management is to pay the said compensation amount to the workman within a period of three months from the date of its publication in the official Gazette, failing which the workman will be entitled to get interest at the rate of 9% (nine per cent) per annum on the amount of compensation from the date the amount became payable by the management till the same is actually paid.

The reference is answered accordingly.

Dictated and corrected by me.

S. K DASH
25-9-2010
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
25-9-2010
Presiding Officer
Labour Court
Bhubaneswar

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